

1 State of New Hampshire Banking Department

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

14
15 CONSENT ORDER

16 I. For purposes of amicably settling the above-referenced matter,
17 the New Hampshire Banking Department (hereinafter referred to as "the
18 Department") and Respondent Christopher Derek Max ("Respondent Max")
19 do hereby stipulate and agree to the following:

- 20 1. The term "this action" shall refer to the Department's November
21 6, 2008 Staff Petition.
- 22 2. Respondent Max was at all relevant times the Branch Manager for
23 the Salem, New Hampshire branch office of Respondent Empire Equity
24 Group, Inc. (d/b/a 1st Metropolitan Mortgage of NY).
- 25 3. Without constituting an admission by Respondent Max,

1 of any allegations made or implied by this action; and solely
2 for the purpose of settlement of all matters in this action,
3 Respondent Max stipulates that while he was the Salem, New
4 Hampshire branch office Branch Manager, numerous files included
5 Respondent Max's name when he was not involved with those loans
6 and numerous files containing white-out were found in the office
7 Shred-It Bins.

8 4. In consideration of the mutual promises and representations set
9 forth herein, and in further consideration of the Department's
10 reliance upon the substantial accuracy and good faith of the
11 representations and submissions made to it by Respondent Max,
12 the Department and Respondent Max intending to be legally bound
13 herein, agree to the terms and conditions below.

14 II. For purposes of amicably resolving and closing the above-referenced
15 matter, the Department and without admitting any allegations or
16 implications of fact or the existence of any violations of the
17 Licensing of Non-Depository First Mortgage Bankers and Brokers Act,
18 RSA 397-A, or other state and federal laws and regulations, Respondent
19 Max do hereby agree to the following terms and conditions:

20 1. Respondent Max agrees that he has voluntarily entered into this
21 Consent Order without reliance upon any discussions between the
22 Department and Respondent Max, without promise of a benefit of
23 any kind (other than concessions contained in this Consent
24 Order), and without threats, force, intimidation, or coercion of
25 any kind. Respondent Max further acknowledges his understanding

1 of the nature of the allegations set forth in this action,
2 including the potential penalties provided by law.

3 2. Respondent Max agrees to waive any and all rights to a hearing
4 and appeal regarding the allegations set forth in this action.

5 3. Respondent Max neither admits nor denies the factual basis for
6 this Consent Order to which he has stipulated above and will not
7 give conflicting statements about such facts or his involvement
8 in the stipulated facts.

9 4. Respondent Max agrees that all terms of this Consent Order are
10 contractual and none is a mere recital.

11 5. Respondent Max represents and warrants that he has all the
12 necessary rights, powers and ability to carry out all of the
13 terms of this Consent Order which are applicable to Respondent
14 Max.

15 6. Respondent Max represents and warrants that he can accomplish
16 the full relief contemplated and required herein and that all
17 parents, subsidiaries, affiliates, and successors necessary to
18 effectuate the full relief contemplated by this Consent Order
19 are parties to this Consent Order.

20 7. Respondent Max represents and warrants that he has obtained all
21 third-party approvals necessary to comply with the Consent
22 Order.

23 8. Respondent Max acknowledges that the Department is relying upon
24 the representations and warranties of Respondent Max stated
25 herein, in making its determination in this matter.

1 9. The Department agrees to accept monies in the amount of
2 \$20,000.00 in penalties from Respondent Max, which Respondent
3 Max agrees to pay as follows:

4 a. \$2,500.00 of which shall be paid contemporaneously with
5 the execution of this Consent Order; and

6 b. the balance of \$17,500.00 shall be paid in continuous
7 monthly installments of \$760.87 for a period of twenty-
8 three (23) months beginning June 1, 2009 and due every
9 month thereafter on the first of the month. If two (2)
10 consecutive payments are late, missed, or Respondent Max's
11 payments otherwise become delinquent, then Department may
12 issue an Order of Default and/or an Order to Show Cause on
13 such default.

14 10. Respondent Max hereby agrees that he is prohibited from applying
15 for a loan originator license with the Department for a period
16 of twenty-four (24) months from the effective date of this
17 Consent Order.

18 11. Respondent Max hereby agrees he is prohibited from conducting
19 any New Hampshire loan activity until such time as he is
20 licensed by the Department as a loan originator.

21 12. Respondent Max and the Department hereby agree that Respondent
22 Max may work in the North Andover, Massachusetts branch of his
23 current employer subject to the prohibitions and limitations as
24 set out in Paragraph 13 below.

1 13. Respondent Max's job duties (outside of New Hampshire) are
2 hereby limited only to those loan originator duties set forth in
3 RSA 397-A:1,XVII entitled "Originator", which are that an
4 originator "negotiates, solicits, arranges, or finds a mortgage
5 loan". The same duties are set out in the definition of "agent"
6 under RSA 397-A:1,I; however, Respondent Max shall not represent
7 a mortgage banker or mortgage broker and shall hereby be
8 precluded from any other activities, duties and
9 responsibilities, including, but not limited to, the following,
10 until such time as Respondent Max is licensed by the Department
11 as a loan originator:

12 a. Respondent Max cannot assist anyone working for or with
13 his current employer and if co-workers, managers and
14 supervising staff seek Respondent Max's advice or help,
15 Respondent Max shall refuse to give such advice or help;
16 and

17 b. Respondent Max shall be prohibited from assisting with
18 the business development for his current employer.
19 Respondent Max cannot promote the current employer to
20 prospective referral sources, cannot provide educational
21 materials or brochures, and cannot provide promotional
22 materials; and

23 c. Respondent Max shall be prohibited from assisting with
24 marketing for his current employer, such prohibition to
25 include but not be limited to designing and creating the

1 content of and aiding in the production of marketing
2 materials; and

3 d. Respondent Max shall be prohibited from training any
4 and all co-workers, independent contractors and staff of
5 his current employer or otherwise, including but not
6 limited to other loan originators, loan processors and
7 loan underwriters; and

8 e. Respondent Max shall be prohibited from assisting in or
9 partaking in any loan processing (i.e., assisting with
10 back-office duties) that are not part of his role as a
11 loan originator (negotiating, soliciting, arranging, or
12 finding a mortgage loan).

13 14. Respondent Max hereby acknowledges that failure to make payment
14 as agreed above may result in civil and/or criminal penalties.

15 15. Respondent Max hereby acknowledges that failure to comply with
16 the requirements and prohibitions as agreed above may result in
17 civil and/or criminal penalties.

18 16. This Consent Order shall become effective immediately upon the
19 date of its issuance.

20 17. The provisions of this Consent Order shall remain effective and
21 enforceable except to the extent that, and until such time as,
22 any provisions of this Consent Order shall have been modified,
23 terminated, suspended, or set aside by the Bank Commissioner or
24 upon an order of a court of competent jurisdiction.

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1 III. This Consent Order represents the resolution of and discharge of any
2 basis for any civil or administrative proceeding by the Department
3 against Respondent Max for violations enumerated in this action only;
4 provided, however, this release does not apply to facts not known by
5 the Department or not otherwise provided by Respondent Max to the
6 Department as of the date of this Consent Order nor to actions for
7 restitution under RSA 383:10-d, or any possible actions related to the
8 examination just completed. Such facts would include, but not be
9 limited to, any consumer harm from Respondent Max's actions. The
10 Department expressly reserves its right to pursue any administrative,
11 civil or criminal action or remedy available to it should Respondent
12 Max breach this Consent Order or in the future violate the Act or
13 rules and orders promulgated thereunder.

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1 **WHEREFORE**, based on the foregoing, we have set our hands to this Agreement,
2 with it taking effect upon the signature of Peter C. Hildreth, Bank
3 Commissioner.

4
5 Recommended this 18th day of May, 2009 by

6
7 _____
8 /s/

9
10 Maryam Torben Desfosses, Hearings Examiner, Banking Department

11
12 Executed this 18th day of May, 2009 by

13 _____
14 /s/

15
16 Jason Cole, Esq., as legal representative for Respondent Christopher Derek
17 Max

18 **SO ORDERED,**

19 Entered this 18th day of May, 2009.

20 _____
21 /s/

22 Peter C. Hildreth,
23 Bank Commissioner
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