

1 State of New Hampshire Banking Department

2

3 In re the Matter of: ) Case No.: 06-087  
 )  
 4 State of New Hampshire Banking ) Cease and Desist Order  
 )  
 5 Department, )  
 )  
 6 and )  
 )  
 7 Mak Investments LLC, Brian Colsia, )  
 )  
 8 Gabe Cohen and Laura Cohen, )  
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 9 Respondents )  
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12 NOTICE OF AMENDED ORDER

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14 This Order commences an adjudicative proceeding under the provisions of  
15 RSA 397-A:18 II, RSA 398-A:1-b IV, and 399-D:23 II, and RSA 541-A.

16 LEGAL AUTHORITY AND JURISDICTION - Unlicensed Mortgage Banking

17 Pursuant to RSA 397-A:18 II, the Banking Department of the State of New  
18 Hampshire (hereinafter the "Department") has the authority to issue and cause  
19 to be served an order requiring any person engaged in any act or practice  
20 constituting a violation of RSA 397-A or any rule or order thereunder, to  
21 cease and desist from violations of RSA 397-A.

22 Pursuant to RSA 397-A:3 any person engaged in the business of making or  
23 brokering residential mortgage loans secured by New Hampshire property  
24 (consisting of 1-4 family units) is required to hold a Department Mortgage  
25 Banking or Brokering license.

24 LEGAL AUTHORITY AND JURISDICTION - Unlicensed Second Mortgage Banking

25 Pursuant to RSA 398-A:1-b VI, the Department has the authority to issue  
and cause to be served an order requiring any person engaged in any act or

1 practice constituting a violation of RSA 398-A or any rule or order  
2 thereunder, to cease and desist from violations of RSA 398-A.

3 Prior to September 2005, all persons engaging in the business of making  
4 or brokering second mortgage home loans secured by New Hampshire residential  
5 property (consisting of 1-4 family units) were required to hold a Department  
6 second mortgage home loan lender or broker license pursuant to RSA 398-A:1-a.

7 **LEGAL AUTHORITY AND JURISDICTION - Unlicensed Debt Adjustment**

8 Pursuant to RSA 399-D:23 II, the Department has the authority to issue  
9 and cause to be served an order requiring any person engaged in any act or  
10 practice constituting a violation of RSA 399-D or any rule or order  
11 thereunder, to cease and desist from violations of RSA 399-D.

12 Pursuant to RSA 399-D:3 I all persons engaged in the business of debt  
13 adjustment, either by having their debt adjustment business located in New  
14 Hampshire, or by offering debt adjustment services to consumers located in  
15 New Hampshire are required to be licensed by the Department.

16 **NOTICE OF RIGHT TO REQUEST A HEARING - All Causes of Action**

17 The above named respondent has the right to request a hearing on this  
18 Order to Cease and Desist, as well as the right to be represented by counsel  
19 at the Respondent's own expense. A hearing shall be held not later than 10  
20 days after the request for such hearing is received by the commissioner. Within  
21 20 days of the date of the hearing the commissioner shall issue a further order  
22 vacating the cease and desist order or making it permanent as the facts  
23 require. All hearings shall comply with RSA 541-A. If the person to whom a  
24 cease and desist order is issued fails to appear at the hearing after being  
25 duly notified, such person shall be deemed in default, and the proceeding may  
be determined against him or her upon consideration of the cease and desist  
order, the allegations of which may be deemed to be true.

If the person to whom a cease and desist order is issued fails to request a  
hearing within 30 calendar days of receipt of such order, then such person

1 shall likewise be deemed in default, and the order shall, on the thirty-first  
2 day, become permanent, and shall remain in full force and effect until and  
3 unless later modified or vacated by the commissioner, for good cause shown.  
4 Any such request for a hearing shall be in writing, and signed by the  
5 respondent or by the duly authorized agent of the above-named respondent, and  
6 shall be delivered either by hand or certified mail, return receipt  
7 requested, to the Banking Department, State of New Hampshire, 64B Old Suncook  
8 Road, Concord, NH 03301.

8 **STATEMENT OF ALLEGATIONS, APPLICABLE LAW AND RELIEF REQUESTED - All Causes of**

9 **Action**

10 The Staff Petition dated June 20, 2006 (a copy of which is attached  
11 hereto) is incorporated by reference hereto.

12 The Staff Petition dated November 15, 2006 (a copy of which is attached  
13 hereto) is incorporated by reference hereto.

14  
15 **ORDER - All Causes of Action**

16 WHEREAS, finding it necessary and appropriate and in the public  
17 interest, and consistent with the intent and purposes of the New Hampshire  
18 banking laws, and

19 WHEREAS, finding that the allegations contained in the Staff Petition,  
20 if proved true and correct, form the legal basis of the relief requested,

21 It is hereby ORDERED, that:

- 22 1. The Respondent immediately cease engaging in the activity of a  
23 mortgage banker/broker on residential property in New  
24 Hampshire; and
- 25 2. The Respondent immediately cease engaging in the activity of a  
second mortgage banker/broker on residential property in New  
Hampshire;

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- 3. The respondent immediately cease engaging in debt adjustment business located in New Hampshire and/or activities with consumers located in New Hampshire;
- 4. The respondent immediately cease any activity, suit, or practice designed to oust Consumers A-I or others similarly situated from their residences until resolution of this matter;
- 5. Failure to request a hearing within 30 days of the date of receipt of this Order shall result in a default judgment being rendered and the relief request will be imposed upon the defaulting Respondent.

SIGNED,

Dated: 11/15/06

/s/  
PETER C. HILDRETH  
BANK COMMISSIONER

1 James Shepard  
2 State of New Hampshire  
3 Banking Department  
4 64B Old Suncook Road  
5 Concord, NH 03301

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7 **State of New Hampshire Banking Department**

8 **In re the Matter of:** ) **Case No.: 06-087**  
9 )  
10 **State of New Hampshire Banking** ) **Cease and Desist Order**  
11 ) **Staff Petition**  
12 **Department,** )  
13 ) **AMENDED November 15, 2006**  
14 **Petitioner,** )  
15 )  
16 **and** )  
17 )  
18 **MAK Investments, Brian Colsia, Gabe** )  
19 )  
20 **Cohen, and Laura Cohen,** )  
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22 **Respondents** )  
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26 **STATEMENT OF FACTS**

27 I. The staff of the Banking Department, State of New Hampshire (hereinafter  
28 referred to as the "Department") alleges the following facts:

29 **Mortgage Banking and/or Brokering - RSA 397-A**

- 30 1. MAK Investments LLC (hereinafter "MAK") offers loans secured by a  
31 mortgage to individuals facing foreclosure.  
32 2. MAK is not licensed to conduct mortgage banking or brokering activities  
33 in New Hampshire, nor do they qualify for an exemption from licensure  
34 pursuant to RSA 397-A:4.  
35 3. MAK registered as a domestic limited liability company with the New  
Hampshire Secretary of State on May 4, 2004. Its sole manager is Brian

1 W. Colsia. Its principal address is 270 Main Street, Manchester, New  
2 Hampshire.

3 4. Mr. Gabriel Cohen and Mrs. Laura Cohen are employees or agents of MAK.  
4 Hereinafter Mr. Colsia, Mr. Cohen and Mrs. Cohen and MAK shall be  
5 referred to collectively as "MAK".

6 5. Paragraphs 5 through 112 of the Staff Petition dated June 20, 2006  
7 concerning Consumers A, B and C are realleged and incorporated herein  
8 by reference.

8 Consumer D

9 6. Consumer D is the owner of certain real estate located at 161 Seavey  
10 Road, Belmont, NH (herein after "Premises D").

11 7. On August 1, 2005, Consumer D signed a Loan Agreement and Promissory  
12 Note ("Note") with MAK Investments LLC ("MAK") in the amount of  
13 \$14,227.47.

14 8. The Note stated that this was for the reinstatement of delinquent first  
15 mortgage to avoid foreclosure in said amount.

16 9. The terms of the Note called for Consumer D to repay double the amount  
17 borrowed, \$28,454.94, one year from funding.

18 10. Additional terms included executing a warranty deed to be held in  
19 escrow, and Consumer D had to pay their first mortgage payment to MAK  
20 who would then make the payment to the first mortgage lender.

21 11. The Note was recorded in the Belknap County Registry of Deeds on  
22 January 25, 2006 in Book 2264 Page 0933.

22 Consumer E

23 12. Consumer E is the owner of certain real estate located at 22 West  
24 Chamberlain Road, Merrimack, NH (herein after "Premises E").

25 13. On August 1, 2005, Consumer E signed a Loan Agreement and Promissory  
Note ("Note") with MAK Investments LLC ("MAK") in the amount of  
\$14,456.55.

1 14. The Note stated that this was for the reinstatement of delinquent first  
2 mortgage to avoid foreclosure in said amount.

3 15. One of the terms of the Note was for Consumer E to repay double the  
4 amount borrowed, \$28,913.10, one year from funding.

5 16. Additional terms included executing a warranty deed to be held in  
6 escrow, and Consumer E had to pay their first mortgage payment to MAK  
7 who would then make the payment to the first mortgage lender.

8 17. The Note was recorded in the Hillsborough County Registry of Deeds on  
9 September 1, 2005 in Book 7537 Page 2251.

10 18. The warranty deed mentioned in the Note was signed on July 13, 2005.

11 19. The warranty deed was recorded in the Hillsborough County Registry of  
12 Deeds on September 8, 2005 in Book 7541 Page 0362.

13 Consumer F

14 20. Consumer F is the owner of certain real estate located at 288 Island  
15 Pond Road, Derry, NH (herein after "Premises F").

16 21. On August 4, 2004, Consumer F signed a Mortgage Deed ("Mortgage") with  
17 MAK Investments LLC ("MAK") in the amount of \$52,000.

18 22. The Mortgage references a certain Note, which had been signed on the  
19 same day.

20 23. The Mortgage was recorded in the Rockingham County Registry of Deeds on  
21 August 11, 2004 in Book 4344 Page 0827.

22 Consumer G

23 24. Consumer G is the owner of certain real estate located at 47 Pinebrook  
24 Place, Manchester, NH (herein after "Premises G").

25 25. On August 1, 2005, Consumer G signed a Loan Agreement and Promissory  
26 Note ("Note") with MAK Investments LLC ("MAK") in the amount of  
\$23,932.58.

27 26. The Note stated that this was for the reinstatement of delinquent first  
28 mortgage to avoid foreclosure in said amount.

1 27. The terms of the Note called for Consumer G to repay double the amount  
2 borrowed, \$47,865.16, one year from funding.

3 28. Additional terms included executing a warranty deed to be held in  
4 escrow, and Consumer G had to pay their first mortgage payment to MAK  
5 who would then make the payment to the first mortgage lender.

6 29. The Note was recorded in the Hillsborough County Registry of Deeds on  
7 September 1, 2005 in Book 7537 Page 2252.

8 30. The warranty deed mentioned in the Note was signed on July 7, 2005.

9 31. The warranty deed was recorded in the Hillsborough County Registry of  
10 Deeds on December 8, 2005 in Book 7597 Page 0629.

11 Consumer H

12 32. Consumer H is the owner of certain real estate located at 49 Edgewood  
13 Avenue, Nashua, NH (herein after "Premises H").

14 33. On June 24, 2005, Consumer H signed a Mortgage Deed ("Mortgage") with  
15 MAK Investments LLC ("MAK") in the amount of \$105,000.

16 34. The Mortgage references a certain Note, which had been signed on the  
17 same day.

18 35. The referenced Note was due in full October 1, 2005.

19 36. The Mortgage was recorded in the Hillsborough County Registry of Deeds  
20 on June 29, 2005 in Book 7490 Page 2511.

21 37. The Mortgage was discharged on September 30, 2005.

22 38. The Discharge was recorded in the Hillsborough County Registry of Deeds  
23 on October 7, 2005 in Book 7561 Page 0001.

24 Consumer I

25 39. Consumer I is the owner of certain real estate located at 526 Sawmill  
Road, Greenfield, NH (herein after "Premises I").

40. On August 15, 2005, Consumer I signed a Mortgage Deed ("Mortgage") with  
MAK Investments LLC ("MAK") in the amount of \$50,000.



1 41. The Mortgage was recorded in the Hillsborough County Registry of Deeds  
2 on August 18, 2005 in Book 7527 Page 1552.

3 42. The Mortgage was discharged on June 30, 2005.

4 43. The Discharge was recorded in the Hillsborough County Registry of Deeds  
5 on July 12, 2005 in Book 7705 Page 1552.

6 New Information Common to All Cases

7 44. MAK Investments has pursued eviction of one or more of Consumers A  
8 through I, mostly through landlord-tenant actions alleging they are the  
9 record owners of the household.

10 45. The landlord-tenant and other actions designed to remove the consumers  
11 from their household occurred both before and after the original Order  
12 to Cease and Desist was served in this case on July 11, 2006.

13  
14 II. The staff of the Banking Department, State of New Hampshire alleges the  
15 following issues of law:

16 Chapter 397-A Mortgage Banking and Brokering

17 1. The Department incorporates by reference and realleges herein paragraphs  
18 1 to 43 and Paragraphs 5 through 112 of the Staff Petition dated June 20,  
19 2006.

20 2. The Department has jurisdiction over the licensing and regulation of  
21 persons engaged in mortgage banker / broker activities pursuant to New  
22 Hampshire RSA 397-A:3.

23 3. RSA 397-A:3 requires any person not exempt under RSA 397-A:4 that, in  
24 its own name or on behalf of other persons, engages in the business of  
25 making or brokering residential mortgage loans secured by real property  
located in this state shall be required to obtain a license from the  
banking department. MAK violated this law by offering mortgage loans

1 secured by single family New Hampshire real estate to Consumers A, B, C,  
2 D, E, F, G, H, I and others without a license.

3 4. When a deed is given as security for a loan rather than to convey  
4 ownership it is an equitable mortgage. *Phelan v. Adam*, 79 NH 348 (1920).  
5 Pursuant to case law equitable mortgages must abide by the same  
6 regulatory scheme as other mortgages.

7 5. The above transactions all qualify as residential mortgage transactions  
8 as defined in 12 CFR §226.3. Federal law is enforced by the Department  
9 pursuant to RSA 397-A:2

10 6. Pursuant to NH RSA 397-A:18, the Department has the power to issue and  
11 to serve an order requiring persons to cease and desist from violations  
12 of the chapter whenever it has reasonable cause to believe that any  
13 person has engaged in any act or practice constituting a violation of  
14 the banking laws, or any rule or order thereunder. Respondent has  
15 violated RSA 397-A:3 by conducting unlicensed mortgage banker / broker  
16 activities in New Hampshire. Based on the Consumer information provided  
17 and the similar Registry of Deeds entries, the Department has reasonable  
18 cause to believe that MAK engaged in unlicensed mortgage banking and has  
19 reasonable cause to believe that with out a Cease and Desist Order MAK  
20 will continue to violate this law.

21 7. Pursuant to NH RSA 397-A:17 mortgage bankers/brokers engaging in  
22 business in New Hampshire are prohibited from engaging in unethical  
23 business practices. Based on the facts stated above, MAK's changing the  
24 terms of the loan from the verbal discussion to the time it was reduced  
25 to a promissory note and other actions as set forth in Section I are  
sufficient to constitute unethical business practices.

**Chapter 398-A - Second Mortgage Loans**

- 1 1. The Department incorporates by reference and realleges herein  
2 paragraphs 1 to 43 and Paragraphs 5 through 112 of the Staff Petition  
3 dated June 20, 2006.
- 4 2. The Department has jurisdiction over the licensing and regulation of  
5 persons engaged in second mortgage banker / broker activities pursuant  
6 to NH RSA 398-A:1-a.
- 7 3. Prior to September 2005 RSA 398-A:1-a required that any person engaged  
8 in the business of making or brokering second mortgage loans secured by  
9 real property located in the state of New Hampshire, which is or shall  
10 be occupied in whole or in part as a primary domicile or place of  
11 residence by the borrower and which consist of not more than 4 living  
12 units, unless the person first obtains a license as provided by in the  
13 Chapter, except when the person lending money is the seller of the real  
14 estate upon which the second mortgage is to be taken as security.  
15 Based on the facts stated above MAK violated this section of the law by  
16 making subordinate lien mortgage loans on single family homes located  
17 in New Hampshire without a license.
- 18 4. Pursuant to NH RSA 398-A:1-b VI the Department has the power to issue  
19 and to serve an order requiring persons to cease and desist from  
20 violations of the chapter whenever it has reasonable cause to believe  
21 that any person has engaged in any act or practice constituting a  
22 violation of the banking laws, or any rule or order thereunder.  
23 Respondent has violated RSA 398-A:1-a by conducting unlicensed second  
24 mortgage banker / broker activities in New Hampshire prior to September  
25 4, 2005. Based on the facts stated in Section I the Department has  
reasonable cause to believe that MAK violated this provision by making  
mortgage loans to Consumer A and Consumer C and holding the deed as  
security for repayment of that loan.

1 5. Pursuant to NH RSA 398-A:1-b(I) (j) mortgage bankers/brokers engaging in  
2 business in New Hampshire are prohibited from engaging in unethical  
3 business practices. Based on the facts stated above, MAK's changing  
4 the terms of the loan from the verbal discussion to the time it was  
5 reduced to a promissory note is sufficient to constitute an unethical  
6 business practice.

7 **Chapter 399-D - Debt Adjuster**

- 8 1. The Department incorporates by reference and realleges herein paragraphs  
9 1 to 43 and Paragraphs 5 through 112 of the Staff Petition dated June 20,  
10 2006.
- 11 2. The Department has jurisdiction over the licensing and regulation of  
12 persons engaged in debt adjustment activities with New Hampshire  
13 consumers pursuant to NH RSA 399-D:3.
- 14 3. RSA 399-D:3 requires any person not exempt under RSA 399-D:4 that  
15 engages in the business of debt adjustment with New Hampshire consumers  
16 is required to obtain a license from the banking department. MAK  
17 violated this provision by requiring consumers to make their first  
18 mortgage payments directly to MAK with the condition that MAK would  
19 forward the payment on to the first mortgage company without a debt  
20 adjuster license.
- 21 4. Pursuant to NH RSA 399-D:23 II the Department has the power to issue and  
22 to serve an order requiring persons to cease and desist from violations  
23 of the chapter whenever it has reasonable cause to believe that any  
24 person has engaged in any act or practice constituting a violation of  
25 the banking laws, or any rule or order thereunder. Respondent has  
violated RSA 399-D:3 by conducting unlicensed debt adjustment activities  
in New Hampshire. Based on the above facts the Department has  
reasonable cause to believe that MAK has violated and will continue to

1 violate this provision by receiving for compensation and as agent of  
2 debtors, debtors' money for the purposes of distributing money to  
3 creditors in full or partial payment of obligations of the debtor.

4 5. Pursuant to NH RSA 399-D:13 I(j) debt adjusters engaging in business in  
5 New Hampshire are prohibited from engaging in unethical business  
6 practices. This section was violated by MAK taking debtor's funds and  
7 failing to forward them to the creditor in a timely manner.

8 **RELIEF REQUESTED**

9 The staff of the Banking Department requests the Commissioner take the  
10 following action:

- 11 1. Find as fact the allegations contained in section I of the Statement of  
12 Allegations of this petition.
- 13 2. Make conclusions of law relative to the allegations contained in section  
14 II of the Statement of Allegations of this petition.
- 15 3. Pursuant to New Hampshire RSA 397-A:18, RSA 398-A:1-b IV, and RSA 399-  
16 D:23 II, immediately Order Respondent to Cease and Desist from violations  
17 of the New Hampshire Banking Laws.
- 18 4. Take such other administrative and legal actions as are necessary for  
19 enforcement of the New Hampshire Banking laws, the protection of New  
20 Hampshire citizens, and to provide other equitable relief.

21 **RIGHT TO AMEND**

22 The Department reserves the right to amend this Petition for Relief and  
23 to request that the Banking Department Commissioner take additional  
24 administrative action. Nothing herein shall preclude the Department from  
25 bringing additional enforcement action under RSA 397-A, RSA 398-A or RSA 399-D  
or the regulations thereunder.

1 Respectfully submitted by:

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3 \_\_\_\_\_  
4 /s/ James Shepard  
5 Staff Attorney

6 \_\_\_\_\_  
7 11/15/06  
8 Date

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