

1 State of New Hampshire Banking Department

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3 In re the Matter of:) Case No.: 08-BD-007
)
 4 State of New Hampshire Banking)
)
 5 Department,)
) Staff Petition
 6 Petitioner,)
)
 7 and) September 8, 2008
)
 8 "Information Service Center, PO Box)
)
 9 3999, Peoria, Illinois 61612-9944",)
)
 10 DOES INDIVIDUALS 1-100, and DOES)
)
 11 COMPANIES 1-100,
 12 Respondents

13
14 STATEMENT OF ALLEGATIONS

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

- 18 1. On or about August 27, 2008, the Department received a written
 19 communication from Financial Institution A, a state-chartered
 20 savings bank located in New Hampshire, regarding a mailing from
 21 Respondent "Information Service Center, PO Box 3999, Peoria,
 22 Illinois 61612-9944" ("Respondent Information Service Center").
- 23 2. Financial Institution A indicated in the August 27, 2008
 24 letter that this solicitation to Consumer A fraudulently used
 25 the name of Financial Institution A in violation of Senate
 Bill 0315.

1 3. Respondents' solicitation advised that Consumer A has an
2 opportunity to participate in a Mortgage Life Insurance
3 Protection Program, which may help protect Consumer A's
4 mortgage loan in case of unexpected death or disability.

5 4. Respondents' solicitation further advised that available
6 benefits include:

7 a. in case of death, the program/plan would pay the mortgage
8 amount in the event of the consumer's death,

9 b. in case of disability, the program/plan provides cash to
10 help make the consumer's mortgage payment if the consumer is
11 disabled,

12 c. in case of unemployment, the program/plan may pay the
13 consumer's premium payments for up to six months,

14 d. no increase of premiums on some plans,

15 e. a return of premium, wherein the program/plan returns 100%
16 of the consumer's premium at the end of the term if it is not
17 used, and

18 f. the transferability of the plan if the consumer moves to
19 another home.

20 5. Respondents' solicitation references the bank name in two
21 places on the solicitation itself:

22 a. At the very top of the solicitation preceded by " Regarding
23 Loan With Lender:"; and

24 b. In the lower middle of the solicitation preceded by the
25 name and address of Consumer A and loan amount.

6. Respondents fail to properly, clearly and conspicuously
reference in bold face type in the same font as is
predominately used in the solicitation that Respondents are
not affiliated with, authorized by, endorsed by any financial

1 institution and that loan information is retrieved from public
2 records.

3 7. Respondents list a facsimile number of 877-802-4102 but it
4 cannot be traced.

5 8. Respondents' address and name listed on its return envelope
6 cannot be traced to any particular business entity.

7 10. The Department has yet to determine an actual business name
8 related to this solicitation addressed to Consumer A.

9 Therefore, Respondent John Doe Individuals 1-100 and
10 Respondent John Doe Companies 1-100 are hereby used in their
11 place for currently unknown Respondents.

12 11. Respondents do not appear to have received any authorization
13 (written or otherwise) to use the full or abbreviated name,
14 trade name, service mark, or trademark of Financial
15 Institution A.

16 ISSUES OF LAW

17 II. The staff of the Department alleges the following issues of law:

18 12. The Department re-alleges the above-stated facts in
19 paragraphs 1 through 11.

20 13. The Department has jurisdiction over state-chartered banks
21 pursuant to RSA 383:9 ("Duties").

22 14. Pursuant to RSA 384:12-a, IV ("Cease and Desist Order"), the
23 Bank Commissioner (hereinafter "Commissioner") may issue and
24 serve upon an individual or business entity a cease and desist
25 order for any act or conduct that is in violation of RSA
384:67 ("Unauthorized and Deceptive Use").

15. Pursuant to RSA 384:68 ("Enforcement"), the Commissioner may
issue a cease and desist order against any individual or

1 business entity which engages in any act or conduct that
2 violates RSA 384:67 involving a financial institution under
3 the jurisdiction of the Commissioner and may bring legal
4 action to enforce the order.

5 16. Pursuant to RSA 384:67, IV, for the purposes thereof, the
6 term "financial institution" shall include a state-chartered
7 savings bank as defined in RSA 384-B:1, I.

8 17. Pursuant to RSA 384:67, I (a), no individual or business
9 entity shall, without the prior written authorization of a
10 financial institution, "use the full or abbreviated name,
11 trade name, service mark, or trademark of any financial
12 institution in any written, electronic, or oral advertisement
13 or solicitation for products and services."

14 18. Pursuant to RSA 384:67, I (c), no individual or business
15 entity shall, without the prior written authorization of a
16 financial institution, include specific loan information
17 relative to a specifically identified consumer that is
18 publicly available "(1) in any written or electronic
19 solicitation, unless the advertisement or solicitation clearly
20 and conspicuously states on the front page or introduction in
21 bold-faced type that is the same font size as is predominately
22 used in the advertisement or solicitation disclosing that such
23 individual or business entity is not sponsored by or
24 affiliated with, and that such solicitation is not authorized
25 by, the financial institution and that the information was
received from public records."

