

In re: Network Capital Funding Corporation, and
Tri Minh Nguyen
Case No.: 14-165

CONSENT ORDER

The State of New Hampshire Banking Department (the "Department") finds and Orders as follows:

Respondents

1. Respondent Network Capital Funding Corporation ("Company") is a corporation formed in the State of Nevada on June 19, 2002 and registered to conduct business in New Hampshire with the New Hampshire Secretary of State on March 16, 2010 with its principal office location in Irvine, California. Company has been licensed with the Department as a New Hampshire Mortgage Banker since August 30, 2010.
2. Respondent Tri Minh Nguyen ("T. Nguyen") is the 100% direct owner, Chief Executive Officer and control person of Respondent Company. T. Nguyen was a New Hampshire-licensed Mortgage Loan Originator from August 30, 2010 until January 1, 2012.
3. Respondents Company and T. Nguyen are hereinafter collectively known as "Respondents."

Jurisdiction

4. The Department is authorized to regulate mortgage bankers pursuant to RSA Chapter 397-A. *RSA 397-A:2,I* and *RSA 397-A:3,I*.
5. The Commissioner has jurisdiction to issue orders against Respondents to
 - a. deny, suspend, decline to renew or revoke a license; and
 - b. cease and desist from conducting business and from violations under RSA Chapter 397-A.
RSA 397-A:17 and RSA 397-A:21.
6. The Department may assess Respondents administrative fines not to exceed \$2,500.00 for each violation of RSA Chapter 397-A. *RSA 397-A:21, IV and V.*
7. The Department may require Respondents to provide restitution. *RSA 397-A:17,VIII and RSA 383:10-d.*

Facts

8. On June 30, 2014 ("Order"), the Department issued an Order to Show Cause for License Revocation against Respondents and other persons, for alleged violations of the November 1, 2012 Consent Order and alleged violations cited in the February 2014 examination (including repeat violations from the 2013 examination).

9. The Department alleges that it observed in both the 2013 and 2014 examinations:
 - a. Failure to Timely Disburse Funds at Closing;
 - b. Untimely good faith estimates; and
 - c. Improper Supervision/Lack of Supervision/Failure to Follow Policy.
10. The Department alleges that Respondent Company demonstrated a pattern and practice of failing to follow policies, having appropriate policies in place and failing to properly supervise employees.

Failure to Timely Disburse Funds at Closing:

11. The Department alleges that Respondent Company violated RSA 397-A:14-b by failing to timely disburse funds at residential mortgage loan closings. RSA 397-A:14-b states that at a minimum, a closing requires the delivery of a deed if the transaction is a conveyance, the signing of a note, and the disbursement of the mortgage loan funds.
12. The Department alleges that Respondent Company violated RSA 397-A:14-b by failing to disburse funds at closing, which caused monetary harm to 23 New Hampshire consumers in the total amount of \$855.64. Respondent Company, in good faith, provided proof of restitution to these New Hampshire consumers.

Untimely Good Faith Estimates:

13. The Department alleges that the although Respondent Company was previously fined by the Department for a violation of RSA 397-A:16,I, Respondents again violated that statute by failing to provide New Hampshire consumers with a good faith estimate within three (3) business days of receipt of the loan application.

14. The Department alleges that although Respondents received sufficient information to issue a good faith estimate ("GFE"), Respondents repeatedly either asked for more information or issued Adverse Action Notices thereby avoiding the issuance of the GFEs.

Improper and Lack of Supervision/Failure to Follow Policy:

15. The Department alleges that Respondent Company's employees made changes to acknowledgments, certifications, and tax documentation post-consumer signature.

16. The Department alleges that the Respondents committed the following additional violations:

- a. Inaccurate HUD-1 Settlement Statements (RSA 397-A:14,IV(g));
- b. Advertising violations (RSA 397-A:14,IV(n));

- c. Late filing of financial statements (RSA 397-A:13,II);
 - d. Failing to safeguard nonpublic personal information; and
 - e. Violation of the 2012 Consent Order (RSA 397-A:14,IV(f)).
17. Pursuant to RSA 397-A:6,I, the Department alleges that the Respondents failed to properly supervise their employees and maintain policies to avoid the alleged violations listed in Paragraphs 14 and 15 herein.

Respondents' Cooperation:

18. During the request for information, Respondents fully cooperated with the Department, including providing restitution to affected New Hampshire consumers and engaging a third-party audit and compliance firm to review Respondent Company's business model, corporate governance framework and policies and procedures.

Department's and Respondents' Consents and Acknowledgments

19. Respondents hereby acknowledge that were an administrative hearing to be held in this matter, the Department advised Respondents that the Department would introduce evidence alleging that the Respondents violated RSA Chapter 397-A.

20. Respondents assured the Department they are committed to ensuring full compliance with New Hampshire law and they have taken significant measures to augment their compliance resources and enhance their compliance policies, procedures and practices.
21. Respondents have voluntarily entered into this Consent Order without reliance upon any discussions between the Department and Respondents, without promise of a benefit of any kind (other than concessions contained in this Consent Order), and without threats, force, intimidation, or coercion of any kind. Respondents further acknowledge their understanding of the nature of the allegations set forth in this action, including the potential penalties provided by law.
22. Nothing in this Consent Order constitutes a "finding" for any purpose. Respondents nonetheless acknowledge that this Consent Order is a public record and is a reportable event for purposes of regulatory disclosure questions on the Nationwide Mortgage Licensing System & Registry ("NMLS"), as applicable.
23. Respondents, without admitting or denying any of the allegations set forth in the Order or any of the additional allegations set forth in this Consent Order, voluntarily agree to consent to the entry of

penalties and the issuance of this Consent Order solely for the purpose of obviating the need for further administrative proceedings concerning the allegations contained in the Order and this Consent Order.

24. Respondents hereby acknowledge, understand, and agree that they have the right to notice and hearing and hereby waive said rights. Respondents hereby further acknowledge they waive the filing of any civil actions related to this matter.

25. The Department and Respondents hereby agree that Respondent Company's New Hampshire Mortgage Banker license expired on December 31, 2014.

Order

26. **Whereas pursuant to RSA 397-A:20,VI,** this Consent Order is necessary, appropriate and in the public interest and consistent with the intent and purposes of New Hampshire banking laws, the Department Orders as follows:

a. Pursuant to RSA 397-A:18,I and II, Respondents and any and all successors in interest shall refrain from violating RSA Chapter 397-A and any rules or orders thereunder after the date of this Consent Order.

b. If Respondent Company reapplies (or any other company with Respondent Tri Nguyen as a control person applies) in the future for a New Hampshire Mortgage Banker or Mortgage Broker license, the commissioner shall determine, whether the Applicant's financial resources, experience, personnel and record of past and proposed conduct warrant the public's confidence and the issuance of a license.

(1). The Commissioner may take into consideration all of the following orders:

- (a). the 2011 Order to Show Cause and Cease and Desist; and
- (b). the 2012 Consent Order;
- (c). the 2014 Order to Show Cause for License Revocation; and
- (d). this Consent Order; and

(2). The Applicant shall be required to demonstrate it has implemented time-tested policies, procedures and practices which shall ensure compliance in all areas of Applicant's business operations to adequately ensure that Applicant will be able to perform services in New Hampshire at

all levels of operation in compliance with all lawful (state and federal) requirements for the conduct of the business for which the license is sought. Nothing herein is intended to alter any future statutory or regulatory requirements for licensure, but shall remain a requirement in addition thereto; and

(3). The Applicant shall provide the Department access to all books and records to determine compliance and successful implementation of its new policies and procedures.

c. Respondent Company shall pay to the Department \$92,500.00 in administrative fines.

27. This Consent Order finally and completely concludes this matter against Respondents, including any claim(s) that were raised or could have been raised in the report of examination and/or the subsequent Order to Show Cause. This Consent Order may still be revoked and the Department may pursue any and all remedies available under law, if the Department later finds that Respondents knowingly withheld information used and relied upon in this Consent Order.

