

## State of New Hampshire

State of New Hampshire  
Banking Department

Docket # 10-117

v.

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

Best Interest Rate Mortgage Company,  
LLC, and Michael Diplacido,

Respondents

### Notice of Complaint, Order to Show Cause and Cease and Desist (Order)

1. This Order commences an adjudicative proceeding under the provisions of RSA 397-A (including RSA 397-A:17, I & II, RSA 397-A:18, I & II, RSA 397-A:20, IV) and RSA 397-A:20, IV and RSA 541-A.
2. The Commissioner has jurisdiction to assess penalties up to a maximum fine of \$2,500.00 for each violation. RSA 397-A:21, IV and V.

### Respondent(s)

3. Best Interest Rate Mortgage Company, LLC. (“Respondent Best Interest”) is a limited liability company incorporated in Florida with a principal office location of 216 Haddon Avenue, Suite 405, Westmont, NJ 08108. Respondent Best Interest is a Person. RSA 397-A: 1, XVIII.
4. Respondent Best Interest has never held a New Hampshire mortgage broker license with the New Hampshire Banking Department (“Department”) as required by RSA 397-A:3, I.
5. Michael Diplacido (“Respondent Diplacido”) is a Managing Member of Best Interest Rate Mortgage Company, LLC. with a principal office location of 216 Haddon Avenue, Suite 405, Westmont, NJ 08108. RSA 397-A:1, V-a. Respondent Diplacido is a Control person (RSA 397-A:1, V-a), a direct owner (RSA 397-A:1, VI-a), a person (RSA 397-A:1, XVIII) and a principal (RSA 397-A:1, XIX).
6. The above named parties are hereby collectively known as “Respondents”.

### **Right to a Hearing**

7. 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 Respondent may request a hearing and waive the ten (10) day hearing requirement. The hearing shall comply with RSA Chapter 541-A, RSA 397-A:17, I and RSA 397-A:18, II.
8. If any person fails to request a hearing within thirty (30) days of receiving this Order, then such person shall likewise be deemed in default, and the Order shall, on the thirty-first (31<sup>st</sup>) 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:17, I and RSA 397-A:18, II.
9. A default may result in administrative fines up to the maximum amount of \$2,500.00 per violation as described in paragraph 2 above.

### **Statement of Alleged Facts and Legal Authority**

10. On January 29, 2010, the Department received a complaint from a New Hampshire resident ("Consumer A") regarding Respondents' business activities within the State of New Hampshire.
11. On June 4, 2010, the Department received a similar complaint from another New Hampshire resident ("Consumer B") regarding the Respondents' business activities within the state.
12. The Department's investigator discovered that Consumer A hired Respondents for loan modification services in violation of RSA 397-A:3, I.
13. Respondents required an advanced payment of \$1,795.00 from Consumer A in violation of RSA 397-A:14, IV (m).
14. Respondents failed to obtain a loan modification for Consumer A and failed to refund

Consumer A's money in violation of RSA 397-A:14, IV (b).

15. Respondents required Consumer B to make an advanced payment of \$900.00, in violation of RSA 397-A:14, IV (m).
16. Respondents then negotiated a loan modification on behalf of Consumer B, with Consumer B's current mortgage company.
17. On February 4, 2010, as a result of Consumer A's complaint the Department sent a letter via U. S. certified mail return receipt requested to Respondents notifying them that they would need a mortgage broker license pursuant to RSA Chapter 397-A to do business in New Hampshire and requesting a description of the nature of Respondents' operations, a copy of their business model and a detailed New Hampshire client list. Respondents received the Department's February 4, 2010 correspondence on February 8, 2010.
18. On October 12, 2010, the Department mailed a letter via U. S. certified mail return receipt requested to Respondents requesting that they provide, within (10) days of receipt, a response regarding the alleged unlicensed activity, a New Hampshire transaction list, contact information and a consumer contract, if applicable. On October 18, 2010 the letter was returned to the Department marked "Return to Sender; Best Interest Rate Mortgage Co Moved Left No Address Unable To Forward Return To Sender."
19. As of February 28, 2011, Respondents have failed to respond to the Department's correspondences in violation of RSA 397-A:12, I.

**Alleged Violations:**

Best Interest Rate Mortgage Company, LLC:

2 Violations of Unlicensed Activity  
as a Mortgage Broker.

RSA 397-A:3, I

2 Violations of Failure to Produce  
requested documents relevant to an  
investigation.

RSA 397-A:12, I

2 Violations of Collection of an  
Advanced Fee for a loan modification.

RSA 397-A:14, IV (m)

1 Violation of Solicitation of a best  
efforts Commission or Fee for a loan  
modification.

RSA 397-A:14, IV (b)

2 Violations for Unlicensed Activity  
as a Mortgage Broker.

RSA 397-A:3, I

2 Violations for Failure to Produce  
requested documents relevant to an  
investigation.

RSA 397-A:12, I

2 Violations of Collection of an  
Advanced Fee for a loan modification.

RSA 397-A:14, IV (m)

1 Violations of Solicitation of a best  
efforts Commission or Fee for a loan  
modification.

RSA 397-A:14, IV (b).

Michael Diplacido (*as a control person,  
direct owner and principal*):

Respectfully Submitted:

\_\_\_\_\_  
/s/  
Raef J. Granger  
Hearings Examiner  
N.H. Banking Department

\_\_\_\_\_  
04/12/11  
Date

**20. I hereby find as follows:**

a. Pursuant to RSA 397-A:17, I, the facts as alleged above, if true, show

- Respondents are operating or have operated in violation of RSA Chapter 397-A and form the legal basis for this Order;
- b. Pursuant to RSA 397-A:20, VI, this Order is necessary and appropriate to the public interest and for the protection of consumers and consistent with the purpose of New Hampshire banking laws;
  - c. Pursuant to RSA 397-A:18, II, reasonable cause exists to issue an order to cease and desist; and
  - d. Pursuant to RSA 397-A:17, I and RSA 397-A:18, II, if Respondents fail to respond to this Order and/or default then all facts as alleged herein are deemed as true.

**21. Accordingly, it is hereby ordered that:**

- a. Respondents shall immediately Cease and Desist from violating RSA Chapter 397-A in the State of New Hampshire;
- b. Respondents shall provide to the Department, for the past one calendar year, a transaction 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;
- c. Respondents shall show cause why the commissioner should not enter an order of rescission, restitution, or disgorgement of profits;
- d. Respondents shall show cause why costs should not be recovered for investigation in the minimum amount of \$2,250.00;
- e. Respondents shall show cause why administrative penalties of a minimum of \$17,500.00 per Respondent should not be imposed; and
- f. Respondents shall show cause why commissions for services rendered should not be disgorged; and

- g. Nothing in this Order shall prevent 1) the Department from taking any further administrative and legal action as necessary under New Hampshire law or 2) the New Hampshire Office of the Attorney General from bringing an action against the above-named Respondents in New Hampshire Superior Court, with or without prior administrative action by the Commissioner.

**SO ORDERED,**

Entered this April 12, 2011.

\_\_\_\_\_  
/s/

Robert A. Fleury, Deputy Bank Commissioner  
New Hampshire Banking Department