

1	In re the Matter of:) Case No.: 10-112
)
2	State of New Hampshire Banking)
)
3	Department,)
)
4	Petitioner,) Order to Show Cause and
5	and) Cease and Desist
)
6	Financial Independence and Resource)
)
7	Education, Inc. (a/k/a F.I.R.E. and)
)
8	a/k/a www.fire-inc.net), Kristen Nuss,)
)
9	and Garry Smith,)
)
10	Respondents)
)
11)

12 NOTICE OF ORDER TO SHOW CAUSE AND CEASE AND DESIST ("ORDER")

13 1. This Order commences an adjudicative proceeding under the provisions
14 of RSA Chapter 399-D (including RSA 399-D:13,I, RSA 399-D:23,I and II, RSA
15 399-D:24, IV and V and RSA 399-D:25,IV) and RSA Chapter 541-A.

16 2. The Commissioner may impose administrative penalties of up to
17 \$2,500.00 for each violation. RSA 399-D:24,IV and V.

18 RESPONDENTS

19 3. Financial Independence and Resource Education, Inc. (a/k/a F.I.R.E and
20 a/k/a www.fire-inc.net) ("Respondent FIRE") is a corporation duly
21 incorporated in the State of Florida on May 13, 2003, with a principal
22 office location in West Palm Beach, Florida. Respondent FIRE has also had
23 office locations in Tequesta, Florida; and New York, New York. Respondent
24 FIRE is not registered with the New Hampshire Secretary of State's Office.
25 Respondent FIRE is not registered with the New York Department of State.

1 Respondent FIRE is a "Person." RSA 399-D:1,VII.

2 4. The New Hampshire Banking Department's ("Department") records do not
3 indicate that Respondent FIRE has ever held a New Hampshire Debt Adjuster
4 license.

5 5. Kristen Nuss ("Respondent Nuss") is listed in the Florida Secretary of
6 State filings as the President of Respondent FIRE from March 28, 2005 until
7 February 11, 2010. Respondent Nuss is listed as the Incorporator of
8 Respondent FIRE in the Articles of Incorporation filed on May 8, 2003.
9 Respondent Nuss is a Control Person (RSA 399-D:2,II-a), a Direct Owner (RSA
10 399-D:2,V-b), a Principal (RSA 399-D:2,VII-a), and a Person (RSA 399-
11 D:2,VII).

12 6. The New Hampshire Banking Department's ("Department") records do not
13 indicate that Respondent Nuss has ever held a New Hampshire Debt Adjuster
14 license.

15 7. Garry Smith ("Respondent Smith") is listed in the Florida Secretary of
16 State filings as the current President of Respondent FIRE. Respondent Smith
17 was the Vice President of Respondent FIRE from March 28, 2005 until February
18 11, 2010. Respondent Smith is a Control Person (RSA 399-D:2,II-a), a Direct
19 Owner (RSA 399-D:2,V-b), a Principal (RSA 399-D:2,VII-a), and a Person (RSA
20 399-D:2,VII).

21 8. The New Hampshire Banking Department's ("Department") records do not
22 indicate that Respondent Smith has ever held a New Hampshire Debt Adjuster
23 license.

24 9. The above-named Respondents are hereinafter collectively known as
25 "Respondents".

1 RIGHT TO REQUEST A HEARING

2 10. Respondents have a right to request a hearing on this Order. A hearing
3 shall be held not later than ten (10) days after the Commissioner receives
4 the Respondent's written request for a hearing. Respondents may request a
5 hearing and waive the ten (10) day hearing requirement. The hearing shall
6 comply with RSA Chapter 541-A. RSA 399-D:13,I and RSA 399-D:23, I and II.

7 11. If any person fails to request a hearing within thirty (30) days of
8 receiving this Order, then such person shall be deemed in default, and the
9 Order shall, on the thirty-first (31st) day, become permanent, all
10 allegations may be deemed true, and shall remain in full force and effect
11 until modified or vacated by the Commissioner for good cause shown. RSA
12 399-D:13,I and RSA 399-D:23,II.

13 12. A default may result in administrative fines as described in Paragraph
14 2 above.

15 STATEMENT OF ALLEGATIONS

16 13. On April 30, 2010, the Department received a complaint against
17 Respondents from a New Hampshire consumer ("Consumer A") alleging that
18 Respondents failed to provide debt relief assistance or refund money paid
19 for this assistance.

20 14. In August 2009, Consumer A hired Respondents to negotiate and settle
21 debts with creditors as well as disperse monies Consumer A gave to
22 Respondents to pay the debts down. Consumer A made two (2) payments of
23 \$451.00, two (2) payments of \$406.00, and four (4) payments of \$217.00.
24 Respondents charged an advanced fee and an unequally amortized fee, both in
25 violation of RSA 399-D:14,I.

1 15. Respondents collected \$2,582.00 in fees from Consumer A, without
2 either the written consent of Consumer A's creditors or any payments made to
3 Consumer A's creditors, in violation of RSA 399-D:14,I and II.

4 16. Respondents failed to conduct any debt negotiations on behalf of
5 Consumer A, and failed to use any of the funds to pay Consumer A's
6 creditors, in violation of RSA 399-D:15,I(b).

7 17. On September 16, 2010, the Department sent a letter via U.S. Mail
8 return receipt requested to Respondents, suggesting Respondents apply for
9 licensure with the Department, provide requested documentation and
10 resolution of Consumer A's complaint. The correspondence was received by
11 the Respondents on September 20, 2010. The correspondence was also sent via
12 facsimile, and the Department received confirmation that the facsimile was
13 transmitted properly. The Department did not receive a response from the
14 Respondents.

15 18. On June 16, 2011, the Department sent a letter via U.S. Mail return
16 receipt requested to Respondents at a certain West Palm Beach, Florida
17 address, suggesting Respondents apply for licensure with the Department,
18 provide requested documentation and resolution of Consumer A's complaint.
19 The correspondence was return to the Department on July 14, 2011 by the U.S.
20 Post Office indicating, "Return to Sender, Unclaimed, Unable to Forward".

21 19. On June 16, 2011, the Department sent a letter via U.S. Mail return
22 receipt requested to Respondents at another West Palm Beach, Florida
23 address, suggesting Respondents apply for licensure with the Department,
24 provide requested documentation and resolution of Consumer A's complaint.
25 The correspondence was return to the Department on June 28, 2011 by the U.S.

1 Post Office indicating, "Return to Sender, Attempted - Not Known, Unable to
2 Forward".

3 20. On June 16, 2011, the Department sent a letter via U.S. Mail return
4 receipt requested to Respondents at the Tequesta, Florida address,
5 suggesting Respondents apply for licensure with the Department, provide
6 requested documentation and resolution of Consumer A's complaint. The
7 correspondence was return to the Department on June 28, 2011 by the U.S.
8 Post Office indicating, "Return to Sender, Not Deliverable As Addressed,
9 Unable to Forward".

10 21. On June 16, 2011, the Department sent a letter via facsimile to
11 Respondents, suggesting Respondents apply for licensure with the Department,
12 provide requested documentation and resolution of Consumer A's complaint.
13 The Department received confirmation that the facsimile was transmitted
14 properly.

15 22. On June 16, 2011, the Department sent a letter via electronic mail to
16 Respondents, suggesting Respondents apply for licensure with the Department,
17 provide requested documentation and resolution of Consumer A's complaint.
18 The Department received an automated response from Respondents indicating
19 the email had been received and would be forwarded to the necessary
20 individual.

21 23. To date, Respondents have failed to respond or to provide any of the
22 information requested by the Department, in violation of RSA 399-D:22,VIII.

23 24. To date, Respondent has failed to return \$2,582.00 of Consumer A's
24 funds.

25 25. The Respondents contracted with at least one (1) New Hampshire

1 consumer to provide unlicensed debt adjustment services in violation of RSA
2 399-D:3,I.

3
4 /s/
5 Ryan McFarland
6 Hearings Examiner

 10/21/11
Date

6 **ORDER**

7 **26. I hereby find as follows:**

8 a. Pursuant to RSA 399-D:13,I, the facts as alleged above, if true,
9 show Respondents are operating or have operated in violation of RSA Chapter
10 399-D and form the legal basis for this Order;

11 b. Pursuant to 399-D:25,VI, this Order is necessary and appropriate
12 to the public interest and for the protection of consumers and consistent
13 with the purpose and intent of New Hampshire banking laws;

14 c. The Department finds pursuant to RSA 399-D:23,II reasonable
15 cause to issue an order to cease and desist; and

16 d. Pursuant to RSA 399-D:13,I and RSA 399-D:23,II, if any
17 Respondent fails to respond to this Order and/or defaults then all facts as
18 alleged herein are deemed as true.

19 **27. Accordingly, it is hereby ORDERED that:**

20 a. Respondents shall cease and desist from violating RSA Chapter
21 399-D and rules or orders thereunder;

22 b. Respondents shall immediately provide the Department a list of
23 all New Hampshire consumers for whom Respondents have conducted or
24 contracted to conduct debt adjustment activities. This list must include
25 the names and contact information of the New Hampshire consumers, along with

1 all monies charged, collected, and waived (if applicable). The list shall
2 also be accompanied by all contracts, checks to and from the consumer and
3 any other documents in the New Hampshire consumers' files;

4 c. Respondents shall show cause why the Commissioner should not
5 enter an order of rescission, restitution, or disgorgement of profits in the
6 amount of at least \$2,582.00 (Consumer A);

7 d. Respondents shall show cause why an administrative fine of up to
8 a maximum of \$2,500.00 per violation should not be imposed as follows:

9 (1). Respondent FIRE:

10 Violation #1: Unlicensed activity as a debt adjuster (RSA
11 399-D:3,I) - 1 count;

12 Violation #2: Collecting a Fee prior to payment to
13 creditors (RSA 399-D:14,I) - 1 count;

14 Violation #3: Collecting an Unequally amortized fee (RSA
15 399-D:14,I) - 1 count;

16 Violation #4: Collecting a Fee without consent of the
17 creditors (RSA 399-D:14,II) - 1 count;

18 Violation #5: Failure to make payment to creditors within
19 10 days after receipt of funds (RSA 399-D:15,I) - 1 count;

20 Violation #6: Failure to provide documents (RSA 399-
21 D:22,VIII) - 1 count;

22 (2). Respondent Nuss (as Control Person, Direct Owner, and
23 Principal):

24 Violation #1: Unlicensed activity as a debt adjuster (RSA
25 399-D:3,I) - 1 count;

1 Violation #2: Collecting a Fee prior to payment to
2 creditors (RSA 399-D:14,I) - 1 count;

3 Violation #3: Collecting an Unequally amortized fee (RSA
4 399-D:14,I) - 1 count;

5 Violation #4: Collecting a Fee without consent of the
6 creditors (RSA 399-D:14,II) - 1 count;

7 Violation #5: Failure to make payment to creditors within
8 10 days after receipt of funds (RSA 399-D:15,I) - 1 count;

9 Violation #6: Failure to provide documents (RSA 399-
10 D:22,VIII) - 1 count;

11 (3). Respondent Smith (as Control Person, Direct Owner, and
12 Principal):

13 Violation #1: Unlicensed activity as a debt adjuster (RSA
14 399-D:3,I) - 1 count;

15 Violation #2: Collecting a Fee prior to payment to
16 creditors (RSA 399-D:14,I) - 1 count;

17 Violation #3: Collecting an Unequally amortized fee (RSA
18 399-D:14,I) - 1 count;

19 Violation #4: Collecting a Fee without consent of the
20 creditors (RSA 399-D:14,II) - 1 count;

21 Violation #5: Failure to make payment to creditors within
22 10 days after receipt of funds (RSA 399-D:15,I) - 1 count;

23 Violation #6: Failure to provide documents (RSA 399-
24 D:22,VIII) - 1 count;

1 e. Nothing in this Order:

2 (1). shall prevent the Department from taking any further
3 administrative and legal action as necessary under New Hampshire law; and

4 (2). shall prevent the New Hampshire Office of the Attorney
5 General from bringing an action against the above named Respondents in any
6 New Hampshire superior court, with or without prior administrative action by
7 the Commissioner.

8
9 **SO ORDERED.**

10
11 /s/
12 RONALD A. WILBUR
13 BANK COMMISSIONER

14 Dated: 10/21/2011
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