

1 State of New Hampshire Banking Department

2

3 In re the Matter of:) Case No.: 07-265
)
 4 State of New Hampshire Banking)
) Cease and Desist Order
 5 Department,)
)
 6 and)
)
 7 Tremont Financial LLC, James)
)
 8 Jacobson, First Hampton Financial)
)
 9 LLC,)
)
 10 Respondents)
)

11
12 NOTICE OF ORDER

13
14 This Order commences an adjudicative proceeding under the provisions of
15 RSA 399-A:8 and BAN 200 et seq.

16 LEGAL AUTHORITY AND JURISDICTION

17 Pursuant to RSA 397-A:8, the Banking Department of the State of New
18 Hampshire (hereinafter the "Department") has the authority to issue and cause
19 to be served an order requiring any person engaged in any act or practice
20 constituting a violation of RSA 399-A or any rule or order thereunder, to
21 cease and desist from violations of RSA 399-A.

22 Pursuant to RSA 399-A:18, the Commissioner has the authority to
23 suspend, revoke or deny any license and to impose administrative penalties of
24 up to \$2,500.00 for each violation of New Hampshire banking law and rules.

25 Pursuant to RSA 383:10-d, the Commissioner shall have exclusive
authority and jurisdiction to investigate conduct that is or may be an unfair
or deceptive act or practice under RSA 358-A and exempt under RSA 358-A:3, I or

1 that may violate any of the provisions of Titles XXXV and XXXVI and
2 administrative rules adopted thereunder. The Commissioner may hold hearings
3 relative to such conduct and may order restitution for a person or persons
4 adversely affected by such conduct. Nothing in this cause will impair a
5 consumer's right of recovery under that statute.

6 **NOTICE OF RIGHT TO REQUEST A HEARING**

7 The above named respondent has the right to request a hearing on
8 this Cease and Desist Order, as well as the right to be represented by
9 counsel. If the person to whom a cease and desist order is issued fails to
10 request a hearing within 30 calendar days of receipt of such order, then such
11 person shall be deemed in default, and the order shall, on the thirty-first
12 day, become permanent and shall remain in full force and effect until and
13 unless later modified or vacated by the commissioner, for good cause shown.
14 Any such request for a hearing shall be in writing, signed by the respondent
15 or by the duly authorized agent of the above named respondent, and shall be
16 delivered either by hand or certified mail, return receipt request, to the
17 Banking Department, State of New Hampshire, 64B Old Suncook Road, Concord, NH
18 03301.

19 A hearing shall be held not later than 10 days after the request for such
20 hearing is received by the commissioner. Within 20 days of the date of any such
21 hearing the commissioner shall issue a further order either vacating the cease
22 and desist order or making it permanent as the facts require. All hearings
23 shall comply with 541-A. If the person to whom a cease and desist order is
24 issued fails to appear at the requested hearing after being duly notified of
25 the date and time, such person shall be deemed in default, and the proceeding
may be determined against him or her upon consideration of the cease and desist
order, the allegations of which may be deemed to be true.

1 STATEMENT OF ALLEGATIONS

2 The allegations contained in the Staff Petition for Relief dated
3 October 18, 2007 (a copy of which is attached hereto) are incorporated by
4 reference hereto.

5 ORDER

6 WHEREAS, finding it necessary and appropriate and in the public
7 interest, and consistent with the intent and purposes of the New Hampshire
8 banking laws, and

9 WHEREAS, finding that the allegations contained in the Staff Petition,
10 if proved true and correct, form the legal basis of the relief requested,

11 It is hereby ORDERED, that:

- 12 1. The Respondent shall immediately cease engaging in the
13 capacity of a small loan lender in New Hampshire; and
- 14 2. The Respondent shall repay to consumers all moneys collected
15 during their unlicensed period as a result of their unlicensed
16 activity; and
- 17 3. Respondent Tremont Financial LLC shall show cause why it
18 should not be ordered to pay \$27,500 for violations of the
19 Chapter; and
- 20 4. Respondent James Jacobsen shall show cause why he should not
21 be ordered to pay \$27,500.00 for violations of the Chapter;
22 and
- 23 5. Respondent First Hampton Financial LLC shall show cause why it
24 should not be ordered to pay \$27,500.00 for violations of the
25 Chapter; and
6. Failure to request a hearing within 30 days of the date of
receipt of this Order shall result in a default judgment being
rendered, administrative penalties being imposed upon the
defaulting Respondents, refunds of all sums collected being

1 State of New Hampshire Banking Department

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 8 Jacobsen, and First Hampton Financial)
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 10 Respondents)
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11
12 STATEMENT OF ALLEGATIONS

13 I. The staff of the Banking Department, State of New Hampshire (hereinafter
14 referred to as the "Department") alleges the following facts:

15 Tremont Financial LLC (hereinafter, "Tremont") does not hold a New
16 Hampshire small loan license.

17 Tremont has an internet site which allows New Hampshire consumers to
18 obtain payday loans from the company without limitation.

19 Upon information and belief Tremont is conducting payday loan lending in
20 this state without maintaining an office accessible to consumers.

21 On June 29, 2007 Tremont made a payday loan agreement with a New Hampshire
22 Consumer.

23 The consumer was located in this state at the time of the transaction.

24 Besides being an unlicensed transaction, the payday loan further failed to
25 comply with New Hampshire law, to wit:

- a. it fails to include a notice that the borrower has a right to
cancel the loan within one business day; and

- 1 b. it fails to include a notice that the borrower may prepay the
2 loan at any time by repaying the principal amount and any
3 **accrued** interest; and
4 c. it authorizes the lender to bring suit against the borrower in
5 a court outside this state; and
6 d. it requires the waiver of rights under the Chapter; and
7 e. it wasn't proceeded by the provision of a pamphlet explaining
8 the rights and responsibilities of a borrower; and
9 f. the lender did not notify the borrower in a clear and
10 conspicuous notice prior to disbursing the loan proceeds that
11 a payday loan is not intended to meet long-term financial
12 needs.

The loan further violates New Hampshire law by requiring:

- 13 a. an agreement by the consumer not to assert any claim or
14 defense arising out of the contract against the lender or any
15 holder in due course; and
16 b. an executory waiver from attachment on personal property; and
17 c. a contractual obligation to pay a \$30 charge for insufficient
18 funds checks.

19 Upon information and belief Tremont has collected principal and interest
20 from New Hampshire consumers.

21 Upon information and belief James Jacobsen is the President of Tremont and
22 has personal knowledge of its activity in New Hampshire.

23 Upon information and belief Tremont is owned in its entirety by Respondent
24 First Hampton Financial LLC.

25 II. The staff of the Banking Department, State of New Hampshire alleges the
26 following issues of law:

1. The Banking Department ("Department"), has jurisdiction over the

1 licensing and regulation of persons engaged in small loan lending
2 activities pursuant to NH RSA 399-A:2 I.

3 2. Pursuant to NH RSA 397-A:8, the Department has the power to issue and
4 to serve an order requiring persons to cease and desist from violations
5 of the chapter whenever it has reasonable cause to believe that any
6 person has engaged in any act or practice constituting a violation of
7 the banking laws, or any rule or order thereunder. Respondent has
8 violated RSA 397-A:2 by conducting unlicensed small loan lending
9 activities in New Hampshire.

10 3. Pursuant to RSA 399-A:2 IV unlicensed lenders may not collect, receive
11 or retain any principal, interest, or charges if acting in an
12 unlicensed capacity. Respondents have violated this statute by
13 collecting principal on loans from New Hampshire consumers without
14 licensure.

15 4. Pursuant to RSA 399-A:3 small loan lenders conducting payday loan
16 lending must maintain an office in this state. Respondents have
17 violated this statute as alleged in I.3.

18 5. Pursuant to RSA 399-A:11 IV, no interest may be paid, deducted, or
19 received in advance. Respondents violated this statute by demanding the
20 entirety of the finance charge despite prepayment of the loan contract.

21 6. Pursuant to RSA 399-A:11 VII, no loan contract may contain the
22 provisions detailed in I.7(a) and I.7(b). The Respondents violated this
23 statute on at least two occasions by including such provisions.

24 7. Pursuant to RSA 399-A:11 XI, no charge for fees may be contracted for.
25 Respondents violated this statute as alleged at I.7(c).

 8. Pursuant to RSA 399-A:13 II, the loan contract must contain certain
 notices as summarized in I.6(a) and I.6(b). Respondents violated this
 statute on at least two occasions by failing to include said notices.

 9. Pursuant to RSA 399-A:13 III, the lender may not obtain certain

1 agreements from the borrower as summarized at I.6(c) and I.6(d).
2 Respondents violated this statute on at least two occasions by requiring
3 such agreements.

4 10. Pursuant to 399-A:13 XVI, a lender may not enter into a loan contract
5 without providing a pamphlet to the borrower. Respondents violated this
6 statute as alleged at I.6(e).

7 11. Pursuant to 399-A:13 XVII, a lender may not disburse funds to a borrower
8 without first providing a certain notice as summarized at I.6(f).
9 Respondents violated this statute by disbursing funds without providing
10 the notice.

11 12. Pursuant to RSA 399-A:18 any person who, either knowingly or
12 negligently, violates any provision of this chapter may, upon notice and
13 opportunity for hearing, and in addition to any such other penalty
14 provided for by law, be subject to suspension, revocation or denial of
15 any registration or license, including forfeiture of any application fee,
16 or an administrative fine not to exceed \$2,500, or both. Each of the
17 acts specified shall constitute a separate violation, and each such
18 administrative action or fine may be imposed in addition to any criminal
19 or civil penalties imposed.

20 13. Also pursuant to RSA 399-A:18 every person who directly or indirectly
21 controls a person liable under this section, every partner, principal
22 executive officer or director of such person, every person occupying a
23 similar status or performing a similar function, every employee of such
24 person who materially aids in the act constituting the violation, and
25 every licensee or person acting as a common law agent who materially aids
in the acts constituting the violation, either knowingly or negligently,
may, upon notice and opportunity for hearing, and in addition to any
other penalty provided for by law, be subject to suspension, revocation,
or denial of any registration or license, including the forfeiture of any

1 application fee, or the imposition of an administrative fine not to
2 exceed \$2,500, or both.

3 14. Pursuant to RSA 383:10-d, the commissioner shall have exclusive
4 authority and jurisdiction to investigate conduct that is or may be an
5 unfair or deceptive act or practice under RSA 358-A and exempt under RSA
6 358-A:3, I or that may violate any of the provisions of Titles XXXV and
7 XXXVI and administrative rules adopted thereunder. The commissioner may
8 hold hearings relative to such conduct and may order restitution for a
9 person or persons adversely affected by such conduct.

9 **RELIEF REQUESTED**

10 The staff of the Banking Department requests the Commissioner take the
11 following action:

- 12 1. Find as fact the allegations contained in section I of the Statement of
13 Allegations of this petition.
- 14 2. Make conclusions of law relative to the allegations contained in section
15 II of the Statement of Allegations of this petition.
- 16 3. Pursuant to NH RSA 397-A:18, immediately Order Respondents to Cease and
17 Desist from violations of the New Hampshire Banking Laws and conducting
18 mortgage activity secured by any interest in New Hampshire real property
19 where licensure is required.
- 20 4. Issue a fine against each Respondent in the amount of \$2,500.00 for each
21 violation of the chapter.
- 22 5. Order the Respondents to refund all fees and/or commissions received as a
23 result of their unlicensed activity.
- 24 6. Take such other administrative and legal actions as are necessary for
25 enforcement of the New Hampshire Banking laws, the protection of New
Hampshire citizens, and to provide other equitable relief.

RIGHT TO AMEND

