

1 State of New Hampshire Banking Department

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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,)
)
 9 Respondents)
)
 10)
)
 11)

12 NOTICE OF ORDER

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

15 LEGAL AUTHORITY AND JURISDICTION - Unlicensed Mortgage Banking

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

21 Pursuant to RSA 397-A:3 any person engaged in the business of making or
22 brokering residential mortgage loans secured by New Hampshire property
23 (consisting of 1-4 family units) is required to hold a Department Mortgage
24 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 **ORDER - All Causes of Action**

13 WHEREAS, finding it necessary and appropriate and in the public
14 interest, and consistent with the intent and purposes of the New Hampshire
15 banking laws, and

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

18 It is hereby ORDERED, that:

- 19 1. The Respondent immediately cease engaging in the activity of a
20 mortgage banker/broker on residential property in New
21 Hampshire; and
- 22 2. The Respondent immediately cease engaging in the activity of a
23 second mortgage banker/broker on residential property in New
24 Hampshire;
- 25 3. The respondent immediately cease engaging in debt adjustment
business located in New Hampshire and/or activities with
consumers located in New Hampshire;

1 4. Failure to request a hearing within 30 days of the date of
2 receipt of this Order shall result in a default judgment being
3 rendered and the relief request will be imposed upon the
4 defaulting Respondent.

5 SIGNED,

6 Dated: 7/7/06

7 /s/
8 PETER C. HILDRETH
9 BANK COMMISSIONER

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1 Andrea J. Shaw
2 State of New Hampshire
3 Banking Department
4 64B Old Suncook Road
5 Concord, NH 03301

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State of New Hampshire Banking Department

In re the Matter of:) Case No.: 06-087
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State of New Hampshire Banking) Cease and Desist Order
) Staff Petition
Department,)
)
 Petitioner,)
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 and)
)
MAK Investments, Brian Colsia, Gabe)
)
Cohen, and Laura Cohen,)
)
 Respondents)
)

STATEMENT OF FACTS

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

Mortgage Banking and/or Brokering - RSA 397-A

1. MAK Investments LLC (hereinafter "MAK") offers loans secured by a mortgage to individuals facing foreclosure.
2. MAK is not licensed to conduct mortgage banking or brokering activities in New Hampshire, nor do they qualify for an exemption from licensure pursuant to RSA 397-A:4.
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 **Consumer A:**

7 5. Consumer A is the owner and occupant of a single family home on certain
8 real estate located at 639 Old Country Road South, Frankestown, NH
(herein after "Premises A").

9 6. Premises A is subject to a first mortgage held by CitiCorp Mortgage
10 Inc. ("CitiCorp"). Premises A is also subject to a second mortgage
11 held by TD BankNorth, N.A.

12 7. Consumer A defaulted on the obligation to CitiCorp. As a result of
13 this default, on or about May 11, 2005, Consumer A received a Notice of
14 Mortgage Foreclosure Sale scheduled to be held at public auction at
15 Premises A on June 9, 2005.

16 8. For reasons not germane to the issue at hand, the foreclosure auction
17 was postponed until July 6, 2005.

18 9. Prior to the foreclosure auction initially scheduled for June 9, 2005 a
19 representative of MAK, Mr. Gabe Cohen, contacted Consumer A with a
20 proposal to stop the foreclosure action.

21 10. Through Mr. Cohen MAK offered Consumer A "short term lending"
22 assistance with an underlying mortgage securing the loan, or,
23 alternatively acquisition of the property prior to the foreclosure.

24 11. Consumer A initially declined the offer as she was attempting to obtain
25 other financing.

12. Despite her efforts Consumer A was not able to obtain alternate
financing.

1 13. Consumer A contacted MAK on July 5, the night before the scheduled
2 July 6 foreclosure.

3 14. On the evening of July 5 Mr. Cohen on behalf of MAK offered what
4 Consumer A understood to be an unsecured loan in the amount necessary
5 to reinstate the mortgage loan to Citicorp and stop the foreclosure
6 sale.

7 15. Consumer A inquired as to the cost of the loan. Mr. Cohen told
8 Consumer A "what you borrow is what you pay". Consumer A did not
9 understand that meant she would pay back the principal plus the same
10 amount borrowed as a finance charge.

11 16. Consumer A did not receive any written information regarding this
12 unsecured loan until the next morning, the morning of the foreclosure
13 sale.

14 17. On July 6, 2005 Consumer A attempted to meet Mr. Cohen at his office at
15 649 Second Street, Ste 2, Manchester, NH 03102 for the purposes of
16 consummating the unsecured loan prior to the foreclosure sale that day.

17 18. Mr. Cohen was not available when Consumer A arrived at his office.

18 19. Mrs. Laura Cohen, Mr. Cohen's wife, was present at the office and she
19 indicated that Mr. Cohen was not available, but she had all of the
20 documentation needing Consumer A's signature.

21 20. Mrs. Cohen presented Consumer A with a document entitled "Affidavit in
22 Lieu of Promissory Note" ("Affidavit"). Under the terms of the
23 Affidavit, MAK agreed to lend Consumer A \$15,100.30 for purposes of
24 stopping the scheduled foreclosure.
25

- 1 21. The Affidavit required Consumer A to sign a Note with the specific
2 terms of the lending arrangement between MAK and Consumer A at a later
3 unspecified date.
- 4 22. The Affidavit required Consumer A to repay \$30,200.60 to MAK on July 6,
5 2006, 12 months from the execution date of the Affidavit.
- 6 23. At this time Mrs. Cohen produced a deed conveying ownership of the
7 property from Consumer A to MAK.
- 8 24. Consumer A questioned why she was being asked to sign a deed for what
9 she thought was an unsecured loan.
- 10 25. Mrs. Cohen told Consumer A that the deed would only be recorded in the
11 event that Consumer A defaulted on the terms of the agreement.
- 12 26. The Affidavit would remain in affect until Consumer A received and
13 signed the promissory note according to the terms stated in the
14 Affidavit.
- 15 27. At no time while executing the above referenced documents was Consumer
16 A made aware that the terms stated in the promissory note (which she
17 had not seen) would differ from the terms included in the affidavit.
- 18 28. MAK tendered funds required to stop the Citicorp foreclosure.
- 19 29. Three weeks after stopping the foreclosure, Consumer A still had not
20 received the aforementioned promissory note.
- 21 30. Consumer A emailed Mr. Cohen to inquire as to when she would receive
22 the promissory note.
- 23 31. In response to the e-mail the promissory note was faxed to Consumer A
24 on July 24, 2005.
- 25 32. Consumer A told Mr. Cohen that she wished to have her attorney review
the documentation prior to execution of said documents.

- 1 33. In response, Mr. Cohen told Consumer A she must sign the note and
2 provide MAK a check for the amount of her CitiCorp mortgage by the end
3 of the day.
- 4 34. MAK stated the check should be made payable directly to MAK (not to
5 CitiCorp.)
- 6 35. There are at least three (3) similar Promissory Notes filed in County
7 Registry of Deeds throughout New Hampshire.
- 8 36. Two (2) were filed with the Registry after September 12, 2005, with one
9 being filed prior to September 12, 2005.
- 10 37. The promissory note required that all first mortgage payments to the
11 holder of the first mortgage (CitiCorp) must be made directly to MAK
12 and MAK would forward the payment to CitiCorp.
- 13 38. The first mortgage payment, if made by check, should be made payable to
14 MAK not CitiCorp according to MAK's instructions.
- 15 39. Once Consumer A became aware of this new requirement, she refused to
16 sign the note on the advice of her attorney.
- 17 40. Concerned about defaulting on her first mortgage, Consumer A wrote a
18 check directly to CitiCorp and then sent the CitiCorp check to MAK.
- 19 41. Consumer A stated that MAK agreed to this change.
- 20 42. Upon review of the promissory note, its terms differed greatly from the
21 signed Affidavit.
- 22 43. In addition, Consumer A stated that the verbal agreement between she
23 and MAK differed from both the Affidavit and the unsigned promissory
24 note.
- 25 44. Consumer A and Mr. Cohen set up a meeting at the Second Street office
for Monday, July 27, 2005 to turn over the Citicorp check. Neither Mr.
Cohen nor anyone else was present at the office.

1 45. On August 3, 2005, Mr. Cohen delivered an eviction notice to Consumer A
2 stating that the terms of the unsigned promissory note had been
3 breached.

4 46. According to the terms of the Affidavit as presented to Consumer A no
5 interest or principal payments were due to MAK until the end of a 12
6 month period, which ended on July 6, 2006.

7 47. CitiCorp contacted Consumer A with refinancing options in August 2005.

8 48. On August 9, 2006 MAK recorded the deed, purportedly held as security
9 for repayment, claiming Consumer A breached their agreement. The deed
10 is recorded in the Hillsborough County Registry of Deeds in Book 7520
11 Page 2998.

12 49. As a result of MAK recording the deed prior to consummation of the
13 refinance, Consumer A was unable to payoff the MAK mortgage.

14 50. Since MAK filed the deed, Consumer A has not received any tax bills or
15 other legal documents relating to the property, as they are sent
16 directly to MAK.

17 51. As a result, CitiCorp has paid the taxes out of Consumer's A escrow
18 account.

19 52. Consumer A's town welfare was cancelled because she no longer owns
20 property in the town, which is a prerequisite for receiving town
21 welfare assistance.

22 53. Consumer A could not make her payment to CitiCorp. MAK made mortgage
23 payments for five months, and then stopped making payments. CitiCorp
24 told Consumer A to make payments by the 24th of each month.

25 54. Once Mak filed the deed, Mak began eviction proceedings against
Consumer A.

55. Consumer A had retained an attorney who was able to get an injunction
from the court to temporarily prevent the eviction. However, the

1 attorney has since withdrawn from the matter. A trial is set for August
2 2006.

3 56. As part of the eviction case MAK and Consumer A attempted mediation.
4 No settlement was reached.

5 57. MAK is now treating Consumer A as a tenant and indicated they want a
6 contractor to start making repairs on Premises A. MAK also stated that
7 they do not have to give Consumer A prior notice before entering
8 Premises A.

9 58. Currently Consumer A is still in her home contesting the eviction and
10 transfer of ownership of Premises A.

11 **Consumer B:**

12 59. Consumer B is the owner of a single family residence located on certain
13 real estate at 549 Pembroke Street, Pembroke, New Hampshire (herein after
14 "Premises B").

15 60. Premises B is subject to a mortgage in first position held by Conti
16 Mortgage Corp (hereinafter "Conti"). The mortgage loan is currently
17 serviced by Select Portfolio Servicing Inc. ("SPS").

18 61. Sometime during early 2005 Consumer B defaulted on the obligation owed
19 to Conti.

20 62. As a result, SPS placed the mortgage in foreclosure.

21 63. On the morning of the foreclosure action, April 27, 2005,
22 representatives of MAK Investments, LLC ("MAK"), including Mr. Gabe
23 Cohen, approached Consumer B at her home, Premises B, with a proposal to
24 stop the foreclosure action.

25 64. Consumer B was not aware that a foreclosure sale was scheduled for later
that day until MAK representatives arrived and notified Consumer B.

1 65. Consumer B subsequently confirmed with SPS that a foreclosure sale was
2 set for 1:00 pm that day.

3 66. MAK proposed either short or long term loan financing, or acquisition of
4 the property prior to the foreclosure.

5 67. On the scheduled date of the foreclosure action, at approximately 1:00
6 pm, Consumer B, Mr. Cohen, and Mr. Brian Colsia met to sign paperwork.

7 68. MAK did not give Consumer B any financing disclosures or copies of
8 signed documents.

9 69. Consumer B later learned that the paperwork was a Purchase and Sale
10 Agreement for the SPS payoff amount, plus \$10,000 to Consumer B. The
11 agreement also provided that Consumer B had 30 days to pay back the
12 amount loaned plus \$25,000, all costs to buyer, including tax stamps and
13 expenditures. In addition, the agreement required Consumer B to obtain a
14 commitment letter for the financing of the sale of the property by May
15 13, 2005.

16 70. If the aforementioned conditions were not met, Consumer B was required
17 to vacate the property by May 27, 2005. If Consumer B failed to vacate
18 Premises B May 27, \$100 a day was to be deducted from the \$10,000 MAK
19 owed Consumer B, which was part of the purchase price stated in the above
20 referenced agreement.

21 71. Consumer B stated that later on the same day of the scheduled
22 foreclosure sale MAK sold Premises B to a Mr. T. Richards, via a warranty
23 deed.

24 72. The warranty deed was recorded in the Merrimack County registry in Book
25 2770 Page 0395, on April 27, 2005.

1 73. It is unclear how MAK obtained marketable title to convey Premises B to
2 Mr. Richards.

3 74. On May 2, 2005, SPS posted receipt of \$66,000, removing the mortgage
4 loan on Premises B from foreclosure status.

5 75. May 4, 2005 Mr. Richard granted a mortgage to MAK as evidenced in the
6 County Registry at Book 2773 Page 0173.

7 76. Meanwhile, Consumer B requested copies of the documentation Consumer B
8 signed from MAK.

9 77. After several requests MAK faxed what they insisted was the only
10 paperwork Consumer B required on May 10, 2005, including a financing
11 extension allowing Consumer B until May 23, 2005 to pay approximately
12 \$175,000 to MAK and reclaim title to her home.

13 78. The next day, May 11, 2005, Consumer B received a mortgage bill from SPS
14 in the amount of \$674.57.

15 79. On May 25, 2005, MAK discharged the mortgage from Mr. Richards in the
16 county registry in Book 2895 Page 0597.

17 80. July 30, 2005 SPS received a payment in the amount of \$2,000, which was
18 paid by check from MAK. The memo line of the check stated Consumer B's
19 name and Premise B's address.

20 81. On March 28, 2006 Consumer B entered into a forbearance agreement with
21 SPS.

22 82. Three days later on March 31, 2006, SPS received another payment of
23 \$1,000 which was paid through Western Union, with Consumer B's name and
24 account number listed on it.

25 83. On May 25, 2006, a Mr. Gabriel Bilc recorded a warranty deed granting
the premises from Mr. Richards to Mr. Gabriel Bilc.

1 84.Immediately upon obtaining title, Mr. Bilc granted a mortgage on Premises
2 B to MAK.

3 85.At present it appears the property is owned by Mr. Bilc, but how he
4 obtained marketable title is unclear.

5 **Consumer C**

6 86. Consumer C is the owner of a single family residence located on a
7 certain real estate at 40 Trail View Drive, Gilford, NH (herein after
8 "Premises C").

9 87. As of March 2006, Premises C was subject to a mortgage in first position
10 held by Novastar Mortgage Inc (hereinafter "Novastar"). Premises C was
11 also subject to a mortgage in second position by MAK Investments LLC
12 ("MAK").

13 88. In June 2005, Consumer C was experiencing difficulty in obtaining
14 mortgage statements from Novastar.

15 89. When Consumer C inquired as to the reason Novastar was not sending
16 statements, Novastar stated it (Novastar) did not hold a mortgage to
17 Premises C. However, it was later discovered that Novastar did hold a
18 mortgage on Premises C.

19 90. Consumer C was unable to determine the amount of and location where a
20 payment should be sent as Novastar repeatedly told Consumer C they did
21 not hold a mortgage on Premises C.

22 91.Consumer C was unable to send timely mortgage payments to Novastar due to
23 Novastar's confusion.

24 92. As a result Novastar placed Consumer C into foreclosure.
25

1 93. A business card containing Mr. Colsia's name as representative for MAK
2 was left at Consumer C's house offering assistance with Consumer C's
3 current foreclosure situation.

4 94. Consumer C contacted MAK and on June 23, 2005. Consumer C signed a Note
5 and Mortgage with MAK. According to the terms of the loan MAK would
6 advance \$11,150.22 in principal to Novastar. In return Consumer C would
7 play MAK \$4,000 in interest and pay MAK the principal in full 6 months
8 from executing the loan. In addition, Consumer C would make monthly
9 payments of \$300 in interest to MAK.

10 95. Additionally, MAK required the first mortgage payment (to Novastar) in
11 the amount of \$1,216.22 to be sent to MAK and MAK would forward the
12 payment to Novastar.

13 96. The loan was secured by Premises C and a mortgage deed was recorded at
14 the Hillsborough County Registry of Deeds in Book 2188 on Page 0147 on
15 June 27, 2005.

16 97. The first payment was due to MAK the day after execution of the loan
17 documents.

18 98. However, MAK insisted on Consumer C paying \$300 more than what Consumer
19 C originally agreed. Consumer C paid MAK \$1,816.22 at that time.

20 99. From August to November 2005, Consumer C paid \$1,516.22 a month directly
21 to MAK.

22 100. However, MAK failed to forward the payments to Novastar in a timely
23 manner.

24 101. Once Consumer C discovered MAK failed to forward the Novastar payments
25 in a timely manner Consumer C felt she had no choice but to start paying

1 Novastar directly and give MAK the \$300 interest payment. per month
2 separately.

3 102. The above referenced modification took place beginning in December 2005
4 and ended in March 2006.

5 103. Once Consumer C began sending her first mortgage payments directly to
6 Novastar, Mr. Colsia became verbally threatening and abusive.

7 104. Mr. Colsia insisted that he was paying the Novastar mortgage; however,
8 Consumer C confirmed with Novastar that Mr. Colsia's statement was not
9 true.

10 105. MAK sent Consumer C a bill for the amount of the Novastar mortgage
11 payments that Consumer C did not send directly to MAK. It is unclear if
12 no payments were made or if the payments were simply late.

13 106. Also of concern for Consumer C was MAK's requirement that payment be made
14 either in cash or cashier's check.

15 107. Most months Consumer C made her payments in person at MAK's request, or
16 MAK would suggest the money be left hidden at Premises C for Mr. Colsia
17 to pick up.

18 108. Consumer C refinanced their mortgage on April 26, 2006 in order to
19 payoff the MAK and Novastar mortgages.

20 109. Consumer C's new mortgage broker requested a payoff statement from Mr.
21 Colsia, as the managing member of MAK.

22 110. Mr. Colsia's payoff statement was \$18,000, which was contrary to the
23 amount contained in the note.

24 111. Mr. Colsia informed the new mortgage company that the \$18,000 figure was
25 "inclusive of all principal, interest, prepaids, and penalties." MAK
provided no further explanation.

1 112. The second mortgage granted to MAK was discharged and said discharge was
2 recorded in the County Registry in Book 2293 on Page 0908_on May 2, 2006.

3
4 II. The staff of the Banking Department, State of New Hampshire alleges the
5 following issues of law:

6 **Chapter 397-A Mortgage Banking and Brokering**

7 1. The Department incorporates by reference and realleged herein paragraphs
8 1 to 112.

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

12 3. RSA 397-A:3 requires any person not exempt under RSA 397-A:4 that, in
13 its own name or on behalf of other persons, engages in the business of
14 making or brokering residential mortgage loans secured by real property
15 located in this state shall be required to obtain a license from the
16 banking department. MAK violated this law by offering mortgage loans
17 secured by single family New Hampshire real estate to Consumers A, B and
18 C without a license.

19 4. Pursuant to NH RSA 397-A:18, the Department has the power to issue and
20 to serve an order requiring persons to cease and desist from violations
21 of the chapter whenever it has reasonable cause to believe that any
22 person has engaged in any act or practice constituting a violation of
23 the banking laws, or any rule or order thereunder. Respondent has
24 violated RSA 397-A:3 by conducting unlicensed mortgage banker / broker
25 activities in New Hampshire. Based on the Consumer information provided
and the similar Registry of Deeds entries, the Department has reasonable
cause to believe that MAK engaged in unlicensed mortgage banking and has

1 reasonable cause to believe that with out a Cease and Desist Order MAK
2 will continue to violate this law.

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

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

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

1 violation of the banking laws, or any rule or order thereunder.

2 Respondent has violated RSA 398-A:1-a by conducting unlicensed second
3 mortgage banker / broker activities in New Hampshire prior to September
4 4, 2005. Based on the facts stated in Section I the Department has
5 reasonable cause to believe that MAK violated this provision by making
6 mortgage loans to Consumer A and Consumer C and holding the deed as
7 security for repayment of that loan.

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

13 **Chapter 399-D - Debt Adjuster**

- 14 1. The Department incorporates by reference and realleged herein paragraphs
15 1 to 112.
- 16 2. The Department has jurisdiction over the licensing and regulation of
17 persons engaged in debt adjustment activities with New Hampshire
18 consumers pursuant to NH RSA 399-D:3.
- 19 3. RSA 399-D:3 requires any person not exempt under RSA 399-D:4 that
20 engages in the business of debt adjustment with New Hampshire consumers
21 is required to obtain a license from the banking department. MAK
22 violated this provision by requiring consumers to make their first
23 mortgage payments directly to MAK with the condition that MAK would
24 forward the payment on to the first mortgage company without a debt
25 adjuster license.
4. Pursuant to NH RSA 399-D:23 II the Department has the power to issue and
to serve an order requiring persons to cease and desist from violations

1 of the chapter whenever it has reasonable cause to believe that any
2 person has engaged in any act or practice constituting a violation of
3 the banking laws, or any rule or order thereunder. Respondent has
4 violated RSA 399-D:3 by conducting unlicensed debt adjustment activities
5 in New Hampshire. Based on the above facts the Department has
6 reasonable cause to believe that MAK has violated and will continue to
7 violate this provision by receiving for compensation and as agent of
8 debtors, debtors' money for the purposes of distributing money to
9 creditors in full or partial payment of obligations of the debtor.

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

14 **RELIEF REQUESTED**

15 The staff of the Banking Department requests the Commissioner take the
16 following action:

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

1 RIGHT TO AMEND

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

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8 Respectfully submitted by:

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10 /s/
11 Andrea J. Shaw
Staff Attorney

7/6/06
Date