

1	In re the Matter of:) Case No.: 10-193
)
2	State of New Hampshire Banking)
)
3	Department,)
)
4	Petitioner,) Order to Show Cause and
5	and) Cease and Desist
)
6	U.S. Mortgage Funding Incorporated)
)
7	(a/k/a Debt Remedy Consultants)
)
8	Incorporated), David Mahler, Jonathan)
)
9	Incandela, and Jamen Lachs,)
)
10	Respondents)

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

12 1. This Order commences an adjudicative proceeding under the provisions
13 of RSA Chapter 397-A (including RSA 397-A:17,I and II, RSA 397-A:18,I and
14 II, and RSA 397-A:20,IV) and RSA Chapter 541-A.

15 2. The Commissioner may impose administrative penalties of up to
16 \$2,500.00 for each violation. RSA 397-A:21,IV and V.

17 RESPONDENTS

18 3. U.S. Mortgage Funding Incorporated (a/k/a Debt Remedy Consultants
19 Incorporated) ("Respondent U.S. Mortgage") is a corporation duly
20 incorporated in the State of Florida on January 10, 2007, with a principal
21 office location in Deerfield Beach, Florida. Respondent U.S. Mortgage has
22 also had a business address in Boca Raton, Florida. Respondent U.S.
23 Mortgage was administratively dissolved by the Florida Secretary of State on
24 September 23, 2011. Respondent U.S. Mortgage is not registered with the New
25 Hampshire Secretary of State. Respondent U.S. Mortgage is a "Person." RSA

1 397-A:1,XVIII.

2 4. The Nationwide Mortgage Licensing System & Registry ("NMLS") does not
3 indicate that Respondent U.S. Mortgage has ever held a license as a mortgage
4 broker. The New Hampshire Banking Department's ("Department") records do not
5 indicate that Respondent U.S. Mortgage has ever held a New Hampshire
6 Mortgage Broker license.

7 5. David Mahler ("Respondent Mahler") is listed by filings with the
8 Florida Secretary of State as the Director and President of Respondent U.S.
9 Mortgage. Respondent Mahler is a Control person (RSA 397-A:1,V-a), a
10 Principal (RSA 397-A:1,XIX), a Direct Owner (RSA 397-A:1,VI-a), and a Person
11 (RSA 397-A:1,XVIII).

12 6. NMLS does not indicate that Respondent Mahler has ever held a license
13 as a mortgage broker. The Department's records do not indicate that
14 Respondent Mahler has ever held a New Hampshire Mortgage Broker license.

15 7. Jonathan Incandela ("Respondent Incandela") is listed by filings with
16 the Florida Secretary of State as the Director of Respondent U.S. Mortgage.
17 Respondent Incandela is a Control person (RSA 397-A:1,V-a), a Principal (RSA
18 397-A:1,XIX), a Direct Owner (RSA 397-A:1,VI-a), and a Person (RSA 397-
19 A:1,XVIII).

20 8. NMLS does not indicate that Respondent Incandela has ever held a
21 license as a mortgage broker. The Department's records do not indicate that
22 Respondent Incandela has ever held a New Hampshire Mortgage Broker license.

23 9. Jamen Lachs ("Respondent Lachs") is listed by filings with the Florida
24 Secretary of State as the Director of Respondent U.S. Mortgage. Respondent
25 Lachs is a Control person (RSA 397-A:1,V-a), a Principal (RSA 397-A:1,XIX),

1 a Direct Owner (RSA 397-A:1,VI-a), and a Person (RSA 397-A:1,XVIII).

2 10. NMLS does not indicate that Respondent Lachs has ever held a license
3 as a mortgage broker. The Department's records do not indicate that
4 Respondent Lachs has ever held a New Hampshire Mortgage Broker license.

5 11. The above-named Respondents are hereinafter collectively known as
6 "Respondents".

7 **RIGHT TO REQUEST A HEARING**

8 12. Respondents have a right to request a hearing on this Order. A hearing
9 shall be held not later than ten (10) days after the Commissioner receives
10 the Respondent's written request for a hearing. Respondents may request a
11 hearing and waive the ten (10) day hearing requirement. The hearing shall
12 comply with RSA Chapter 541-A. RSA 397-A:17 and RSA 397-A:18.

13 13. If any person fails to request a hearing within thirty (30) days of
14 receiving this Order, then such person shall be deemed in default, and the
15 Order shall, on the thirty-first (31st) day, become permanent, all
16 allegations may be deemed true, and shall remain in full force and effect
17 until modified or vacated by the Commissioner for good cause shown. RSA
18 397-A:17,I and RSA 397-A:18.

19 14. A default may result in administrative fines as described in Paragraph
20 2 above.

21 **STATEMENT OF ALLEGATIONS**

22 15. On December 6, 2010, the Department received a complaint from a New
23 Hampshire consumer ("Consumer A") against Respondents concerning residential
24 mortgage loan modification services.

25 16. On March 16, 2010, Respondents contracted with Consumer A to modify

1 Consumer A's mortgage loan without a New Hampshire mortgage broker license,
2 in violation of RSA 397-A:3,I.

3 17. Respondents collected an advance fee of \$1,800.00 from Consumer A, in
4 violation of RSA 397-A:14,IV(m).

5 18. Respondents failed to provide a residential mortgage loan modification
6 to Consumer A, in violation of RSA 397-A:14,IV(b).

7 19. On April 21, 2010, the Department received a hotline call from a New
8 Hampshire consumer ("Consumer B") against Respondents concerning residential
9 mortgage loan modification services.

10 20. Respondents contracted with Consumer B to modify Consumer B's mortgage
11 loan without a New Hampshire mortgage broker license, in violation of RSA
12 397-A:3,I.

13 21. Respondents collected an advance fee of \$1,000.00 from Consumer B, in
14 violation of RSA 397-A:14,IV(m).

15 22. On June 21, 2010, the Department sent a letter via U.S. Certified Mail
16 return receipt requested to Respondents, suggesting Respondents apply for
17 licensure with the Department and requesting documents relative to New
18 Hampshire consumers. The correspondence was received by the Respondents on
19 June 29, 2010. The Department did not receive a response to this
20 correspondence.

21 23. On September 20, 2010, the Department sent a letter via U.S. Certified
22 Mail return receipt requested to Respondents, suggesting Respondents apply
23 for licensure with the Department and requesting documents relative to New
24 Hampshire consumers. This correspondence was returned to the Department on
25 October 22, 2010 by the U.S. Post Office indicating, "Return to Sender, Not

1 Deliverable as Addressed, Unable to Forward".

2 24. On September 20, 2010, the Department sent a letter via electronic
3 mail to Respondents, suggesting Respondents apply for licensure with the
4 Department and requesting documents relative to New Hampshire consumers.
5 The Department received confirmation that the electronic mail was delivered
6 on September 20, 2010 and read on September 21, 2010.

7 25. On September 20, 2010, the Department sent a letter via facsimile to
8 Respondents, suggesting Respondents apply for licensure with the Department
9 and requesting documents relative to New Hampshire consumers. The Department
10 received confirmation that the facsimile was transmitted properly.

11 26. The Department did not receive a response from the Respondents to any
12 of the correspondences sent by the Department on September 20, 2010.

13 27. To date, Respondents have failed to provide the information requested
14 by the Department, in violation of RSA 397-A:12,I.

15
16 _____ /S/
17 Ryan McFarland
18 Hearings Examiner

Dated: November 14, 2011

18 **ORDER**

19 28. **I hereby find as follows:**

20 a. Pursuant to RSA 397-A:17,I, the facts as alleged above, if true,
21 show Respondents are operating or have operated in violation of RSA Chapter
22 397-A and form the legal basis for this Order;

23 b. Pursuant to 397-A:20,VI, this Order is necessary and appropriate
24 to the public interest and for the protection of consumers and consistent
25 with the purpose and intent of New Hampshire banking laws;

1 c. The Department finds pursuant to RSA 397-A:17,II and RSA 397-
2 A:18,II, reasonable cause to issue an order to cease and desist; and

3 d. Pursuant to RSA 397-A:17,I and RSA 397-A:18,II, if any
4 Respondent fails to respond to this Order and/or defaults then all facts as
5 alleged herein are deemed as true.

6 29. **Accordingly, it is hereby ORDERED that:**

7 a. Respondents shall cease and desist from violating RSA Chapter
8 397-A and rules or orders thereunder;

9 b. Respondents shall immediately provide the Department a list of
10 all New Hampshire consumers for whom Respondents have residential mortgage
11 loan modification activity and a status of those accounts. This list must
12 include the names and contact information of the New Hampshire consumers,
13 along with monies charged, collected and waived (if applicable). The list
14 shall also be accompanied by all contracts, checks to and from the consumer
15 and any other documents in the New Hampshire consumers' files;

16 c. Respondents shall show cause why the Commissioner should not
17 enter an order of rescission, restitution, or disgorgement of profits in the
18 amount of at least \$1,800.00 (for Consumer A) and \$1,000.00 (for Consumer
19 B);

20 d. Respondents shall show cause why an administrative fine of up to
21 a maximum of \$2,500.00 per violation (as stated in Counts below) should not
22 be imposed as follows:

23 (1). Respondent U.S. Mortgage:

24 #1: Unlicensed mortgage broker activity (RSA 397-A:3,I) -

25 2 Counts;

1 #2: Collecting an Advance Fee (RSA 397-A:14,IV(m)) - 2
2 Counts;

3 #3: Failure to provide a residential mortgage loan
4 modification (RSA 397-A:14,IV(b)) - 1 Count;

5 #4: Failure to provide documents (RSA 397-A:12,I) - 1
6 Count;

7 (2). Respondent Mahler (as Control Person, Direct Owner, and
8 Principal):

9 #1: Unlicensed mortgage broker activity (RSA 397-A:3,I) -
10 2 Counts;

11 #2: Collecting an Advance Fee (RSA 397-A:14,IV(m)) - 2
12 Counts;

13 #3: Failure to provide a residential mortgage loan
14 modification (RSA 397-A:14,IV(b)) - 1 Count;

15 #4: Failure to provide documents (RSA 397-A:12,I) - 1
16 Count;

17 (3). Respondent Incandela (as Control Person, Direct Owner, and
18 Principal):

19 #1: Unlicensed mortgage broker activity (RSA 397-A:3,I) -
20 2 Counts;

21 #2: Collecting an Advance Fee (RSA 397-A:14,IV(m)) - 2
22 Counts;

23 #3: Failure to provide a residential mortgage loan
24 modification (RSA 397-A:14,IV(b)) - 1 Count;

25 #4: Failure to provide documents (RSA 397-A:12,I) - 1

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Count;

(4). Respondent Lachs (as Control Person, Direct Owner, and Principal):

#1: Unlicensed mortgage broker activity (RSA 397-A:3,I) - 2 Counts;

#2: Collecting an Advance Fee (RSA 397-A:14,IV(m)) - 2 Counts;

#3: Failure to provide a residential mortgage loan modification (RSA 397-A:14,IV(b)) - 1 Count;

#4: Failure to provide documents (RSA 397-A:12,I) - 1 Count; and

e. Nothing in this Order:

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

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

SO ORDERED.

_____/s/
RONALD A. WILBUR
BANK COMMISSIONER

Dated: November 14, 2011