

1 State of New Hampshire Banking Department

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3 In re the Matter of:) Case No.: 07-068
)
 4 State of New Hampshire Banking) Recommended Decision by the Presiding
) Officer
 5 Department,)
)
 6 and)
)
 7 Debbie A. Knecht)
)
 8 Complainant,)
)
 9 and)
)
 10 Capital Quest Financial Services,
 11 Inc,
 12 Respondent

13
14 Recommended Decision

15 The Complainant had the burden of establishing a prima facie case that
16 a violation of the chapter or an unfair and deceptive trade practice had
17 occurred. For the reasons set forth below I find that she met that burden.
18 For the reasons further set forth below I find the proper amount of
19 restitution to be \$2,198.63.

20 Procedural Background and Authority

21 Pursuant to RSA 383:10-d the commissioner shall have exclusive authority
22 and jurisdiction to investigate conduct that is or may be an unfair or
23 deceptive act or practice under RSA 358-A and exempt under RSA 358-A:3, I or
24 that may violate any of the provisions of Titles XXXV and XXXVI and
25 administrative rules adopted thereunder. The Commissioner may hold hearings

1 relative to such conduct and may order restitution for a person or persons
2 adversely affected by such conduct.

3 On January 3, 2007, the New Hampshire Banking Department ("Department")
4 received a complaint from Complainant regarding Respondent. On review, the
5 Commissioner determined that the initial documents submitted contained a
6 factual discrepancy between the parties, and that a proper determination of
7 what restitution is due, if any, would best be determined by an
8 administrative hearing wherein each party would have an opportunity to
9 present their evidence to an appointed Presiding Officer.

10 I was appointed Presiding Officer. In preparation for the hearing, I
11 requested a Bank Examiner perform an analysis of the loan file. His analysis
12 was provided to the parties and formed the basis of his testimony.

13 The Respondent submitted a list of exhibits, now identified as Exhibits
14 A-G, and consented to having the loan file submitted as Exhibit H once non-
15 public personal information was redacted.

16 The hearing was convened on May 3, 2007. As stated in the Notice of
17 Hearing and reiterated at the hearing, the Respondent was charged with
18 answering the question of whether it had violated a provision of the New
19 Hampshire Banking Laws or committed an unfair or deceptive trade practice.
20 If the Presiding Officer determined that such a violation had occurred, then
21 he must then determine what restitution may be due to the Complainant for the
22 violation.

23 Findings of Fact, Rulings of Law

24 On the date of hearing there was testimony from the Complainant, Debbie
25 Knecht; Michael Poullos, a bank examiner; and Sean McGuire and Therese
Veysey, the President of Respondent and loan officer for the subject loan,
respectively, on behalf of Respondent.

1 Both parties further submitted memoranda after the hearing. Neither of
2 these could reasonably be construed as proposed findings of fact or rulings
3 of law, however, to the extent they were helpful in my analysis of this
4 cause, I have used them herein.

5 Ms. Knecht's principal complaint concerned the change in payment from
6 the initial quote to the final product. There was contradictory testimony on
7 the topic of when she received a Good Faith Estimate (GFE). There was
8 uncontraverted testimony that the original payment terms were based on
9 inaccurate estimates of homeowners and flood insurance premiums provided by
10 the seller of the property. I hereby find as fact that the change in payment
11 terms was inside the norms experienced by the industry and, therefore, make a
12 ruling of law that this discrepancy did not constitute an unfair and
deceptive act or a violation of the Chapter.

13 During the course of this matter, I became aware of a separate issue
14 regarding the preparation of the initial GFE and a possible violation of the
15 Chapter by the Respondent. In this context the Respondent has the burden to
16 prove compliance with the Chapter. Ms. Veysey, Mr. McGuire, and Bank Examiner
17 Poulios all testified regarding an undated GFE which appeared to be signed by
18 Ms. Knecht, submitted as part of exhibit H. It is hereto attached because of
its significance to this decision.

19 The undated GFE does not disclose the Mortgage Broker Fee. Bank
20 Examiner Poulios' uncontraverted testimony on this topic indicates that both
21 federal and state laws require any Mortgage Broker Fees to be disclosed at
22 GFE stage. On further questioning Mr. Poulios stated that the Department
23 regularly cites licensees when they fail to disclose that fee in the GFE.
24 There was testimony regarding the uncertainty of the amount of the Mortgage
25 Broker Fee at the time of GFE disclosure when it is received as a Yield
Spread Premium from the lender. Mr. Poulios testified that for that reason
both federal law and state law allowed a range to be used. He further

1 testified that both a percent and dollar range are typically disclosed to the
2 borrower. Ms. Veysey admitted in response to my questions that the GFE signed
3 by Ms. Knecht could reasonably be read to mean that Capital Quest would not
4 receive any compensation as a result of their efforts on behalf of Ms.
5 Knecht.

6 The initial GFE is an integral and important part of the process of
7 shopping for a mortgage loan, which arguably is why it is mandated by federal
8 and state law and tightly controlled and regulated. A material omission from
9 the GFE could wrongfully influence an applicant for a mortgage loan to favor
10 one broker over another who has faithfully disclosed all fees.

11 Attorney Lapointe, on behalf of Respondents, argued that any harm that
12 may have occurred as a result of the omission on the undated GFE was cured by
13 the subsequent re-disclosure of a GFE that included the Mortgage Broker Fee
14 which shows a preparation date of October 6, 2006. The testimony on this
15 alleged disclosure of the October 6 GFE was conflicting, with the loan
16 officer testifying that it was mailed immediately after its preparation and
17 Ms. Knecht denying having ever received it. Ms. Knecht's testimony was clear
18 that she never received any GFE until closing. The only GFE acknowledged by
19 the Complainant does not disclose the Mortgage Broker Fee. Given the
20 testimony on this issue and the undisputed facts, I make a finding of fact
21 that the October 6 GFE was not provided to the Complainant. I decline to
22 rule, therefore, that this alleged re-disclosure cured the violation of the
23 Chapter that had already occurred. It is fair to conclude in this case that
24 the omission was one of negligence rather than intent given the testimony of
25 the parties which included statements about the loan officer's relative
inexperience.

26 RSA 397-A:16 sets forth that mortgage brokers may only charge fees and
27 points for services when a written disclosure stating the estimated purpose
28 of all fees and expenses is issued within three days of the receipt of a loan

1 State of New Hampshire Banking Department

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 5 Department,) ORDER of the Commissioner
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 6 and)
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 7 Debbie A. Knecht)
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 8 Complainant,)
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 10 Capital Quest Financial Services,
 11 Inc,
 12 Respondent

13
14
15 ORDER

16 The Recommended Decision by the Presiding Officer is hereby adopted and I
17 hereby ORDER the Respondent:

- 18 1. To pay \$2,198.63 to Complainant immediately upon receipt of this
 19 order; and
 20 2. To furnish evidence of such payment to the Department; and
 21 3. To hold a mandatory training class for its loan officers regarding
 22 the requirements regarding Good Faith Estimates under both Federal
 23 and State law; such training to be held within 30 days of this order
 24 and the curriculum for said training to be submitted to the
 25 Presiding Officer for approval at least one week prior to the
 training; and



GOOD FAITH ESTIMATE OF SETTLEMENT CHARGES

DATE: _____
BORROWER: _____
CO-BORROWER: _____
MAILING ADDRESS: _____

BASED ON THE FOLLOWING ASSUMPTIONS:

LOAN AMOUNT: _____
PURCHASE PRICE: _____
RATE: _____
TERM: _____

This Good Faith Estimate is being provided by CAPITAL QUEST FINANCIAL SERVICES, INC., a mortgage broker, and no lender has been obtained.

The information provided below reflects estimates which you are likely to incur at the settlement of your loan. The fees listed are estimates - the actual charges may be more or less. Your transaction may not involve a fee for every item listed. The numbers listed beside the estimates generally correspond to the numbered lines contained in the HUD-1 or HUD-1A Settlement Statement which you will be receiving at settlement. The HUD-1 or HUD-1A Settlement Statement will show you the actual cost for items paid at settlement.

These estimates are provided pursuant to the Real Estate Settlement Procedure Act of 1974, as amended (RESPA). Additional information can be found in the HUD Special Information Booklet, which is to be provided to you by your mortgage broker or lender.

The undersigned acknowledges receipt of the booklet "Settlement Costs," and the Consumer Handbook on ARM Mortgages, if applicable.

Table with 2 columns: Fee Description and Amount. Includes items like 801 Loan Origination Fee, 802 Loan Discount Points, 803 Appraisal Fee (325.00), 804 Credit Report Fee (18.00), 806 Delivery Fee (45.00), 807 Flood Certification Fee (24.00), 808 Mortgage Broker Fee, 809 Tax Service Fee (79.00), 810 Processing Fee (300.00), 811 Underwriting Fee (425.00), 901 Prepaid Interest (30 days), 1101 Settlement or Closing Fee (500.00), 1108 Title Insurance (\$3.50 per thousand), 1201 Recording Fee (70.00), 1203 State Tax Stamps (7.50 per thousand), 1001 Hazard or Homeowners Insurance Escrow (3mths), 1002 Mortgage Insurance (PMI) Escrow (2 mths), 1004 Property Taxes Escrow (6 mths).

Estimate Prepaid Items/Escrow: _____
Estimated Closing Costs: _____
Total Estimated Costs/Prepays: _____

C

Handwritten signature of Tillie Koecht, Borrower

Co-Borrower