

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-091
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
) Consent Order as to all Respondents
 7 Pacific Reverse Mortgage Inc (d/b/a)
)
 8 Financial Heritage), Edward J.)
)
 9 Nelson, and John F. Myers,)
)
 10 Respondents)
)

11 CONSENT ORDER

12 The State of New Hampshire Banking Department (the "Department"), finds and
13 Orders as follows:

14 Respondent (s)

- 15 1. Pacific Reverse Mortgage, Inc. d/b/a Financial Heritage,
 16 ("Pacific") is an incorporation duly incorporated in the State of
 17 California with its principal location in California.
- 18 2. Pacific was licensed as a New Hampshire mortgage banker in effect
 19 since at least July 19, 2005.
- 20 3. Pacific is now wholly owned by Lydian REIT Holdings ("Lydian")
 21 which acquired Pacific's stock to satisfy commercial loans by
 22 Lydian that were guaranteed by Edward J. Nelson and John F. Myers.
- 23 4. Edward J. Nelson, ("Nelson") is an individual who had a 50%
 24 ownership and was President/ Vice-President of Pacific at the time
 25 of the violation(s).

1 5. John F. Myers, ("Myers") is an individual who had a 50% ownership
2 and was a control person of Pacific at the time of the
3 violation(s).

4 6. Collectively, Pacific, Nelson and Myers are herein referred to as
5 Respondents.

6 **Jurisdiction**

7 7. The Department has jurisdiction to revoke, deny, or suspend a
8 license, of a licensee and/or assess fines, penalties, and costs
9 pursuant RSA §397-A and more specifically RSA §397-A:17 and RSA
10 §397-A:21.

11 **Facts**

12 8. On June 29th, 2009 (the "June 29th letter"), the Department sent a
13 notice via certified mail return receipt requested to Pacific's
14 National Mortgage Licensing System (NMLS) principal office address
15 advising Pacific of its scheduled examination.

16 9. In the June 29th letter, Pacific as a New Hampshire Mortgage Banker
17 Licensee with a principal office in California was required to:

18 (a) within seven (7) days: acknowledge receipt of the notice and
19 provide the person's name and contact information that would
20 facilitate the exam; and to provide a loan summary or list
21 regarding New Hampshire loans over the last eighteen (18) month
22 period.

23 (b) within twenty-one (21) days: provide the most recent year end
24 financial statements; SEC forms; the most recent Federal Income Tax
25 Return; most recent quarterly report; work papers to support its

1 New Hampshire Annual Report; and a list of current direct owners,
2 indirect owners, and all principals.

3 (c) produce these records within the twenty one (21) day deadline
4 or be subject to a fine of \$50.00 per day after the 21st day.

5 10. Pacific did provide the information required in 9(a) but failed to
6 respond and provide the information required in 9(b). Respondents
7 allege they were in the process of closing operations at that time
8 and selling Pacific to Lydian. Respondents state they inadvertently
9 overlooked the need to respond to 9(b).

10 11. On August 21, 2009, the Department sent a letter via U.S. Certified
11 Mail return receipt requested, again requesting the required
12 information in 9(b). Pacific failed to respond for the same
13 reasons as set forth in the preceding section.

14 12. On August 14, 2009, the State of Georgia revoked Pacific's mortgage
15 lender license. Pacific failed to notify the Department of this
16 revocation. However, the Department learned of the license
17 revocation in Georgia through the examination process.

18 13. On September 15, 2009, the Department called Pacific's listed
19 contact person, (provided both in the examination response and in
20 NMLS). The phone number was disconnected.

21 14. On September 17, 2009, Pacific surrendered its New Hampshire
22 Mortgage Banker license.

23 15. On July 27, 2009, the Department conducted an examination of
24 Pacific. Pacific was charged the minimum one day examination fee
25 of \$835.00 for the examination that consisted of document review.

1 16. On January 12, 2010, the Department issued its invoice to Pacific
2 requesting payment for the examination fee. Pacific paid the
3 examination fee in the amount of \$835.00.

4 17. On February 3, 2010, the Department issued an Order to Show Cause
5 (with supporting Staff Petition), stating Pacific's failure to
6 notify that its Georgia Department of Banking and Finance mortgage
7 lender license was revoked; and stating Pacific's failure to:
8 facilitate an exam, produce records for an exam, and keep proper
9 records.

10 **Count I:** Failure to update information on file with the
11 Commissioner

RSA §397-A:10,IV

12 **Count II:** Failure to facilitate an exam

RSA §397-A:12,VII

13 **Count III:** Failure to produce records required in an exam

RSA §397-A:12,III

14 **Count IV:** Failure to properly keep records

RSA §397-A:11,II

15 **Fines:** \$2,450.00 in fines owed for failure to produce
16 records within the twenty-one (21) day statutory
17 time frame. RSA §397-A:11,II

18 18. Lydian's counsel responded on Pacific's behalf, requested a
19 hearing, and waived the ten (10) day notice requirement.

20 19. Nelson and Myers each responded, requested a hearing, and waived
21 the ten (10) day notice requirement.

22 20. On August 25, 2010, the Department received a notarized Affidavit
23 from Myers.

24 21. Due to mitigating factors set out in the Myers' Affidavit, the
25 Department hereby dismisses Myers as a Respondent in this

1 enforcement action.

2 **Violation(s) of Law and Penalties**

3 22. All Respondents are "Persons" as defined by RSA §397-A:1,XVIII.

4 23. At the time of the alleged violations, Nelson and Myers each owned
5 50% of Pacific, and therefore, were direct owners of Pacific. RSA
6 §397-A:1,VI-a.

7 24. Each Count, as detailed above in Paragraph 17, may be assessed an
8 administrative fine not to exceed \$2,500.00 as to each Respondent
9 for a total maximum administrative fine of \$30,000.00. RSA §397-
10 A:21,V.

11 25. In addition, out of state licensees shall be subject to fines for
12 failure to produce documents for examination within twenty-one (21)
13 days of the Commissioner's request. These fines total \$2,450.00
14 from the date the examination notice was received to the date of
15 surrender. RSA §397-A:11,II.

16 **Respondents' Consent**

17 26. The above named Respondents neither admit nor deny the facts,
18 statements, or violations contained herein; however, due to the
19 time and risks associated with proceeding to administrative
20 proceeding the Respondents hereby agree to the entry of this
21 Consent Order.

22 27. The above named Respondents hereby acknowledge, understand, and
23 agree that there is the right to notice, hearing, and/or a civil
24 action and hereby waive said rights.

Order

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28. **Whereas the Commissioner Finds** this Consent Order necessary, appropriate and in the public's best interest and consistent with the purposes of New Hampshire banking laws and Orders as follows:

 a. Respondent Myers is hereby dismissed as a Respondent in this enforcement action.

 b. Pacific's New Hampshire Mortgage Banker license that was previously surrendered is hereby revoked.

 c. Pacific shall pay to the Department \$20,000.00 as administrative fines, payable contemporaneously with Respondents' signing of this Consent Order.

 d. Pacific shall pay to the Department \$2,450.00 in fines, payable contemporaneously with Respondents' signing of this Consent Order.

 e. All checks shall be certified check or guaranteed funds and made payable to "State of New Hampshire".

29. This Consent Order may be revoked and the Department may pursue any and all remedies available under law, if the Department later finds that the above named Respondents knowingly or willfully withheld information used and relied upon in this Consent Order.

30. This Consent Order is binding on all heirs, assigns, and/or successors in interest.

31. This Consent Order shall become effective upon the date the Commissioner signs this Consent Order.

1 32. Once this Consent Order is effective, the Department agrees not to
2 seek further reimbursement, refunds, penalties, fines, costs, or
3 fees regarding the facts, allegations, or findings of violations
4 contained herein.

5 **WHEREFORE**, based on the foregoing, we have set our hands to this Consent
6 Order, with it taking effect upon the signature of Peter C. Hildreth, Bank
7 Commissioner.

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9 Recommended this 31st day of August, 2010 by

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11 _____
12 /s/

13
14 Maryam Torben Desfosses, Hearings Examiner, Banking Department

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16 Executed this 30th day of September, 2010 by

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18 _____
19 /s/

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21 Melissa Richards, Esq., as legal representative for Respondent Pacific
22 Reverse Mortgage Inc (d/b/a Financial Heritage) by and through its
23 Authorized Agent, Lydian REIT Holdings

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25 Executed this 28th day of September, 2010 by

Respondent Edward J. Nelson

1 Executed this 7th day of September, 2010 by

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3 _____
4 /s/

5 Respondent John F. Myers

6 **SO ORDERED,**

7 Entered this 21st day of October, 2010.

8 /s/ Robert A. Fleury for
9 Peter C. Hildreth,
10 Bank Commissioner

11 **IT IS SO ORDERED.**