

1 State of New Hampshire Banking Department

2

3 In re the Matter of:) Case No.: 08-381
)
 4 State of New Hampshire Banking)
)
 5 Department,)
) Adjudicative Hearing Decision:
 6 Petitioner,) Order to Pay Penalties
)
 7 and)
)
 8 Empire Equity Group, Inc. (d/b/a 1st)
)
 9 Metropolitan Mortgage of NY),)
)
 10 Corporate Office Management)
)
 11 Providers, Inc., Daniel Howard)
)
 12 Jacobs, Joshua Israel Lieber, Ezra S.)
)
 13 Beyman, William Dean Warren, and)
)
 14 Christopher Derek Max,)
)
 15 Respondents)
)

16
17 PROCEDURAL BACKGROUND

18 Respondent Empire Equity Group d/b/a 1st Metropolitan Mortgage of NY,
19 and all other Respondents were served with an Order to Show Cause and Cease
20 and Desist Order on or about November 6, 2008. The initial hearing scheduled
21 for November 6, 2008 was continued several times and finally scheduled for
22 May 19, 2009.

23 On May 18, 2009, the New Hampshire Banking Department (the
24 "Petitioner") executed Consent Orders with Salem, New Hampshire Branch
25

1 Manager Christopher Derek Max ("Respondent Max"), and Respondent Ezra S.
2 Beyman.
3

4 A hearing in this matter was held on May 19, 20, and 21, 2009 (the
5 "Hearing"), with Ingrid E. White acting as Presiding Officer. Respondent
6 Joshua Israel Lieber was dismissed from the matter on the Petitioner's
7 verbal motion at the start of the Hearing. The remaining respondents
8 subject to this Order are Empire Equity Group, Inc. d/b/a 1st Metropolitan
9 Mortgage of NY, Daniel Howard Jacobs and William Dean Warren (the "Remaining
10 Respondents").

11 At the conclusion of said hearing the record was left open for the
12 parties to submit proposed orders to include proposed findings of fact and
13 rulings of law and any other closing statements.

14 **DISMISSAL OF COUNTS**

15 1. At the Hearing, Petitioner verbally requested dismissal of the
16 following counts in the Staff Petition, and the request for dismissal
17 was **GRANTED**:

18 a. Relating to Paragraphs 125 and 126, "Failure to Update Information
19 on File with the Commissioner":

20 a. RSA 397-A:10, IV (2 counts)

21 b. RSA 397-A:10, III (2 counts)

22 b. Relating to Paragraph 105, "Manipulation of Documents: Cut, Tape,
23 Copy & White Out":

24 a. 18 U.S.C. § 1001 et seq., via RSA 397-A:2, III (3 counts)

25 b. 18 U.S.C. § 1010 et seq., via RSA 397-A:2, III (3 counts)

c. 18 U.S.C. § 1344 via RSA 397-A:2, III (3 counts)

1 d. RSA 397-A:6, I (3 counts)

2 e. RSA 397-A:17, I (f) (3 counts)

3 f. RSA 397-A:17, I (g) (3 counts)

4 g. RSA 397-A:17, I (k) (3 counts)

5 h. RSA 397-A:17, I (l) (3 counts)

6 c. Relating to Paragraph 110, "Influencing the Value of an Appraisal by
7 Respondents' Employees":

8 a. 18 U.S.C. § 1001, et seq., via RSA 397-A:2, III (1 count)

9 b. 18 U.S.C. § 1010, et seq., via RSA 397-A:2, III (1 count)

10 c. 18 U.S.C. § 1344, via RSA 397-A:2, III (1 count)

11 d. RSA 397-A:6, I (1 count)

12 e. RSA 397-A:17, I (f) (1 count)

13 f. RSA 397-A:17, I (g) (1 count)

14 g. RSA 397-A:17, I (k) (1 count)

15 h. RSA 397-A:17, I (l) (1 count)

16 2. After the hearing, the Petitioner requested the dismissal of several
17 more counts. The Request for Dismissal of the following counts as
18 stated in the Petitioner's Findings of Fact and Conclusions of Law is
19 hereby **ACCEPTED**:

20 a. Relating to Paragraph 1, "Defrauding the Lender: Consumer A Loan
21 File":

22 1.) Title 18 U.S.C. Section 1001, et seq. via RSA 397-A:2, III (11
23 Counts);

24 2.) Title 18 U.S.C. Section 1010 via RSA 397-A:2, III (11 Counts);

25 3.) Title 18 U.S.C. Section 1344 via RSA 397-A:2, III (11 Counts);

4.) RSA 397-A:17, I (f) (11 Counts);

1 5.)RSA 397-A:17,I(g) (11 Counts);

2 6.)RSA 397-A:17,I(k) (11 Counts); and

3 7.)RSA 397-A:17,I(l) (11 Counts).

4 b. Relating to Paragraph 2, "Defrauding the Lender: Consumer B Loan
5 File":

6 1.) Title 18 U.S.C. Section 1001, et seq. via RSA 397-A:2,III (2
7 Counts);

8 2.)Title 18 U.S.C. Section 1010 via RSA 397-A:2,III (2 Counts);

9 3.)Title 18 U.S.C. Section 1344 via RSA 397-A:2,III (2 Counts);

10 4.)RSA 397-A:17,I(f) (2 Counts);

11 5.)RSA 397-A:17,I(g) (2 Counts);

12 6.)RSA 397-A:17,I(k) (2 Counts); and

13 7.)RSA 397-A:17,I(l) (2 Counts).

14 c. Relating to Paragraph 3, "Defrauding the Lender: Consumer C Loan
15 File":

16 1.)Title 18 U.S.C. Section 1001, et seq. via RSA 397-A:2,III (2
17 Counts);

18 2.)Title 18 U.S.C. Section 1010 via RSA 397-A:2,III (2 Counts);

19 3.)Title 18 U.S.C. Section 1344 via RSA 397-A:2,III (2 Counts);

20 4.)RSA 397-A:6,I (2 Counts);

21 5.)RSA 397-A:17,I(f) (2 Counts);

22 6.)RSA 397-A:17,I(g) (2 Counts);

23 7.)RSA 397-A:17,I(k) (2 Counts); and

24 8.)RSA 397-A:17,I(l) (2 Counts).

25 d. Relating to Paragraph 4, "Intent to Defraud the Lender: Various Loan
Files":

1 1.)RSA 397-A:6,I (1 Count) (the Consumer D matter only);

2 2.)RSA 397-A:17,I(g) (2 Counts); and

3 3.)RSA 397-A:17,I(k) (2 Counts).

4 e. Relating to Paragraph 5, "Manipulation of Documents":

5 1.) Title 18 U.S.C. Section 1001, et seq. via RSA 397-A:2,III (12
6 remaining Counts);

7 2.) Title 18 U.S.C. Section 1010 via RSA 397-A:2,III (12
8 remaining Counts);

9 3.)Title 18 U.S.C. Section 1344 via RSA 397-A:2,III (12 remaining
10 Counts);

11 4.) RSA 397-A:17,I(f) (12 remaining Counts);

12 5.) RSA 397-A:17,I(g) (12 remaining Counts);

13 6.) RSA 397-A:17,I(k) (12 remaining Counts); and

14 7.) RSA 397-A:17,I(l) (12 remaining Counts).

15 f. Relating to Paragraph 6, "Influencing the Value of an Appraisal":

16 1.) Title 18 U.S.C. Section 1001, et seq. via RSA 397-A:2,III (3
17 remaining Counts);

18 2.) Title 18 U.S.C. Section 1010 via RSA 397-A:2,III (3 remaining
19 Counts);

20 3.) Title 18 U.S.C. Section 1344 via RSA 397-A:2,III (3 remaining
21 Counts);

22 4.) RSA 397-A:17,I(f) (3 remaining Counts);

23 5.) RSA 397-A:17,I(g) (3 remaining Counts);

24 6.) RSA 397-A:17,I(k) (3 remaining Counts); and

25 7.) RSA 397-A:17,I(l) (3 remaining Counts)

1 STANDARD OF REVIEW

2 Despite a reference in the Hearing record to a 'prima facie'
3 standard of review, the Presiding Officer has reviewed the evidence in
4 this matter under the 'preponderance of evidence' standard as set forth in
5 N.H. RSA 541-A and the Jus 800 rules. Respondents' Conclusions of Law at
6 Paragraphs 44 and 45 are hereby deemed **MOOT** as this issue is already
7 concluded.

8
9 FINDINGS OF FACT AND CONCLUSIONS OF LAW

10 A. "FAILURE TO SUPERVISE" ISSUES

11 1. In many instances where the Petitioner dismissed counts against the
12 Remaining Respondents, the only remaining count pertaining to the facts
13 presented in the Staff Petition and at Hearing is an alleged violation of
14 RSA 397-A:6, I, "Failure to Supervise". That provision states, "Licensees
15 shall be responsible for the supervision of their employees, agents, loan
16 originators, and branch offices."

17 2. A finding of "Failure to Supervise" cannot be sustained unless it
18 is also proven that the employee, agent, loan originator or branch office
19 in question committed some other substantive violation of law for which
20 their supervisors, the licensees, should be held responsible. Where the
21 Petitioner does not allege a substantive violation, it must be determined
22 that Remaining Respondents did not fail to supervise their employees.

23 3. The following counts of violations of RSA 397-A:6, I, "Failure to
24 Supervise" contained in Petitioner's Conclusions of Law at paragraph (B)
25 are **DENIED** because all other counts have been dismissed and no underlying
violations of law are alleged:

1 a. 11 counts pertaining to the Consumer A Loan File;

2 b. 1 count pertaining to Consumer D;

3 c. 12 counts pertaining to the Manipulation of Documents: Cut,
4 Tape, Copy & White Out; and

5 d. 3 counts pertaining to Influencing the Value of an Appraisal
6 by Respondents' Employees.

7 4. I hereby **ACCEPT** Remaining Respondent's Conclusions of Law at
8 paragraphs 3 and 4.

9 5. I hereby deem as **MOOT** Petitioner's Findings of Fact at paragraphs
10 19, 21, 22, and 23, and Remaining Respondents' Findings of Fact at paragraphs
11 50-62, 78-81, 88-95, and 98-106, as it is not necessary to review the factual
12 allegations in these instances where the Petitioner no longer alleges a
13 substantive violation of law.

14
15 B. CONSUMER B LOAN FILE

16 1. Petitioner seeks 1 count for a violation of RSA 397-A:11, for
17 failure to maintain records, 2 counts for violations of RSA 397-A:12 for
18 failure to correct reported deficiencies, and 2 counts for violations of RSA
19 397-A:6, I for failure to supervise.

20 2. Examiner Lea Sabean ("Examiner Sabean") testified she found a
21 "Verification of Deposit" form in the Shred-it bin at the Salem Branch that
22 bore Consumer B's name. She asked Respondent Empire Equity Group, Inc.
23 (d/b/a 1st Metropolitan Mortgage of NY) (hereinafter "Empire") to produce a
24 loan file or other file on Consumer B, but Empire searched its records and
25 its files and could find nothing. Examiner Sabean concluded that a) either

1 someone at Empire destroyed the file or b) an employee of Empire was
2 impermissibly obtaining information on Consumer B without authorization.

3 3. Remaining Respondents argue that because it searched the records
4 and found no application or information about Consumer B, that a file on
5 Consumer B did not exist. If no file existed, Remaining Respondents argued,
6 then liability for destruction of a file cannot follow. However, the
7 evidence showed that a Verification of Deposit form was found with Consumer
8 B's information on it. (Petitioner Exh. 16) This is proof that some work was
9 being done on behalf of Consumer B at the Salem Branch. Therefore, Remaining
10 Respondents failed to maintain records, in violation of 397-A:11, I (1
11 count), and failed to supervise its employees, in violation of 397-A:6, I (1
12 count). Remaining Respondents also failed to correct reported deficiencies in
13 connection with these findings because it failed to maintain complete loan
14 files and failed to provide legible copies of documents contained with loan
15 files. RSA 397-A:12, VIII.

16 4. I hereby:

- 17 a. **DENY** Remaining Respondents' Findings of Fact at paragraph 96.
18 b. **ACCEPT** Remaining Respondents' Findings of Fact at paragraph 97.
19 c. **ACCEPT** Petitioner's Findings of Fact at paragraph 20.
20 d. **PARTIALLY ACCEPT** Petitioner's Conclusions of Law at paragraph (F)
21 and **ACCEPT** paragraph (I).
22 e. **DENY** Remaining Respondents' Conclusions of Law at paragraph 32.
23

24 C. SUPERVISION - FAILURE TO SUPERVISE AND SAFEGUARD CONSUMER INFORMATION

25 1. Petitioner alleges Remaining Respondents failed to produce four loan
files requested by Examiner Sabean during her investigation, and in so doing

1 violated RSA 397-A:11,I, "Failure to Maintain Records". During testimony,
2 Examiner Sabean identified only three loan files, not four, that she asked
3 for and that were not produced, one of which was the Consumer B file, which
4 is addressed above. (Testimony, May 19, 165: 21-22) Because Consumer B is
5 addressed above, at least 1 count for failure to maintain records under this
6 sub-section cannot be sustained as it is repetitive.

7 2. With respect to the remaining two files identified at the Hearing,
8 Examiner Sabean testified that she sought the loan files because she found
9 certain documentation in the Shred-it bins that included those consumers'
10 names. She stated that Respondents looked for the files, but told her there
11 were "no records" of the loan files. (Testimony, May 19, 165:11-22)
12 Petitioner's Exhibits 45a and 45b. Testimony of Respondent William Dean
13 Warren ("Respondent Warren") also showed that despite a search of records, no
14 files were found. (Testimony, May 20, 92: 16-23) The documentary evidence
15 received at the Hearing regarding these two files was Examiner Sabean's notes
16 on her request to the company for the file. (Petitioner Exh. 16a) The
17 Hearings Examiner found that Examiner Sabean's testimony and notes regarding
18 the files was persuasive evidence that some work was being done by employees
19 at Empire on behalf of these consumers. Additionally, Respondent Warren
20 testified that it was possible an employee of Empire generated a verification
21 of deposit for one of those two consumers, and if so, the file should have
22 been maintained by Empire. (Testimony, May 20, 93:4 - 94:1).

23 3. Two of the three remaining counts for failure to maintain records (RSA
24 397-A:11, I) are hereby **ACCEPTED**; and the third count is hereby **DENIED**, as no
25 evidence was received at the Hearing to support this count.

1 4. Examiner Sabean also testified at the Hearing that she asked to see
2 emails between ("Respondent Max") and a certain employee of the company. She
3 was informed that those emails had been destroyed or were no longer available
4 and that the passwords to access Respondent Max's computer and the other
5 employee's computer had also been deleted. No compelling explanation for
6 this was offered by Remaining Respondents. In this case, evidence shows the
7 emails and passwords existed at one point, but were destroyed. (Testimony,
8 May 19, 164: 18-23, 165:1-10)

9 5. I find Remaining Respondents liable for 3 counts of destruction of
10 records, under RSA 397-A:11, IV, for destruction of the emails and passwords,
11 and 3 counts of violations of RSA 397-A:6, I, "Failure to Supervise".

12 6. I hereby **DENY** Remaining Respondents' Conclusions of Law at paragraphs
13 29 and 30, and **ACCEPT** Petitioner's Findings of Fact at paragraph 12.

14 7. The Petitioner also brings 5 counts of violations of the Gramm-Leach-
15 Bliley Act. Evidence at the Hearing showed that employees of Empire failed to
16 maintain security over consumer loan files, which were found lying around the
17 Salem Branch unsecured, and also that the Salem Branch itself was not
18 properly secured, as the bank examiners were able to walk into the office and
19 proceed through the office without anyone stopping them.

20 8. The above facts are undisputed, but Respondents' legal argument on
21 this point is compelling. Respondent argues that the Petitioner has failed to
22 demonstrate how these actions violated specific provisions of law.

23 9. I hereby **ACCEPT** Petitioner's Findings of Fact at paragraphs 24, 24a
24 and 24b (although not the legal conclusion drawn from them). I also **ACCEPT**
25 Petitioner's Findings of Fact at paragraph 24c, and **DENY** Petitioner's
Findings of Fact at Paragraph 11 and 24d.

1 10. I hereby **ACCEPT** Remaining Respondents' Conclusions of Law at
2 paragraph 21, and **DENY** Petitioner's Conclusions of Law at paragraph (C).
3 Remaining Respondents' Conclusions of Law at paragraph 22 is deemed **MOOT**.

4 11. Petitioner seeks a finding that Remaining Respondents failed to
5 facilitate the examination by the New Hampshire Banking Department (3
6 counts). In support of this allegation, Petitioner cites written policies of
7 Remaining Respondents that discuss how examiners are to be treated and
8 accommodated when they arrive to conduct an on-site examination. On the
9 basis of this evidence, and Respondent Warren's testimony regarding this
10 policy and its implementation (Testimony, May 20, page 175-180) the Presiding
11 Officer determined there was no violation of this statutory provision.

12 12. I hereby **ACCEPT** Remaining Respondents' Conclusions of Law at
13 paragraph 31. Further, I **ACCEPT** Petitioner's Findings of Fact at paragraph
14 7b, and **DENY** Petitioner's Findings of Fact at paragraph 7b, and Conclusions
15 of Law at paragraph (H).

16
17 D. FAILURE TO UPDATE INFORMATION ON FILE WITH THE COMMISSIONER

18 1. Petitioner seeks a finding that Remaining Respondents violated RSA
19 397-A:10, III, for failure to inform Commissioner of office closure (2
20 counts) and RSA 397-A:10, IV, for failure to update information on file with
21 the Commissioner (2 counts).

22 2. It was undisputed that Remaining Respondents immediately closed the
23 Salem Branch as a result of information discovered during the Department's
24 examination, in violation of RSA 397-A:10, III. Remaining Respondents argue
25 their actions were warranted under the circumstances because of the impending
Cease and Desist Order and because of the activity discovered during the

1 examination. They also argue that no consumers were harmed by the immediate
2 closure; therefore, there is no basis for liability.

3 3. A violation of law does not have to result in harm to consumers in
4 order to be actionable by the Department as Remaining Respondents have
5 argued. However, the amount of the harm, (or alternatively, the lack of any
6 harm at all), or mitigation of the harm by the entity, can be a factor in the
7 decision to impose penalties on the entity for violations. Additionally, RSA
8 397-A:21, VI provides that "all actions taken by the commissioner pursuant to
9 this chapter shall be taken only when the commissioner finds such action
10 necessary or appropriate to the public interest or for the protection of
11 consumers and consistent with the purposes fairly intended by the policy and
12 provisions of this title."

13 4. I hereby hold that one violation of RSA 397:A-10, III occurred, but
14 that public interest dictates that no penalties be assessed for this
15 violation of a procedural provision.

16 5. Based on the above, I hereby:

- 17 a. **ACCEPT** Petitioner's Findings of Fact at paragraph 25b;
18 b. **ACCEPT** Remaining Respondents' Findings of Fact at paragraphs 107-113;
19 c. **DENY** Remaining Respondents' Findings of Fact at paragraphs 114 and
20 115;
21 d. **ACCEPT** Remaining Respondents' Conclusions of Law at paragraph 7;
22 e. **PARTIALLY ACCEPT** Remaining Respondents' Conclusions of Law at
23 paragraphs 27 and 28;
24 f. **DENY** Remaining Respondents' Conclusions of Law at paragraph 6; and
25 g. **PARTIALLY ACCEPT** Petitioner's Conclusions of Law at paragraph (D).

1 6. Petitioner also stated in the Staff Petition that Remaining
2 Respondents violated RSA 397-A:10, IV, for failure to update information on
3 file with the Commissioner (2 counts) because they failed to inform the
4 Department in a timely manner when Respondent Max was fired. That provision
5 allows licensees 30 days to update the Department of any material changes to
6 the information on file with the commissioner. There was no evidence that
7 Remaining Respondents failed to tell the Department within 30 days of
8 terminating Respondent Max's employment. I hereby **DENY** Petitioner's Findings
9 of Fact at paragraph 25A and Conclusions of Law at paragraph (E).

10
11 E. INDIVIDUAL LIABILITY and CORPORATE LIABILITY FOR STATUTORY VIOLATIONS

12 1. In accordance with RSA 397-A:21, V, Petitioner has sought a
13 determination that the individual respondents in this matter be held
14 personally liable for any statutory violations. Remaining Respondents argue
15 that 397-A:21, V does not apply because neither Respondent Warren nor
16 Respondent Daniel Howard Jacobs ("Respondent Jacobs") was a direct supervisor
17 to any of the employees of the Salem Branch. However, Respondent Warren and
18 Respondent Jacobs were still "control persons" as contemplated by 397-A:21,
19 V, which states that "every person who directly or indirectly controls a
20 person liable under this section, every partner, principal executive officer
21 or director of such person, every person occupying a similar status or
22 performing a similar function..." may be subject to disciplinary action.

23 2. Under RSA 397-A:21, V, all "control persons" are liable for the
24 actions of their employees unless they can affirmatively defend the
25 allegations by demonstrating they did not know, and in the exercise of
reasonable care could not have known, of the existence of facts by reason of

1 which the liability is alleged to exist. There was no evidence presented at
2 the Hearing, and the Petitioner did not argue, that the Respondent Warren and
3 Respondent Jacobs had any actual knowledge of the issues and problems that
4 arose in the Salem Branch.

5 3. Petitioner instead argued that Respondents Warren and Jacobs could
6 have known of the statutory violations, had they exercised reasonable care in
7 supervising the Salem Branch. For instance, testimony received at the Hearing
8 showed that Empire does not supervise or spot-check employee emails.
9 (Testimony, May 20, 203:2-23) Respondent Empire did not conduct a spot check
10 at the Salem Branch during the 14 months it was in operation, despite a
11 company policy to conduct "spot" or "surprise" examinations of branch
12 offices. (Testimony , May 20, pages 169-170). Petitioner also argues that the
13 evidence showed the policies and procedures put in place by Remaining
14 Respondents were not "proactive" enough in their design to catch fraud. (See
15 Petitioner's Findings of Facts, paras. 8(e), 13(a), 14).

16 4. Remaining Respondents argued that Respondent Warren and Respondent
17 Jacobs did exercise reasonable care and diligence, and despite their efforts,
18 were not aware of the fraud being perpetrated by the individuals at the Salem
19 Branch. (See Remaining Respondent's Findings of Fact paras. 25-44). The
20 fraud policy of Respondent Empire Equity's compliance manual entered into
21 evidence states that the company has a "zero tolerance" for fraud. It
22 requires employees to report to the Chief Compliance Officer any loan fraud
23 or attempted loan fraud. Any failure to report can result in severe
24 disciplinary proceedings, including loss of commission and/or termination.

25 5. Evidence at the Hearing showed that Respondent Warren and
Respondent Jacobs followed corporate procedures and exercised care and

1 diligence in carrying out their duties to the corporation. Empire maintained
2 routines and procedures for compliance, and for communication with branch
3 offices through the inter-office email system. (Testimony, May 20, pages
4 105-106). Policies were in place that required any Empire Equity Group, Inc.
5 employee who became aware of fraud or compliance issues, to report to their
6 superiors and ultimately to the Compliance Department. (Respondent's Exhibit
7 A7 at 6; Testimony, May 20, page 79).

8 6. There is no allegation that any of Respondent Warren's or
9 Respondent Jacob's actions or inactions violated any laws pertaining to
10 operation of the branch, except for the closing of the branch without the
11 requisite 10 day notice. The evidence demonstrated that Remaining
12 Respondents' compliance and fraud detection procedures and policies were
13 adequate, and therefore "reasonable."

14 7. Respondent Warren was, at all times relevant to this matter, acting
15 in his capacity as Chief Compliance Officer of Empire Equity Group, Inc.
16 Respondent Jacobs was, at all times relevant to this matter, acting in his
17 capacity as Chief Executive Officer and an indirect part owner of Empire
18 Equity Group, Inc. He was acting in this capacity even when he closed the
19 Salem Branch without the 10-day notice. Also, because no penalties will be
20 assessed in conjunction with this procedural statute, Respondent Jacobs will
21 not be held personally liable for this violation.

22 8. The Presiding Officer concluded from the evidence that Respondent
23 Jacobs and Respondent Warren, individually, exercised reasonable care in the
24 execution of their duties, and did not know of the facts that led to the
25 alleged statutory violations in this matter. Therefore, no personal
liability arises under RSA 397-A:21, V.

1 9. Remaining Respondents' Findings of Fact at paragraphs 12 - 19 are
2 hereby **ACCEPTED**, and Remaining Respondents' Conclusions of Law at paragraph
3 43 are deemed **MOOT**.

4 10. By contrast, Respondents Empire and Corporate Office Management
5 Providers (together, "Corporate Respondents") have no such statutory
6 affirmative defense available to them. Corporate Respondents tried to show
7 through contracts with Respondent Max that he was the "first defense" and
8 essentially the sole person responsible for detecting, reporting and
9 eliminating fraud going on at the Salem Branch.

10 11. The evidence did show that the employee contract put the onus of
11 compliance with law and fraud detection on the branch manager's shoulders.
12 However, Corporate Respondents cannot discharge their statutory obligation to
13 oversee a branch manager through a contractual agreement with that employee.
14 This administrative action does not address the contractual obligations of
15 Respondent Max's employment contract. Petitioner's Findings of Fact at
16 paragraphs 8a(1) - (6) and 8e are hereby deemed **MOOT**.

17 12. I hereby make the following findings relative to the issue of
18 "Individual vs. Corporate Responsibility":

19 a. **PARTIALLY ACCEPT** Petitioner's Findings of Fact at paragraph 8c.

20 b. **PARTIALLY ACCEPT** Petitioner's Findings of Fact at paragraph 10.

21 Portions of the subparagraphs of paragraph 10 are valid restatements of
22 the testimony. The conclusions "Remaining Respondent failed to supervise
23 Deputy Chief Compliance Officer Melissa Crider" and "illustrates a
24 reactive policy" were not found by the Presiding Officer.

25 c. **DENY** Petitioner's Findings of Fact at paragraph 3.

- 1 d. **ACCEPT** Petitioner's Findings of Fact at paragraphs 13, and **DENY** the
2 Findings of Fact at paragraphs 13a, 13a(1) and 13a(2), 14a, 14b, 14c,
3 14d, 14e, 14f.
- 4 e. **ACCEPT** Remaining Respondents' Conclusions of Law at paragraphs 35 and
5 36. I **ACCEPT** paragraph 38 only as it applies to Respondents Jacobs and
6 Warren.
- 7 f. **ACCEPT** Remaining Respondents' Conclusions of Law at paragraph 37, 41,
8 42. Conclusions of Law at paragraph 34 is **MOOT** since the allegations of
9 violation 397-A;17, I(g) have been dismissed.
- 10 g. **ACCEPT** Petitioner's Findings of Fact at paragraph 16a, 16b, 16c.
- 11 h. **DENY** Petitioner's Findings of Fact at paragraphs 8b, 8d, 16, 17 and 18.
- 12 i. **DENY** Petitioner's Findings of Fact at 16d.
- 13 j. **DENY** Petitioner's Findings of Fact at paragraphs 18, 18a, 18b. The
14 evidence showed that in 2006, Respondent Empire had an issue with
15 nonpublic information being discovered in an unsecured dumpster behind
16 one of its branches. As a result, a Compliance Alert was issued and
17 secured Shred-It bins were placed in all branches. Petitioner argues
18 that Respondent Empire should have been going through the Shred-it bins
19 to check whether employees were creating fraudulent documents.
20 Evidence at the Hearing showed that the purpose of the Compliance Alert
21 was to deal with disposal of nonpublic personal information, not the
22 disposal of fraudulent documents. (Testimony, May 20, pages 217-220.)
- 23 k. **PARTIALLY ACCEPT** Petitioner's Findings of Fact at paragraph 26.
- 24 l. **PARTIALLY ACCEPT** Remaining Respondents' Findings of Fact at paragraph
25 25. Evidence did not show that it is 'accepted industry practice' to
use branch managers as the first defense against fraud.

1 m. **PARTIALLY ACCEPT** Remaining Respondents' Findings of Fact at paragraph
2 31. It was not proven that Respondent Empire Equity's employees are
3 "fully informed of the consequence of noncompliance". This implies
4 employee knowledge which was not entered into evidence. However,
5 exhibits entered did demonstrate that the corporate management had
6 communicated its policy about tolerance of fraud to employees.

7 n. **ACCEPT** Remaining Respondents' Findings of Fact at paragraphs 27-30,
8 32-41, 43-46, 49.

9 o. **DENY** Remaining Respondents' Findings of Fact at paragraph 42. The
10 statement, "All of the above-described policies and procedures were in
11 effect for the Salem Branch during the entire time it was open, from
12 July 2007-August 2008" was not proven by the evidence.

13 p. **DENY** Remaining Respondents' Findings of Fact at paragraphs 9, 10, 11,
14 47 and 48.

15
16 F. DETERMINATIONS ON OTHER FINDINGS OF FACT OR CONCLUSIONS OF LAW

17 1. In addition to the foregoing determinations, I hereby:

18 a. **ACCEPT** Petitioner's Findings of Fact at paragraphs 1, 1a, 2, 2b, 4, 5,
19 5a, 5c, 5d, 5f, 6, 6b, 6c, 6e, 6g, 8, 14d,15,and 15a;

20 b. **DENY** Petitioner's Findings of Fact a paragraph 2a, 3, 5b, 6a, 6c, 6d,
21 6f, 6h, 8d, 8e, 8f and 26 and Conclusions of Law at paragraph A;

22 c. **ACCEPT** Remaining Respondents' Findings of Fact at paragraphs 5, 7, 8, 10
23 - 23, 37, 50, and 62;

24 d. **DENY** Remaining Respondents' Findings of Fact at paragraph 1, 2, 8, 24
25 and 38;

1 e. Deem as **MOOT** the Remaining Respondents' Conclusions of Law at
2 paragraphs 23 - 26, 33, 39 and 40 due to the dismissal of a number of
3 counts by the Petitioner;

4 f. Deem as **MOOT** the Remaining Respondents' Findings of Fact at paragraphs
5 63-77 due to the Petitioner's dismissal of all counts against Remaining
6 Respondents concerning Consumer C's file;

7 g. Deem as **MOOT** the Remaining Respondents' Findings of Fact at paragraphs
8 82-87 due to the Petitioner's dismissal of counts against Remaining
9 Respondents concerning Consumer D's file; and

10 h. Deem as **MOOT** the Remaining Respondents' Findings of Fact at paragraph
11 34 due to the Petitioner's dismissal of counts against Remaining
12 Respondents concerning relating to violations of RSA 397-A:17, I (g).

13
14 F. SURRENDER OF LICENSE

15 1. As a matter of record, the Department can revoke a license even
16 after it has been surrendered. RSA 397-A:10-a, I(b). I hereby **DENY**
17 Remaining Respondents' Conclusions of Law at paragraph 20.

ORDER

The Presiding Officer recommends the following:

1. Respondents Empire Equity Group, Inc. (d/b/a 1st Metropolitan Mortgage of NY), and Corporate Office Management Providers, Inc., shall immediately pay to the Department an administrative fine in the amount of \$30,000.00 (joint and severally) for violations of RSA 397-A:6, I (4 counts, failure to maintain records and destruction of records) 397-A:11,I (3 counts, failure to maintain records); 397-A:11, IV (3 counts, destruction of records); and 397-A;12, VIII (2 counts, failure to correct reported deficiencies).
2. Respondents Empire Equity Group, Inc. (d/b/a 1st Metropolitan Mortgage of NY), and Corporate Office Management Providers, Inc. violated RSA 397-A:10, III, failure to provide 10 days' notice of branch closure.
3. Respondents Empire Equity Group, Inc. (d/b/a 1st Metropolitan Mortgage of NY), and Corporate Office Management Providers, Inc., shall be joint and severally liable for such administrative fines;
4. The license of Empire Equity Group, Inc., (d/b/a 1st Metropolitan of NY) is hereby REVOKED; and
5. The Cease and Desist Order is hereby made PERMANENT.

SO ORDERED.

Date: 4/28/10

/s/
Peter C. Hildreth
Bank Commissioner