

1 State of New Hampshire Banking Department

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3 In re the Matter of:) Case No.: 08-179
)
 4 State of New Hampshire Banking) Cease and Desist Order
)
 5 Department,)
)
 6 Petitioner,)
)
 7 and)
)
 8 Frederick Law Group, LLC, Brennan,)
)
 9 Smith & Associates, Credit Counselors)
)
 10 of America and Richard A. Brennan,
 11 Respondents

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13 This Order commences an adjudicative proceeding under the provisions of
14 RSA 399-D:23, RSA 383:10-d, RSA 541-A, BAN 200 and JUS 800 as applicable.

15 LEGAL AUTHORITY AND JURISDICTION

16 Pursuant to RSA 399-D:23, the Banking Department of the State of New
17 Hampshire (hereinafter the "Department") has the authority to issue and cause
18 to be served an order requiring any person about to engage in or has engaged
19 in any act or practice constituting a violation of RSA 399-D or any rule or
20 order thereunder, to cease and desist from violations of RSA 399-D.

21 Pursuant to RSA 383:10-d, the Commissioner shall have exclusive
22 authority and jurisdiction to investigate conduct that is or may be an unfair
23 or 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
relative to such conduct and may order restitution for a person or persons
adversely affected by such conduct.

1 NOTICE OF RIGHT TO REQUEST A HEARING

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

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

22 STATEMENT OF ALLEGATIONS, APPLICABLE LAW, AND RELIEF REQUESTED

23 The Staff Petition dated May 15, 2008 (a copy of which is attached
24 hereto) is incorporated by reference hereto.

25 ORDER

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

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

3 It is hereby ORDERED, that:

- 4 1. The Respondents shall immediately cease engaging in debt
5 adjustment activities with consumers located in New Hampshire;
6 and
7 2. The Respondents shall show cause why they should not pay
8 administrative penalties in the amount of \$2,500.00 each per
9 violation of Chapter 399-D; and
10 3. The Respondents shall show cause why they should not have to
11 reimburse Consumer A all payments, fees and any other costs
12 collected; and
13 4. Failure to request a hearing within 30 days of the date of
14 receipt of this Order shall result in a default judgment being
15 rendered and administrative penalties being imposed upon the
16 defaulting Respondent.

17 SIGNED,

18 Dated: 5/28/08

19 /s/
20 PETER C. HILDRETH
21 BANK COMMISSIONER
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1 State of New Hampshire Banking Department

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 10 of America, and Richard A. Brennan,
 11 Respondents

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13 STATEMENT OF ALLEGATIONS

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

- 17 1. On or about February 29, 2008 the Department received a written
18 communication from Consumer A, a New Hampshire resident,
19 regarding Respondent Credit Counselors of America (hereinafter
20 "CCofA").
- 21 2. Consumer A indicated in the letter that they had been solicited
22 by CCofA to prepare, for a fee, paperwork to enable Consumer A to
23 enter into a debt reduction contract.
- 24 3. CCofA advised Consumer A that CCofA could get them an attorney
25 who would negotiate with their creditors to settle their
unsecured debts.

- 1 4. On or about August 4, 2007, Consumer A executed a Representation
2 Agreement (hereinafter "Agreement") with Respondent Brennan,
3 Smith & Associates (hereinafter "BSA").
- 4 5. The Agreement required Consumer A to pay BSA \$653.00 per month
5 for a debt settlement program. The Agreement also required
6 Consumer A to pay a one time non-refundable consulting fee, which
7 would be taken from the first monthly payment.
- 8 6. Consumer A executed an Electronic Payment Authorization
9 (hereinafter "Authorization") granting BSA access to Consumer A's
10 checking account to deduct the monthly payment.
- 11 7. Consumer A executed a Limited Power of Attorney granting BSA the
12 authority to negotiate with Consumer A's creditors.
- 13 8. Consumer A provided BSA with the names and account numbers for
14 their creditors in order for BSA to negotiate on their behalf.
- 15 9. BSA deducted \$3,645.90 from Consumer A's checking account from
16 February to petition date for the debt settlement program.
- 17 10. On or about February 12, 2008 Consumer A received a Settlement
18 Negotiation Services Contract (hereinafter "Contract") from
19 Respondent Frederick Law Group LLC (hereinafter "FLG").
- 20 11. The Contract contained a provision that FLG would be retained in
21 substitute for representation by BSA.
- 22 12. The Contract contained further provisions that would grant them
23 the authority to negotiate with Consumer A's creditors.
- 24 13. FLG asked Consumer A to execute a SmartPay EFT Authorization
25 Agreement in order for FLG to deduct monthly payments.

1 14. FLG also requested Consumer A execute a Power of Attorney
2 granting FLG the authority to negotiate with Consumer A's
3 creditors.

4 15. Respondent Richard A. Brennan is the only attorney listed on the
5 FLG website and is not a member of the New Hampshire Bar
6 Association.

7 16. None of the above names Respondents are licensed to do business
8 under RSA Chapter 399-D.

9 17. Each of the above named Respondents appear to have contracted to
10 provide debt adjustment services for a fee.

11 **ISSUES OF LAW**

12 II. The staff of the Department, alleges the following issues of law:

13 1. The Department realleges the above stated facts in paragraphs 1
14 through 15.

15 2. The Department has jurisdiction over the licensing and
16 regulation of persons engaged in debt adjustment activities
17 pursuant to NH RSA 399-D:3.

18 3. RSA 399-D:3 requires that any person, in its own name or on
19 behalf of other persons, engages in the business of debt
20 adjustment in this state or with persons located in this state
21 shall be required to obtain a license from the banking
22 department.

23 4. RSA 399-D:3, IV defines debt adjustment as

24 (a) Providing debt management advice or counseling to
25 consumers for direct or indirect compensation;

1 (b) Creating debt management plans for consumers for direct
2 or indirect compensation;

3 (c) Negotiating with creditors on behalf of consumers for
4 direct or indirect compensation; or

5 (d) Receiving, for a fee or compensation and as agent of a
6 debtor, money or evidences thereof for the purpose of
7 distributing such money or evidences thereof among
8 creditors in full or partial payment of obligations of the
9 debtor.

10 Respondents collectively violated this provision by providing
11 debt adjustment services without a license.

12 5. RSA 399-D:23 provides that the Department may issue a Cease and
13 Desist Order against anyone who it has reasonable cause to
14 believe is in violation of the provisions of the Chapter or a
15 rule or order under the Chapter.

16 6. RSA 399-D:24 IV provides that any person who, either knowingly or
17 negligently, violates any provision of this chapter may, upon
18 notice and opportunity for hearing, and in addition to any such
19 other penalty provided for by law, be subject to suspension,
20 revocation or denial of any registration or license, including
21 forfeiture of any application fee, or an administrative fine not
22 to exceed \$2,500, or both. Each of the acts specified shall
23 constitute a separate violation, and such administrative action
24 or fine may be imposed in addition to any criminal or civil
25 penalties imposed.

RELIEF REQUESTED

1 The staff of the Banking Department requests the Commissioner take the
2 following action:

- 3 1. Find as fact the allegations contained in section I of the
4 Statement of Allegations of this petition.
5 2. Make conclusions of law relative to the allegations contained in
6 section II of the Statement of Allegations of this petition.
7 3. Pursuant to NH RSA 399-D:23, Order Respondent to immediately Cease
8 and Desist from violations of the chapter.
9 4. Take such other administrative and legal actions as are necessary
10 for enforcement of the New Hampshire Banking laws, the protection
11 of New Hampshire citizens, and to provide other equitable relief.

12 **RIGHT TO AMEND**

13 The Department reserves the right to amend this Petition for Relief and
14 to request that the Banking Department Commissioner take additional
15 administrative action. Nothing herein shall preclude the Department from
16 bringing additional enforcement action under RSA 399-D or the regulations
17 thereunder.

18 Respectfully Submitted:

19
20 /s/
21 James Shepard
22 Staff Attorney