

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-223
))
3 State of New Hampshire Banking) Order to Show Cause
))
4 Department,) Cease and Desist Order
))
5 Petitioner,))
))
6 and))
))
7 The Mortgage Specialists, Inc.,))
))
8 Michael Gill, Lisa Tracy, Jean Duerr,))
))
9 and David Caillouette,

10 Respondents

11
12 NOTICE OF ORDER

13 This Order commences an adjudicative proceeding under the provisions of
14 RSA 397-A, RSA 541-A, BAN 200 and JUS 800 as applicable.

15 LEGAL AUTHORITY AND JURISDICTION

16 Pursuant to RSA 397-A:17, the Banking Department of the State of New
17 Hampshire (hereinafter the "Department") has the authority to issue an order
18 to show cause why license revocation penalties for violations of New
19 Hampshire Banking laws should not be imposed.

20 Pursuant to RSA 397-A:17 and RSA 397-A:21, the Commissioner has the
21 authority to suspend, revoke or deny any license and to impose administrative
22 penalties of up to \$2,500.00 for each violation of New Hampshire banking law
23 and rules.

24 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.

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 and Cease and Desist Order, as well as the right to be
11 represented by counsel at each Respondent's own expense. All hearings shall
12 comply with RSA 541-A. Any such request for a hearing shall be in writing, and
13 signed by the Respondent or the duly authorized agent of the above named
14 Respondent, and shall be delivered either by hand or certified mail, return
15 receipt requested, to the Banking Department, State of New Hampshire, 53
16 Regional Drive, Concord, NH 03301. Such hearings will be scheduled within 10
17 days of the request. If the Respondent fails to appear at the hearing after
18 being duly notified, such person shall be deemed in default, and the proceeding
19 may be determined against the defaulting Respondent(s) upon consideration of
20 the Order to Show Cause, the allegations of which may be deemed to be true.

21 If the Respondent(s) fails to request a hearing within 30 calendar days
22 of receipt of this order or reach formal settlement with the Department within
23 that time frame, then such person shall likewise be deemed in default, and the
24 orders shall, on the thirty-first day, become permanent, and shall remain in
25 full force and effect until and unless later modified or vacated by the
commissioner, for good cause shown.

STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF

1 The Staff Petition dated July 23, 2008 (a copy of which is attached
2 hereto) is incorporated by reference hereto.

3 ORDER

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

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

9 It is hereby ORDERED, that the Respondent shall show cause why:

- 10 1. Administrative penalties of \$200,000.00 should not be imposed
11 against each Respondent; and
- 12 2. The Mortgage Specialist, Inc.'s license should not be revoked;
and

13 It is hereby ORDERED that:

- 14 3. The Respondents shall immediately **Cease and Desist** from all
15 violations of New Hampshire law and the rules promulgated
thereunder; and
- 16 4. Failure to request a hearing within 30 days of the date of
17 receipt of this Order shall result in a default judgment being
18 rendered, license revocation and administrative penalties
19 imposed upon the defaulting Respondent(s).

20
21 SIGNED,

22 Dated: 07/24/08

 / s /
PETER C. HILDRETH
BANK COMMISSIONER

23
24 **NOTE: VIOLATION OF A CEASE AND DESIST ORDER IS A**
25 **CRIMINAL OFFENSE.**

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-223
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 3 State of New Hampshire Banking) Staff Petition
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 4 Department,)
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 5 Petitioner,) July 23, 2008
)
 6 and)
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 7 The Mortgage Specialists, Inc.,)
)
 8 Michael Gill, Lisa Tracy, Jean Duerr,)
)
 9 and David Caillouette,
 10 Respondents

11
12 STATEMENT OF ALLEGATIONS

13 The Staff of the Banking Department, State of New Hampshire (hereinafter
14 referred to as the "Department) alleges the following facts:

15 Information Common to All Counts

- 16 1. The Mortgage Specialists, Inc. (hereinafter "Respondent TMS" or
 17 licensee) is licensed to do business as a mortgage banker by the
 18 Department.
- 19 2. Respondent Michael Gill (Gill) is the majority owner of licensee
 20 and upon information and belief is familiar with the day to day
 21 business activities of licensee.
- 22 3. Respondent Lisa Tracy (Tracy) is licensee's Compliance Officer
 23 and is disclosed to the department as licensee's "Controller."
- 24 4. Respondent Jean Duerr (Duerr) is the processing manager for
 25 licensee and is disclosed to the department as licensee's
 Operations Manager.

1 5. Licensee's principal office is located in Plaistow, NH and they
2 have New Hampshire licensed branches in Plaistow, Somersworth,
3 Manchester, Nashua, Salem, and Windham.

4 6. Respondent David Caillouette (Caillouette) was a branch manager
5 of licensee's Salem branch at all times relevant to this
6 petition.

7 Violation of NH RSA 397-A:11 I incomplete records (20 Counts)

8 Violation of NH RSA 397-A:6 I failure to supervise (1 Count)

9 Violation of NH RSA 397-A:12 VII failure to facilitate exam (20 Counts)

10 Violation of NH RSA 397-A:17 I(k) dishonest or unethical practices (1 Count)

11 7. Paragraphs 1-6 are hereby realleged as if fully set forth herein.

12 8. The Department requested twenty loan files from licensee's
13 employees as part of a routine examination being conducted at
14 licensee's principal office.

15 9. Though the twenty loan files were stored at an off-site storage
16 facility within 10 minutes drive of the examination location it
17 took licensee's employees over four hours to turn the files over
18 to examiners.

19 10. The loan files presented to examiners were all missing documents
20 necessary to determine compliance with state and federal law and
21 regulations.

22 11. The licensee uses an industrial shredding company to shred its
23 sensitive documents and has a locked storage bin which it uses to
24 store those unshredded documents until such time as the shredding
25 company arrives on the premises.

 12. According to licensee the shredding company visits the office

1 weekly to empty and shred the contents of the bin.

2 13. Upon investigation documents which should have been in the
3 aforementioned files were located in licensee's industrial shred
4 bin.

5 14. Respondents Gill, Tracy and Duerr all professed ignorance
6 regarding the reason why staff had taken essential documents out
7 of the file before giving the file to department examiners and
8 clearly intended those documents for destruction.

9
10 **Violation of RSA 397-A:17 I(f) fraud (14 Counts)**

11 **Violation of RSA 397-A:17 I(k) dishonest or unethical practices (14 Counts)**

12 **Violation of NH RSA 397-A:6 I failure to supervise (1 Count)**

13 15. Paragraphs 1-14 are hereby realleged as if fully set forth
14 herein.

15 16. On review of the documents recovered from the principal office
16 shred bin the following practice was observed relating to
17 disclosure documents required to be in the file:

- 18 a. Evidence that the consumers signature had been photocopied.
19 b. Evidence that the photocopied signature was removed from the
20 copied document.
21 c. Evidence that the photocopied signature was physically attached
22 to an unsigned document.
23 d. Evidence that the now "signed" document was recopied so that it
24 now appeared to bear the signature of the consumer.

25 17. The above outlined procedure was followed for several documents
in at least five loan files that could be identified.

1 18. The above outlined procedure was also followed on a series of
2 documents related to a single loan file found in the shred bin in
3 the Salem branch.

4 19. Documents for an additional loan file at the Plaistow office
5 showed that the signature had been physically removed.

6 20. An application for a federally related mortgage loan signed in
7 blank was also found in the Plaistow shred bin.

8 21. The Broker Fee Agreements located in the Plaistow shred bin in
9 relation to two loan files showed evidence that they were altered
10 after the consumer signed the documents.

11 22. Documents found in the Plaistow shred bin for four loan files had
12 dates whited out and a new date written over it.

13 23. Respondents Gill, Tracy and Duerr all professed ignorance
14 regarding these transactions and the reason why staff had
15 fraudulently manipulated documents.

16 24. Respondent Caillouette admitted that he had manipulated the
17 fraudulent documents found in the Salem shred bin but refused to
18 answer questions related to whether it was a practice of the
19 company or branch.

20 **Violation of NH RSA 397-A:11 I destruction of records (3 Counts)**

21 **Violation of NH RSA 397-A:12 VII failure to facilitate exam (2 Counts)**

22 25. Paragraphs 1-24 are hereby realleged as if fully set forth herein.

23 26. Licensee professed not to be able to provide two requested cancelled
24 loan files.

25 27. The entire loan files were located by exam staff in the aforementioned
shred bin.

1 28. A complete cancelled or withdrawn loan file was also located in the
2 Salem branch.

3 **Violation of NH RSA 397-A:2 III violation of federal statutes and**
4 **regulations (2 Counts)**

5 29. Paragraphs 1-28 are hereby realleged as if fully set forth herein.

6 30. As of November, 2007 the licensee had a written information security
7 program that was compliant with the Gramm-Leach-Bliley act and its
8 implementing regulations.

9 31. The policy names Respondent Tracy as the person responsible for
10 implementation of the information security program.

11 32. As part of the information security program closed files are stored at
12 an off-site storage facility.

13 33. Respondent Tracy stated that she had never been to the storage facility
14 prior to the exam staff specifically requesting she go with them to
15 retrieve files.

16 34. The policy dictates that "Customer application files are to be kept in
17 a locked file cabinet, desk, or locked office when not being worked
18 on."

19 35. The in process loan files for the licensee are kept in several stacks
20 in an open bookcase in an unsecured area of the office.

21 **Violation of NH RSA 397-A:6 I failure to supervise (1 Count)**

22 **Violation of NH BAN Code 2504.01 failure to notify of balloon payments (1**
23 **Count)**

24 36. Paragraphs 1-35 are hereby realleged as if fully set forth herein.

25 37. A certain consumer's loan file indicated they received a 2/28
adjustable rate mortgage first lien which was amortized over 40 years
resulting in a balloon payment at the end of 30 years.

1 38. Both Respondent Tracy and Respondent Duerr stated that it was against
2 company policy to offer balloon payments on first liens.

3 39. At the time of application the consumer applied for a fixed rate 30
4 year mortgage.

5 40. There was no disclosure in the file indicating the consumer knew that
6 what the consumer received was a balloon loan prior to signing the loan
7 documents at closing.

8 41. Because of the aforementioned fraudulent practices of the Respondents
9 the Department has no confidence that the consumer has seen any of the
10 documents, even those purportedly signed by the borrower, which would
11 notify the consumer of the existence of a balloon payment due in thirty
12 years.

12 ISSUES OF LAW

13 The staff of the Department alleges the following issues of law:

- 14 1. The Department realleges the above stated facts in paragraphs 1
15 through 41.
- 16 2. The Department has jurisdiction over the licensing and
17 regulation of persons engaged in mortgage banking and mortgage
18 brokering activities pursuant to NH RSA 397-A:2.
- 19 3. RSA 397-A:2 III requires licensees to abide by applicable
20 federal laws and regulations. Respondent violated this statute
21 on at least two occasions as alleged above.
- 22 4. RSA 397-A:6 I mandates that licensees supervise their employees,
23 agents loan originators, and branch offices. The Respondent
24 failed to adequately supervise and therefore violated this
25 statute on at least three occasions as alleged above.
5. RSA 397-A:11 I mandates that licensees keep accurate records

1 that allow the Commissioner to make compliance determinations.
2 Respondent violated this statute on at least twenty-three
3 occasions as alleged above.

4 6. RSA 397-A:12 III mandates that licensees comply with examination
5 requests. Respondent violated this statute on at least twenty-
6 two occasions as alleged above by failing to provide requested
7 files.

8 7. Pursuant to NH RSA 397-A:17 I(f) mortgage bankers/brokers
9 engaging in business in New Hampshire are prohibited from making
10 fraudulent misrepresentations or concealing material
11 particulars required to be furnished to a borrower. Respondent
12 has violated said statute fourteen times as alleged above.

13 8. Pursuant to NH RSA 397-A:17 I(k) mortgage bankers/brokers
14 engaging in business in New Hampshire are prohibited from
15 engaging in unethical business practices. Respondents have
16 violated said statute fifteen times as alleged above.

17 9. RSA 397-A:21 IV provides that any person who, either knowingly
18 or negligently, violates any provision of RSA 397-A, may upon
19 hearing, and in addition to any other penalty provided for by
20 law, be subject to an administrative fine not to exceed \$2,500,
21 or both. Each of the acts specified shall constitute a separate
22 violation, and such administrative action or fine may be imposed
23 in addition to any criminal penalties or civil liabilities
24 imposed by New Hampshire banking laws. Respondents are subject
25 to administrative fines for violations of the above noted
statutes.

1 10. Pursuant to Admin. BAN Code 2504.01 licensees must notify
2 borrowers or applicants of balloon provisions within certain
3 timelines. Respondents violated this provision as alleged
4 above.

5 11. RSA 397-A:21 IV provides that any person who knowingly violates
6 any rule or order of the commissioner may upon hearing, and in
7 addition to any other penalty provided for by law, be subject to
8 an administrative fine not to exceed \$2,500. Each of the acts
9 specified shall constitute a separate violation, and such
10 administrative action or fine may be imposed in addition to any
11 criminal penalties or civil liabilities imposed by New Hampshire
12 banking laws. Respondents are subject to administrative fines
13 for violations of the above noted rule provision.

14 12. RSA 397-A:21 V provides that every person who directly or
15 indirectly controls a person liable under this section, every
16 partner, principal executive officer or director of such person,
17 every person occupying a similar status or performing a similar
18 function, every employee of such person who materially aids in
19 the act constituting the violation, and every licensee or person
20 acting as a common law agent who materially aids in the acts
21 constituting the violation, either knowingly or negligently, may,
22 upon notice and opportunity for hearing, and in addition to any
23 other penalty provided for by law, be subject to suspension,
24 revocation, or denial of any registration or license, including
25 the forfeiture of any application fee, or the imposition of an
administrative fine not to exceed \$2,500, or both.

1 13. Pursuant to RSA 397-A:18 the Commissioner may issue a cease and
2 desist order against any licensee or person who he has reasonable
3 cause to believe is in violation of the provisions of the chapter
4 or any rule or order under the chapter.

5
6 **RELIEF REQUESTED**

7 The staff of the Department requests the Commissioner take the following
8 Action:

- 9 1. Find as fact the allegations contained in section I of this petition;
10 2. Make conclusions of law relative to the allegations contained in
11 section II of the this petition;
12 3. Order the Respondent to Show Cause why its license should not be
13 revoked;
14 4. Assess fines and administrative penalties in accordance with RSA 399-
15 A:18, for violations of Chapter 399-A, in the number and amount equal
16 to the violations set forth in section II of this petition;
17 5. Order Respondents to Cease and Desist from the practices noted above
18 that violate the provisions of the Chapter and rules adopted
19 thereunder; and
20 6. Take such other administrative and legal actions as necessary for
21 enforcement of the New Hampshire Banking Laws, the protection of New
22 Hampshire citizens, and to provide other equitable relief.

23 **RIGHT TO AMEND**

24 The Department reserves the right to amend this Staff Petition and to
25 request that the Commissioner take additional administrative action.

1 Nothing herein shall preclude the Department from bringing additional
2 enforcement action under RSA 397-A or the regulations thereunder.

3
4 Respectfully submitted by:

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6 _____
7 */ s /*
8 James Shepard
9 Staff Attorney

_____ *07/23/08*
Date