

State of New Hampshire

State of New Hampshire
Banking Department

Docket # 10-492 & 10-329

v.

Lenox Financial Mortgage LLC;
&
Brian S. Shibley; Jon M. Shibley;
Respondents

Order to Cease & Desist
And
Complaint and Order
to Show Cause

Notice of Complaint and Order to Show Cause and Cease & Desist Order

This Order commences an adjudicative proceeding under the provisions of RSA 397-A and RSA 541-A.

Respondent(s)

1. Lenox Financial Mortgage, LLC is a business with a principal office location of 6 Piedmont CTR, 3525 Piedmont Rd., Atlanta GA 30305.
2. Lenox Financial Mortgage LLC has held, since at least October 1, 2004, a New Hampshire mortgage broker license pursuant to RSA 397-A.
3. Brian S. Shibley is an individual with the same principal office location stated above and is a member in Lenox Financial Mortgage, LLC with a 35% ownership interest.
4. Jon M. Shibley is an individual with the same principal office location stated above and is a member in Lenox Financial Mortgage, LLC with a 65% ownership interest
5. Lenox Financial Mortgage LLC, Brian S. Shibley, and Jon M. Shibley are referred to collectively as Respondents.

Legal Authority and Jurisdiction

6. The Commissioner may issue, amend, or rescind such orders as are reasonably necessary to carry out the provisions of RSA 397-A when such actions are necessary

or appropriate to the public interest or for the protection of consumers and consistent with the purposes fairly intended by the policy and provisions of RSA 397-A. RSA 397-A:20, IV.

7. All Respondent(s) are “Persons” as defined by RSA 397-A:1, XVIII.
8. Every person may be subject to administrative fines up to a maximum of \$2,500 for each violation. *See* RSA 397-A:21.
9. “Control” means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person is presumed to control a company that: (a) Is a director, general partner, or executive officer; (b) directly or indirectly has the right to vote 10% or more of a voting security or membership interest; (c) is a managing member of a LLC; (d) in the case of a partnership, has contributed or can receive 10% upon dissolution. *See* RSA 397-A:21 V-a.
10. An applicant or licensee shall demonstrate and maintain a minimum positive net worth and shall continuously maintain a surety bond in the minimum amount of \$50,000.00 to the commissioner. RSA 397-A:5, III (c).
11. The Banking Department (the Department) has jurisdiction to examine the business affairs of any licensee or any other person, whether licensed or not, as it deems necessary to determine compliance with RSA 397-A and the rules adopted thereunder. RSA 397-A:12, I. *See* also 383:9, I.
12. The Commissioner has jurisdiction to recover the costs of examination and investigation. RSA 397-A:12, V and VI.
13. The Commissioner may issue an order requiring a person to whom any license has been granted or any person under the commissioner’s jurisdiction to show cause why

the license should not be revoked or suspended, or penalties imposed or both for violation of RSA 397-A. RSA 397-A:17, I.

14. The Department may issue a Cease and Desist Order against any licensee or person who it has reasonable cause to believe is in violation of the provisions of RSA 397-A or any rule or order thereunder. and 397-A:17, II (a) and RSA 397-A:18, II
15. The Department may issue and serve upon any licensee or person over whom it has jurisdiction a complaint setting forth charges wherever the Department is of the opinion that the licensee or person is violating or has violated any provision of RSA 397-A or any rule or order thereunder. RSA 397-A:18, I.
16. The Department may assess fines and penalties up to a maximum of \$25,000.00 for violation of the S.A.F.E Act. RSA 397-A:17, IX.
17. Any person who violates any provision of RSA 397-A shall be guilty of a misdemeanor for each violation if a natural person, or guilty of a felony if any other person. RSA 397-A:21, I.

Right to a Hearing

18. Respondents have the right to request a hearing of this Order. A hearing shall be held not later than ten (10) days after the Commissioner receives the Respondents' written request for a hearing. The Respondents may request a hearing and waive the ten (10) day hearing requirement. The hearing shall comply with RSA 541-A; RSA 397-A:17, I and RSA 397-A:18, II.
19. If any person fails to request a hearing within thirty (30) days of receiving this Order, then such person shall be deemed in default, and the Order shall, on the thirty-first (31st) day, become permanent, all allegations may be deemed true, and shall remain

in full force and effect until modified or vacated by the Commissioner for good cause shown. RSA 397-A:18, II.

20. A default may result in administrative fines as previously stated herein . Each of the acts specified shall constitute a separate violation. RSA 397-A:21, IV.

Statement of Alleged Facts

21. From June 1, 2010 to June 11, 2010 the Department conducted a regularly scheduled examination of the Respondents.
22. The June 2010 examination, showed many of the same notable observations found in the 2009 examination and in addition, the June 2010 examination showed (1) a failure to maintain the proper amount of financial net worth and (2) failure to maintain a bond.
23. On August 16, 2010, the Respondents submitted audited financials by way of NMLS. The balance sheet showed a members' equity deficit and the statement of operations showed a net loss.
24. On August 20, 2010, the Department sent a letter to the Respondents stating the licensee is required to maintain a positive net worth at all times. The letter also noted that the licensee would need to provide updated financials to show the licensee has corrected to a positive equity position and how this was accomplished.
25. On September 15, 2010, the Respondents requested more time to provide the requested information. The Department granted the Respondent until September 22, 2010 to submit requested information.
26. As of November 19, 2010, the Respondent has failed to provide any of the requested information.
27. In addition, on or about the beginning of September 2010, the Department received notice that bond 017026272 was to be cancelled effective 10/23/10.

28. On September 20, 2010, the Department sent a certified letter to Mr. Stephen Gimpelson, licensing contact person, requesting replacement or reinstatement of the surety bond 017026272 prior to expiration date.
29. This certified letter was received on September 30, 2010, as evidenced by the receipt of the signed, returned receipt “green card”.
30. On October 27, 2010, the Department phoned Stephen Gimpelson and left a message that it was urgent that he return the call.
31. As of November 19, 2010, the Respondents have failed to contact the Department and failed to replace the bond.
32. On September 22, 2010, Wisconsin revoked Respondent Lenox Financial Management, LLC mortgage broker license.
33. On October 15, 2010 Massachusetts issued a Temporary Cease and Desist Order against Respondents.

Alleged Violations:

A. Lenox Financial Mortgage, LLC	<p>1 Count failure to maintain positive net worth. RSA 397-A: 5, III (c)</p> <p>1 Count for failure to maintain a bond RSA 397-A: 5, III (c)</p> <p>1 Count for failure to maintain a bond for coverage of loan originators. RSA 397-A:5 IV-c (a)(8)</p> <p>1 Count for violating the S.A.F.E. Act for failure to maintain a bond for loan originators. RSA 397-A:17, IX and §1508(d)(6) of the S.A.F.E. Act §1508(d)(6) of the S.A.F.E. Act</p>
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B. Brian S. Shibley

As Control Person:

1 Count failure to maintain positive net worth..

RSA 397-A: 5, III (c)

1 Count for failure to maintain a bond

RSA 397-A: 5, III (c)

1 Count for failure to maintain a bond for coverage of loan originators.

RSA 397-A:5 IV-c (a)(8)

1 Count for violating the S.A.F.E. Act for failure to maintain a bond for loan originators.

RSA 397-A:17, IX and

§1508(d)(6) of the S.A.F.E. Act

C. Jon M. Shibley

As Control Person:

1 Count failure to maintain positive net worth..

RSA 397-A: 5, III (c)

1 Count for failure to maintain a bond
RSA 397-A: 5, III (c)

1 Count for failure to maintain a bond for coverage of loan originators.

RSA 397-A:5 IV-c (a)(8)

1 Count for violating the S.A.F.E. Act for failure to maintain a bond for loan originators.

RSA 397-A:17, IX and

§1508(d)(6) of the S.A.F.E. Act

34. The Department reserves the right to alter, amend, and add counts and/ or violations against Respondents pursuant to RSA 397-A:17 and RSA 397-A:20, IV.

Respectfully Submitted:

November 22, 2010

Raef J. Granger, Esq.
Legal Division
N.H. Banking Department

Order

35. **Whereas the Commissioner Finds** the facts as alleged above, if true, show Respondents have operated and/or are operating in violation of New Hampshire banking laws RSA 397-A and forms the legal basis for this Order
36. **Whereas the Commissioner Finds** this Order necessary and appropriate to the public's best interest and for the protection of consumers and consistent with the purposes of New Hampshire banking laws.
37. **Whereas the Commissioner Finds** reasonable cause to issue an Order to Cease and Desist.
38. **Whereas the Commissioner Finds** if Respondents fail to respond to this Order and/or are defaulted then all facts as alleged are deemed as true.
39. **Now Therefore It is Hereby ORDERED that Respondent:**
- a. Cease and Desist immediately from violating RSA Chapter 397-A;
 - b. Cease and Desist immediately from conducting business and/or originating loans while in violation of RSA Chapter 397-A and more specifically while failing to maintain the proper net worth and failing to maintain the proper surety bond;

- c. Provide to the Department, for the past one calendar year, a loan list detailing name, date, address, and amount of each service and provide all consumer contracts involving New Hampshire consumers within thirty (30) days of the date of this Order;
- d. Show cause as to why respondent Lenox Mortgage Financial, LLC's mortgage broker's license should not be revoked or suspended;
- e. Show cause as to why administrative penalties should not be paid up to the maximum amount of \$2,500.00 for each violation;
- f. Show cause as to why a penalty should not be paid up to the maximum amount of \$25,000.00 for violation of the S.A.F.E. act; and
- g. Pay the costs of investigation and/or examination.

SO ORDERED,

Entered this November 22, 2010

/s/

Peter C. Hildreth, New Hampshire Bank Commissioner
By Robert A. Fleury, Deputy Bank Commissioner