

1 State of New Hampshire Banking Department

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3 In re the Matter of:) Case No.: 07-037
)
 4 State of New Hampshire Banking) Order To Show Cause
)
 5 Department,)
)
 6 Petitioner,)
)
 7 and)
)
 8 Emax Financial Group,)
)
 9 Mitchell Heffernon, and James E.)
)
 10 Pedrick)
)
 11 Respondents

12
13 NOTICE OF ORDER

14 This Order commences an adjudicative proceeding under the provisions of
15 RSA 541-A:31, RSA 397-A, and BAN 204.03.

16
17 LEGAL AUTHORITY AND JURISDICTION

18 Pursuant to RSA 397-A:17, the Commissioner of the New Hampshire Banking
19 Department (hereinafter "the Department") may issue an Order to Show Cause
20 why a license should not be revoked. RSA 397-A:17 states that the
21 Department may issue such Order when a licensee fails to meet the standards
22 in the Chapter. RSA 397-A:21 states the Commissioner may impose penalties of
up to \$2,500 per violation of the chapter.

23 Pursuant to RSA 397-A:18 the banking department may issue a cease and
24 desist order against any licensee or person who it has reasonable cause to
25 believe is in violation of the provisions of this chapter or any rule or order
under this chapter.

1 Pursuant to RSA 383:10-d the Commissioner shall investigate conduct that
2 is or may be an unfair or deceptive act or practice under RSA 358-A and exempt
3 under RSA 358-A:3, I or that may violate any of the provisions of Titles XXXV
4 and XXXVI and administrative rules adopted thereunder. The commissioner may
5 hold hearings relative to such conduct and may order restitution for a person
6 or persons adversely affected by such conduct. The Commissioner may utilize
7 all remedies available under the Act.

8 **NOTICE OF RIGHT TO REQUEST A HEARING**

9 The above named respondents have the right to request a hearing on this
10 Order to Show Cause, as well as the right to be represented by counsel. Any
11 such request for a hearing shall be in writing, and signed by the respondents
12 or by the duly authorized agent of the above named respondents, and shall be
13 delivered either by hand or certified mail, return receipt request, to the
14 Banking Department, State of New Hampshire, 64B Old Suncook Road, Concord, NH
15 03301. Hearings will be conducted within 10 days of such request.

16 If respondents fail to request a hearing or respond to the orders
17 within 30 calendar days of receipt of these orders, respondent shall be
18 deemed in default, the penalties requested will be imposed, and the Cease and
19 Desist will be become permanent on the 31st day.

20 **STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF**

21 The Staff Petition dated February 7, 2007 (a copy of which is attached
22 hereto) is incorporated by reference hereto.

23 **ORDER**

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

1 6. Respondent Pedrick was also until recently the Executive Vice-President
2 of MLN.

3 7. On information and belief Respondents Heffernon and Pedrick were in that
4 position of control over MLN until it declared bankruptcy on February 5,
5 2007.

6 8. On information and belief the actions or inactions of Respondents
7 Heffernon and Pedrick were materially contributory in the failure of
8 MLN.

9 9. As a result of the failure to observe sound business practices by
10 Respondents Heffernon and Pedrick, New Hampshire consumers have suffered
11 financial and other losses with the failure of MLN.

12 10. It is reasonable to conclude that such unsound business practices stand
13 a reasonable chance of repetition at Respondent Emax.

14 11. Persons subject to licensure under 397-A are required to fund loans at
15 closing.

16 12. Respondent Heffernon was the president, chief executive officer and
17 majority owner of MLN when it violated the law on at least 11 occasions
18 by failing to fund 11 loans at closing.

19 13. Respondent Pedrick was the Executive Vice-President, Sales Director and
20 20% owner at MLN when it violated the law on at least 11 occasions by
21 failing to fund 11 loans at closing.

22 14. Respondents Heffernon and Pedrick are currently subject to an
23 administrative action as a result of said violations and it is
24 reasonable to conclude that such violations could recur at Respondent
25 Emax.

15. Had these conditions existed at the time of license application the
Commissioner would have denied Respondent Emax's license.

1 16. Respondent Emax currently has posted a \$20,000 bond. This bond level
2 is inappropriate pursuant to RSA 397-A:5 given the current dealings of
3 Respondent Heffernon and Respondent Pedrick.

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

- 7 1. The Banking Department ("Department"), has jurisdiction over the
8 licensing and regulation of persons engaged in first mortgage banker /
9 broker activities pursuant to NH RSA 397-A:3.
- 10 2. Mortgage Servicing Companies are required to be registered pursuant to
11 RSA 397-B:2.
- 12 3. Licensees under RSA 397-A are exempt from the registration provisions
13 of 397-B pursuant to 397-B:10.
- 14 4. Pursuant to RSA 397-A:5 licensees are required to have financial
15 integrity, a positive net worth and a net worth in excess of
16 \$100,000.00 in order to post a bond in the limited amount of
17 \$20,000.00.
- 18 5. Pursuant to RSA 397-A:5 the Commissioner is charged with determining
19 whether an applicant's financial resources, experience, personnel, and
20 record of past or proposed conduct warrants the public confidence and
21 the issuance of a license at time of application.
- 22 6. RSA 397-A:21 IV provides that any person who, either knowingly or
23 negligently, violates any provision of RSA 397-A, may upon hearing, and
24 in addition to any other penalty provided for by law, be subject to
25 suspension, revocation, or denial of any registration or license, or an
administrative fine not to exceed \$2,500, or both. Each of the acts
specified shall constitute a separate violation, and such
administrative action or fine may be imposed in addition to any

1 criminal penalties or civil liabilities imposed by New Hampshire
2 banking laws. Respondents are subject to revocation and/or
3 administrative fines for violations of RSA 397-A.

4 7. RSA 397-A:21 V provides that every person who directly or indirectly
5 controls a person liable under this section, every partner, principal
6 executive officer, or director of such person, who materially aids in
7 the acts constituting the violation, either knowingly or negligently,
8 may, upon notice and opportunity for hearing, and in addition to any
9 other penalty provided for by law, be subject to suspension,
10 revocation, or denial of an registration or license, including the
11 forfeiture of any application fee, or the imposition of an
12 administrative fine not to exceed \$2,500, or both. Each of the acts
13 specified shall constitute a separate violation, and such
14 administrative action or fine may be imposed in addition to any
15 criminal penalties or civil liabilities imposed by New Hampshire
16 banking laws. Respondents are subject to revocation and/or
17 administrative fines for violations of RSA 397-A.

18 8. Pursuant to RSA 397-A:17 the commissioner may issue an order requiring a
19 person to whom any license has been granted or any person under the
20 commissioner's jurisdiction to show cause why the license should not be
21 revoked, suspended, or penalties imposed, or both, if the licensee fails
22 to meet the standards of this chapter. Pursuant to RSA 397-A:17 I(b)
23 respondents are subject to license revocation and fines.

24 9. Pursuant to RSA 397-A:18 the banking department may issue a cease and
25 desist order against any licensee or person who it has reasonable cause
to believe is in violation of the provisions of this chapter or any rule
or order under this chapter.

RELIEF REQUESTED

