In re the Matter of:

State of New Hampshire Banking

Department,

Petitioner,

and

SunnyMTG.com 866-768-CASH, LLC, and

Sumit Gaddh,

Respondents

) Case No.: 09-093
)

Adjudicative Hearing Decision
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Sumit Gaddh,

Respondents
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I. PROCEDURAL BACKGROUND

SunnyMTG.com 866-768-CASH, LLC ("SunnyMTG") was licensed as a Mortgage Banker with the New Hampshire Banking Department ("Department") from January 4, 2007 to August 27, 2009 when it surrendered its license. Exhibit 3.

Summit Gaddh ("Gaddh") is the 100% owner, president, treasurer, and secretary of SunnyMTG. *Exhibit*. 3. Gaddh was licensed as a New Hampshire Mortgage Loan Originator from July 28, 2009 until he surrendered his license on August 31, 2009. *Id*. Gaddh and SunnyMTG are jointly and severally liable for the violations identified in this Decision. Gaddh is liable for all violations by SunnyMTG.

The Department issued an Order to Show Cause to SunnyMTG and Gaddh (Collectively "Respondents") dated December 23, 2010 ("Order").

II. RESPONDENTS' ADDRESS

On September 25, 2008, in a Renewal Notice ("Renewal") sent to Respondents, Exhibit 13, the Respondents were asked to update their mailing address, phone numbers and E-mail address. The Respondents changed their E-

mail address but did not change the mailing address which remained: 1910 E.

Oakland Park Blvd., Fort Lauderdale, FL, 33306. The Department used this address to send the documents to the Respondents.

The Order was a result of a Notice of Examination ("Notice") to both Respondents. Exhibit 6. The Notice was sent by Certified Mail Return Receipt to 1910 E. Oakland Park Blvd., Fort Lauderdale, FL, 33306. The Notice was stamped "Return to Sender", "Unclaimed", "Unable to Forward" and was returned to the Department on May 11, 2009. Exhibit 6, 5 of 5 Pages.

The Notice was sent to the same address via UPS on May 12, 2009 and Proof of Delivery was signed by "Long" on May 18, 2009. Exhibit 7, Pages 1 and 2.

The Notice contained several timed requirements including requirements for a written acknowledgment within seven calendar days and the production of identified documents within 21 calendar days. Exhibit 6. The Notice also contained the statement that "the lack of complete response to all requested items within noted time frames may result in fines." Id.

In Paragraph 18 of the Order, the Department alleges that the Respondents provided "a loan list and some of the requested items from the [Notice]" on May 20, 2009. Order P. 4. There was testimony from Bank Examiner Lorry Cloutier that a loan list and some information were received on or about May 20, 2009. Exhibit 7 established that "Long" signed for the Notice on May 18, 2009, enough time for a response to reach the Department

by May 20, 2009. Gaddh testified that the Respondents did not receive the Notice because the address was incomplete - lacking "Suite C." 1

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The Department has the burden of proof. Where witness' testimony conflicts, the Presiding Officer must weigh credibility. Credibility is a subjective issue. Given the allegations and testimony by and from the Department that the documents were received from the Respondents in response to the Notice, the introduction of such documents could satisfy the burden of proof and establish whether or not the Respondents received the Notice. I recognize that the Respondents failed to file an exhibit or witness list which could have put the Department on notice regarding the alleged incomplete address. Rather than weigh credibility at this juncture, I will continue with an analysis of the facts.

There is no dispute that the Department sent an Examination Notice dated July 7, 2009 to the Respondents with "Suite C" added. Exhibit 8. While the certified letter with Suite C was stamped "Return to Sender" on July 29, 2009, the UPS delivery to the same address was signed by "Jim" on August 5, 2009. Exhibit 9. On August 11, 2009, the Respondents sent a letter to the Department acknowledging receipt of the July 7, 2009 letter. Exhibit 10.

III. ISSUES

The issues to be determined regarding SunnyMTG and Gaddh pursuant to the Order are:

- 1. Respondent SunnyMTG.com 866-768-CASH, LLC:
 - a.) Violation #1: Failure to facilitate the exam (RSA 397-A:12,VII) -

¹ Suite C is part of the address contained on the New Hampshire Secretary of State website for SunnyMTG as well as on other websites. What is controlling, however, is the address SunnyMTG provided to the Department.

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- b.) Violation #2: Failure to comply with RESPA (RSA 397-A:2,III via Real Estate Settlement Procedures Act, Regulation X, 24 C.F.R. Section 3500.14) - 1 Count
- 2. Respondent Sumit Gaddh:
 - a.) Violation #1: As a control person, failure to facilitate the exam (RSA 397-A:12, V) - 1 Count
 - b.) Violation #2: Failure of officer and owner to respond to Department inquiries (RSA 397-A:13, VI) - 1 Count
 - c.) Violation #3: As a control person, failure to comply with RESPA (RSA 397-A:2, III via Real Estate Settlement Procedures Act, Regulation X, 24 C.F.R. Section 3500.14) - 1 Count.

The Department is seeking a \$2,500.00 administrative fine for each of the allegations above. The Department's alleged violations against the Respondents also include a statutory fine of \$7,250.00 for failing to provide examination materials as requested by the Department. The Department also seeks revocation of the Respondents' licenses.

IV. REQUEST TO AMEND

The Notice of Order to Show Cause ("Order") contains a number of statutory citations. Paragraph 22 alleges that fines have been accrued for failure to provide requested files in a timely manner. The statutory citation is RSA 397-A:13, IV. In the next sentence, the fine is identified as \$50.00 a day. Paragraph 23 alleges that Respondent Gaddh failed to respond to Department inquiries and cites to RSA 397-A:13, VI. In the next paragraph, SunnyMTG is alleged to have violated RSA 397-A:12, VII. The

Department has requested that the reference to RSA 397-A:13, IV be changed to RSA 397-A:11, II.

The Respondents' activities were governed by RSA 397-A. Exhibit 6, dated April 6, 2009, specifically cites to RSA 397-A:11 in regard to the request for documents. [RSA 397-A:11 applies when a request is made by the Department. RSA 397-A:11, II.] As discussed below, this request was received by the Respondents on May 18, 2009. Ex. 7.

In contrast, RSA 397-A:13 is self actuating. It requires licensees to file an annual report and a financial statement by certain statutory deadlines. The Department raised no issues in this matter regarding the application of RSA 397-A:13. Nor could Respondents mistakenly believe that they had allegedly violated RSA 397-A:13.

The state law portion of this matter involves record keeping under RSA 397-A:11 and examinations under RSA 397-A:12. In the Presiding Officer's opinion, the Respondents were given sufficient notice and defended themselves against violations of RSA 397-A:11, II for failure to provide files and documents within the allotted time and RSA 397-A:12, VII for failure to facilitate the examination. The Department's request to amend the Order is GRANTED. The citation in paragraph 22 is changed from RSA 397-A:13, IV to RSA 397-A:11, II. The citation in paragraph 23 is changed from RSA 397-A:13, VI to RSA 397-A:12, VII.

In the Notice of Order to Show Cause Hearing, the same issues arise. The citation in paragraph 4b line 14 is changed from RSA 397-A:13, VI to RSA 397-A:12, VII.

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V. SUBSTANCE

Turning to the heart of the matter, as required by statute, RSA 383:9 and 397-A:11, on April 10, 2009, the Department requested, among other things:

- 1.) a list of all New Hampshire loans for the 18-month period prior to April 10, 2009;
- 2.) a separate list of foreclosures for the same period;
- 3.) a copy of the most recent year-end financial statement;
- 4.) a copy of the most recent quarterly financial statement;
- 5.) certain work papers regarding the most recently filed New Hampshire Annual Report; and
- 6.) two lists of license application forms. Exhibit 6.
- In order to respond to the Notice, Schedule A and B were provided. Exhibit 6.
- In the Examination Notice dated July 7, 2009, the Department requested the following:
 - 1.) all New Hampshire loan files, with each file complete; and
 - 2.) a completed Officer's Questionnaire. Exhibit 8.
- The Department reiterated its request from the April 10, 2009 letter for the following:
 - 1.) the most recent year-end financial statement; 2
 - 2.) the most recent quarterly financial statement; and

² The entire bullet point reads: "A copy of the most recent year-end financial statement (the most recent year end is 2008, the Department received 2007). (Emphasis added.) The emphasized reference may be to the material received on May 20, 2009.

3.) work papers in support of the most recently filed New Hampshire

Annual Report. Exhibit 8.

The Respondents provided some information as a result of the July 7, 2009 letter. August 11, 2009 letter, Exhibit 10. The Respondents provided the most recent year-end financial statement for 2008. In Exhibit 10, Paragraph 3, the Respondents state, through their agent, "as advised previously3, SunnyMTG does not produce quarterly financial statements..."

(Emphasis added.)

The remainder of the August 11, 2009 letter is a demand that the Department provide information to the Respondents. Remarkably, the documents demanded were created by the Respondents in 2007. The Demand is based on the Freedom of Information Act which applies to records held by the federal government and not the Department. The gist of the letter is that the Respondents don't know the answers to the routine questions asked by the Department; haven't kept a copy of the submissions made in 2007; and, hope that the 2007 submission will help with questions related to 2008.

Exhibit 10 also contains one side of additional correspondence between the Respondents and the Department. After the 2008 Annual Financial Statement, there is a letter dated September 3, 2009 from the Respondents in answer to a communication from the Department dated September 1, 2009. Exhibit 11. The letter makes the point that SunnyMTG had "withdrawn" its

³ Again, the sentence plainly states that there was earlier contact with the Department, perhaps in May, 2009.

⁴ This document is not part of the record. This may be because the Respondents failed to file the mandatory documents and chose to attempt a trial by ambush. This tactic will not be tolerated.

license because it does not have the money to pay for examinations and does not have the resources to meet the Department's "unreasonable demands to repetitive same questions and answers." The letter also refers to the attached Officers Questionnaire and closes with the statement that "Your swift attention to this matter will ensure your office's integrity."

This is an unorthodox way for a licensee to behave toward a licensing agency. Also unorthodox was the response to the majority of the 31 questions contained in the Officers Questionnaire. Most of the questions related to 2008 were answered by merely referring to the information provided to the Department in November 2007. Even with the remarkable assumption that none of the answers have changed since 2007, the Respondents' basic message is "we can't be bothered to provide answers." Moreover, not all the answers are the same for 2007 and 2008. For example, Questions 18 and 19 request financial information "for the most recent 18-month period." The information provided in November 2007 cannot be the correct answer to this request.

VI. WEBSITE

Questions 22 and 23 request media advertisement distributed in New Hampshire, including website advertisements, if any, and the web address. Here again, the Respondents insisted the answer was produced in 2007. Yet, Exhibit 12 is a website that was available in New Hampshire at least in September, 2009. The Questionnaire zeroed in on 2008 and it may be that there was no website in 2008. Nevertheless, the Respondents needed to provide a better answer than "the same information was furnished in November, 2007." In these questions, information furnished in 2007 cannot answer the question of what was happening in 2008.

VII. REAL ESTATE SETTLEMENT PROCEDURES ACT ("RESPA")

Exhibit 12 contains numerous references to the payment of \$100.00 residual income for referring experienced loan officers! (Emphasis in the original.) Exhibit 12, P. 1 of 2. Exhibit 12 makes clear that the \$100.00 will be paid every time the referred loan originator closes a loan! (Emphasis in the original.) Exhibit 12, P. 3 of 10, P. 4 of 10.

Exhibit 12, Page 8 of 10, establishes that the type of loans done by SunnyMTG are "conventional (conforming and subprime) FHA and VA!" (Emphasis in the original.) At the Hearing, Gaddh placed great emphasis on the fine print on the website with the statement "[Residual] Income does NOT apply on FHA." (Emphasis in the original.) Exhibit 12, P. 2 of 2, P. 9 of 10. Gaddh admitted that this language was not originally contained on the website and was added at the demand of FHA.

VIII. RESPONDENTS' SUMMARY OF FACT AND LAW

The Presiding Officer has reviewed the Summary of Fact and Law Document (the "Document") submitted by the Respondents on August 8, 2011. It is not in the form of a Request for Findings of Fact and/or Conclusions of Law. The arguments raised in the Document are not persuasive and are therefore, DENIED.

IX. DECISION

SunnyMTG has an obligation to provide the Department with an accurate mailing address. If not placing Suite C on an envelope containing the April 10, 2009 Notice actually prevented SunnyMTG and Gaddh from receiving the Notice, the responsibility lies with SunnyMTG not the Department. The Department has satisfied its burden of proof, the Respondents received

constructive notice of the April 10, 2009 Notice at the latest on May 18, 2009. It is not necessary to determine whether the Respondents contacted the Department on May 20, 2009 and acknowledged receipt of the Notice. If this issue becomes relevant, based on all the evidence and the credibility of the witnesses, I determine that the Respondents did contact the Department on May 20, 2009 and acknowledged receipt of the Notice.

The Respondents failed to provide information in a timely manner; failed to provide all information requested, and failed to facilitate the examination.

In the past, the Presiding Officer has shied away from awarding the full amount of requested fines out of a concern that awarding the full amount should be reserved for a particularly egregious case. This is such a case. The Respondents failed to file the mandatory witness and exhibit list. The only witness for SunnyMTG, Mr. Gaddh, demonstrated over and over his unwillingness to answer a straight question with a straight answer. In almost 30 years of litigation experience, I cannot remember a witness who made every effort to avoid telling the truth. On my judgment, based on the behavior on the record, and the body language that cannot be perceived on a cold record, Mr. Gaddh has no credibility.

This brings me to the issue of the website and the potential RESPA violation. Mr. Gaddh insists the website was flawed but was reviewed by FHA and a disclaimer added before the website went up. He also insists that the website was only active in September, 2009, after the Respondents had surrendered their licenses. Finally, he insisted that no \$100.00 payments

for residual income were paid and that the Respondents only provided FHA loans.

I reject this testimony. The website states that VA loans are available. The surrender of a license does not deprive the Department of jurisdiction. Even assuming that the website was only up in September, 2009 and always contained the FHA disclaimer, an assumption that I am loath to make, the website still violates RESPA.

The Department's request for an Order that the Respondents violated RESPA is GRANTED. The Department seeks an accrued fine of \$7,500.00 for failing to provide the examination materials. The Department also seeks \$2,500.00 per violation for two (2) violations by Gaddh and three (3) by SunnyMTG for failing to facilitate and failure to comply. Finally, The Department request revocation of the Respondents' licenses. The Department's requests are GRANTED in full. Gaddh and SunnyMTG are jointly and severally liable for the violations identified in this Decision. Gaddh is liable for all violations by SunnyMTG.

RSA Chapter 541 provides the appeals process. SO ORDERED.

SIGNED,

Dated:10/14/11

STEPHEN J. JUDGE, ESO. PRESIDING OFFICER

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