

State of New Hampshire Banking Department

| | | |
|---|---|--------------------------|
| In re: |) | Case No.: 19-220 |
| |) | |
| State of New Hampshire Banking Department, |) | |
| |) | |
| Petitioner, |) | Notice of Hearing |
| |) | |
| and |) | |
| |) | |
| Whistling Pines, Inc. d/b/a Whistling Pines Mobile Home Village & Sales and d/b/a NH Manufactured Housing Loan |) | |
| |) | |
| and |) | |
| |) | |
| Alan G. Simard, Individually and as Owner of Whistling Pines, Inc. |) | |
| |) | |
| Respondents |) | |
| |) | |
| |) | |
| |) | |
| |) | |
| |) | |
| |) | |

NOTICE OF HEARING

1. Respondents request a hearing to challenge a fine imposed for a late-filed financial statement. Respondents are regulated under RSA Chapter 397-A, and are required to submit the financial statement within 90 days from the Respondent Company’s fiscal year end, in accordance with RSA 397-A:13, II. RSA 397-A:13, IV imposes a \$25.00 a day fine for each day the financial statement is late (maximum fine of \$2,500.00). Respondents’ financial statement was 46 days late. See Exhibit A. Accordingly, an invoice for a total fine for late filing of the financial statement of \$1,150.00 was presented to the Respondents on November 22, 2019. See Exhibit A.

2. A request for abatement of this fine was requested by Respondent Alan Simard on December 5, 2019. The Commissioner has authority to abate a fine imposed under RSA

397-A:22, V “for good cause shown.” The Company asserted that the reason for failing to file its financial statement in a timely manner was because it was unable to work with the Nationwide Multistate Licensing System and Registry (NMLS). On December 18, 2019, the request for abatement was denied. See Exhibit B.

3. On December 31, 2019, Respondents made a written request for an administrative hearing to contest the imposition of the \$1,150.00 fine. See Exhibit C.
4. Maryam Torben, New Hampshire Banking Department Consumer Credit Division, has been designated as Staff Representative in this matter with authority to represent the public interest within the scope of the Department’s authority (“Staff Representative”). The Staff Representative shall have the status of a party to this proceeding. The Staff Representative may be reached at (603) 271-3561.
5. Lauren Warner, Esquire, (“Presiding Officer”), has been delegated to preside over this matter pursuant to RSA 383:7-a. See also RSA 541-A:1,XIV.

IT IS HEREBY ORDERED that:

6. The parties shall appear on February 6, 2020, at 10:00 a.m., at the New Hampshire Banking Department located at 53 Regional Drive, Suite 200, Concord, New Hampshire 03301, for the purpose of participating in an adjudicative proceeding, at which time Respondent will have the burden to show cause why the \$1,150.00 fine should be abated. RSA 397-A:18, I; RSA 541-A.
7. The Hearing shall be conducted under the relevant provisions of RSA 541-A, RSA 397-A, the Jus 800 rules (http://www.gencourt.state.nh.us/rules/state_agencies/jus800.html), and all relevant Ban rules.

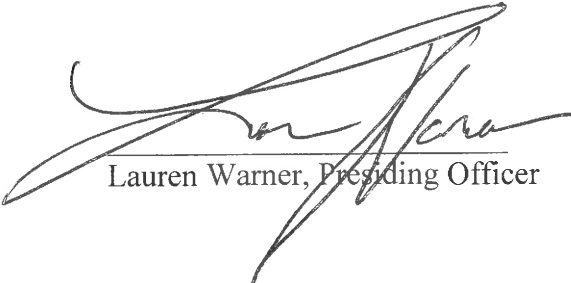
8. Each party has the right to have an attorney present to represent the party at the party's expense, or may represent itself or himself.
9. The entirety of the hearing shall be audio recorded verbatim by the Department. Upon request of any party, or upon the Presiding Officer's own initiative, such record shall be transcribed by a certified court reporter designated by the Presiding Officer, and all costs for such transcript shall be borne solely by the requesting party.
10. Any proposed exhibits shall be pre-marked, for identification only, filed with the Presiding Officer and provided to the opposing party no later than Friday, January 31, 2020 at 4:30 PM. The Staff Representative shall pre-mark exhibits with Arabic numbers. Respondents shall pre-mark exhibits with capital letters. An index/list of exhibits providing a brief description of each exhibit with its corresponding pre-marked number or letter shall be filed by each party simultaneous with the filing of exhibits.
11. The parties shall also exchange a list of all witnesses to be called at the hearing with a brief summary of the anticipated testimony no later than Friday, January 31, 2020 at 4:30 PM, and shall at the same time file a copy of their respective lists with the Presiding Officer.
12. If a party fails to appear at the time, date, and place specified the Presiding Officer shall declare the party in default. The Presiding Officer shall either (a) Dismiss the case, if the party with the burden of proof fails to appear; or (b) Hear the testimony and receive the evidence offered by a party, if that party has the burden of proof in the case. Jus 810.02
13. All documents shall be filed with the Presiding Officer in the form of an original and one (1) copy and shall bear a certification that a copy is being delivered to the Staff Representative and any other parties to this matter in accordance with applicable laws.

All documents shall be filed by mailing or delivering them to the New Hampshire Banking Department, ATTN: Presiding Officer, 53 Regional Drive, Suite 200, Concord, NH 03301. Filing by electronic transmission shall be accepted at PresidingOfficer@banking.nh.gov.

14. All motions shall bear a certification that assent has been sought and whether the other party has responded, assents or objects.
15. Pursuant to Jus 803.03, the Presiding Officer waives the requirement in Jus 806.01 that objections be filed within 30 days of the date of the motion and orders that objections be filed within 10 days of receipt of a motion.
16. The parties shall submit Proposed Orders, which shall include findings of fact and conclusions of law, separately stated, no later than twelve (12) days following February 6, 2020. The record of the hearing shall remain open during such time, closing on February 18, 2020 at 4:30 PM.
17. The parties may discuss and agree on routine procedural issues. Any such agreement shall be proposed to the Presiding Officer. All communications with the Presiding Officer shall be in writing and shall be filed as provided above. *Ex parte* communications are forbidden by statute.
18. The parties are encouraged to engage in settlement discussions prior to the hearing.
19. A copy of this Notice of Hearing shall be delivered via e-mail and U.S. mail to all Parties identified on the Certificate of Service attached hereto.

SO ORDERED,

Dated: 1/9/2020


Lauren Warner, Presiding Officer

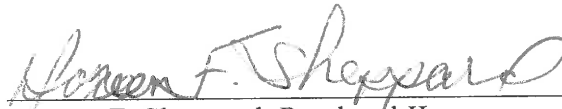
CERTIFICATE OF SERVICE

I, Doreen F. Sheppard, hereby certify that on January 9, 2020, a copy of the attached Notice of Hearing was sent to the following parties:

VIA E-MAIL AND US MAIL

Maryam Torben, Esq.
NH Banking Department
53 Regional Drive, Suite 200
Concord, NH 03301
Maryam.Torben@banking.nh.gov

Alan G. Simard
Whistling Pines Inc.
192 ByPass 28, #304
Derry, NH 03038
Asimard1@me.com



Doreen F. Sheppard, Paralegal II
New Hampshire Banking Department

Exhibit A

STATE OF NEW HAMPSHIRE
BANKING DEPARTMENT
53 Regional Drive, Suite 200
Concord, New Hampshire 03301
Tel. (603) 271-3561

WHISTLING PINES INC
192 BYPASS 28
#304
DERRY NH 03038

NOTIFICATION OF FINE

WHISTLING PINES INC

Date Billed: November 22, 2019

Invoice Number: 7496

NHBD ID: 6130

Your institution or company is assessed a fine of: \$1,150.00

The reason for this fine is: **Late Filing of Financial Statement**

Comment: **46 days late at \$25.00 per day**

Total Amount Waived: \$0.00

Amount Paid on Account: \$0.00

BALANCE DUE: \$1,150.00

Please return this portion with your remittance

STATE OF NEW HAMPSHIRE
BANKING DEPARTMENT
53 Regional Drive, Suite 200
Concord, New Hampshire 03301
Tel. (603) 271-3561

NOTIFICATION OF FINE

WHISTLING PINES INC

Date Billed: November 22, 2019

Invoice Number: 7496

NHBD ID: 6130

Your institution or company is assessed a fine of: \$1,150.00

The reason for this fine is: **Late Filing of Financial Statement**

Comment: **46 days late at \$25.00 per day**

Total Amount Waived: \$0.00

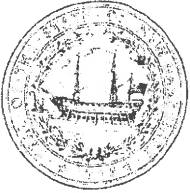
Amount Paid on Account: \$0.00

BALANCE DUE: \$1,150.00

Make check payable to "State of New Hampshire" and mail to the above address.

PAYMENT IS DUE WITHIN 14 DAYS OF RECEIPT OF THIS INVOICE

Exhibit B



State of New Hampshire

Banking Department

53 Regional Drive, Suite 200
Concord, New Hampshire 03301

Telephone: (603) 271-3561
FAX: (603) 271-1090 or (603) 271-0750

December 18, 2019

VIA ELECTRONIC MAIL (alan.simard43@gmail.com)

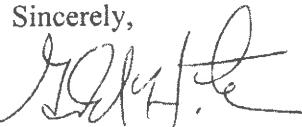
Mr. Aland G. Simard, Owner
Whistling Pines Inc.
192 ByPass 28, #304
Derry NH 03038

Re: **Fine Waiver Request for Late-Filed Financial Statement; BC-2019-065**

Dear Mr. Simard:

On December 5, 2019, the New Hampshire Banking Department (“the Department”) received your request for a fine waiver for the late-filed financial statement. Your request for waiver is based on Whistling Pine Inc.’s inability to work through the NMLS system to file the financial statement. A fine may be abated “for good cause shown” in accordance with RSA 397-A:22, V.

The Department reviewed its records regarding the late-filed financial statement and its prior discussions with you regarding the NMLS. The Department previously fined Whistling Pine Inc. for late-filed annual reports/and mortgage call reports and financial statements. Accordingly, the Department hereby denies your request to abate or waive the \$1,150.00 fine. As an aside, Whistling Pines Inc. also owes \$25.00 for a late-filed mortgage call report. A copy of each invoice is included herein for your convenience. Please remit payment as soon as possible and please do not hesitate to contact this office with any questions or concerns.

Sincerely,

Gerald H. Little
Bank Commissioner

Enclosures

cc: Licensing Division
Business Office

STATE OF NEW HAMPSHIRE
BANKING DEPARTMENT
53 Regional Drive, Suite 200
Concord, New Hampshire 03301
Tel. (603) 271-3561

WHISTLING PINES INC
192 BYPASS 28
#304
DERRY NH 03038

NOTIFICATION OF FINE

WHISTLING PINES INC
Mortgage Broker
NHBD ID: 6130

Date Billed: December 09, 2019
Invoice Number: 7504

Your institution or company is assessed a fine of: \$25.00
The reason for this fine is: **Late Filing of Mortgage Call Report**
Comment: **1 day late at \$25/day**
Total Amount Waived: \$0.00
Amount Paid on Account: \$0.00
BALANCE DUE: \$25.00

Please return this portion with your remittance

STATE OF NEW HAMPSHIRE
BANKING DEPARTMENT
53 Regional Drive, Suite 200
Concord, New Hampshire 03301
Tel. (603) 271-3561

NOTIFICATION OF FINE

WHISTLING PINES INC
Mortgage Broker
NHBD ID: 6130

Date Billed: December 09, 2019
Invoice Number: 7504

Your institution or company is assessed a fine of: \$25.00
The reason for this fine is: **Late Filing of Mortgage Call Report**
Comment: **1 day late at \$25/day**
Total Amount Waived: \$0.00
Amount Paid on Account: \$0.00
BALANCE DUE: \$25.00

Make check payable to "State of New Hampshire" and mail to the above address.

PAYMENT IS DUE WITHIN 14 DAYS OF RECEIPT OF THIS INVOICE

STATE OF NEW HAMPSHIRE
BANKING DEPARTMENT
53 Regional Drive, Suite 200
Concord, New Hampshire 03301
Tel. (603) 271-3561

WHISTLING PINES INC
192 BYPASS 28
#304
DERRY NH 03038

NOTIFICATION OF FINE

WHISTLING PINES INC

Date Billed: November 22, 2019

NHBD ID: 6130

Invoice Number: 7496

Your institution or company is assessed a fine of: \$1,150.00

The reason for this fine is: **Late Filing of Financial Statement**

Comment: **46 days late at \$25.00 per day**

Total Amount Waived: \$0.00

Amount Paid on Account: \$0.00

BALANCE DUE: \$1,150.00

Please return this portion with your remittance

STATE OF NEW HAMPSHIRE
BANKING DEPARTMENT
53 Regional Drive, Suite 200
Concord, New Hampshire 03301
Tel. (603) 271-3561

NOTIFICATION OF FINE

WHISTLING PINES INC

Date Billed: November 22, 2019

NHBD ID: 6130

Invoice Number: 7496

Your institution or company is assessed a fine of: \$1,150.00

The reason for this fine is: **Late Filing of Financial Statement**

Comment: **46 days late at \$25.00 per day**

Total Amount Waived: \$0.00

Amount Paid on Account: \$0.00

BALANCE DUE: \$1,150.00

Make check payable to "State of New Hampshire" and mail to the above address.

PAYMENT IS DUE WITHIN 14 DAYS OF RECEIPT OF THIS INVOICE

Exhibit C

Dolcino, Chiara

From: Alan Simard <asimard1@me.com>
Sent: Tuesday, December 31, 2019 2:34 PM
To: Torben, Maryam
Subject: Re: Whistling Pines Public Administrative Hearing Request

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Ms Torben

I have requesting a public hearing for my appeal of my fine
Alan Simard
Whistling Pines Inc

Sent from my iPad

On Dec 31, 2019, at 2:31 PM, Torben, Maryam <Maryam.Torben@banking.nh.gov> wrote:

Good afternoon, Mr. Simard:

Pursuant to our discussion regarding the matter and what a public hearing entails, please let us know in writing whether or not you request a public hearing.

Thank you.

PLEASE NOTE MY NEW NAME AND EMAIL ADDRESS
(Maryam.Torben@banking.nh.gov)

Maryam Torben

Hearings Examiner, Legal Division
New Hampshire Banking Department
53 Regional Drive, Suite 200
Concord NH 03301
Phone: 603-271-3561
Fax: 603-271-1090

NOTICE REGARDING PRIVILEGED COMMUNICATIONS – This email and any attachments are confidential and intended solely for the recipients named above. The contents of this electronic message are or may be protected from disclosure by banking confidentiality laws, the attorney-client privilege, work product doctrine, and/or other applicable protections. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution or reproduction of this communication is strictly prohibited. If you have received this communication in error, please immediately notify the New Hampshire Banking Department by emailing legal@banking.nh.gov and then delete the email and any attachments from your system.