

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-223
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause and
) Cease and Desist Order
 5 Petitioner,)
)
 6 and)
)
 7 The Mortgage Specialists, Inc.,) Consent Order (only as to The
) Mortgage Specialists, Inc., Michael
 8 Michael Gill, Lisa Tracy, Jean Duerr,) Gill and Lisa Tracy)
)
 9 and David Caillouette,
 10 Respondents

11
12 CONSENT ORDER

13 I. For purposes of settling the above-referenced matter, the New Hampshire
14 Banking Department (hereinafter referred to as "the Department") and
15 only Respondents The Mortgage Specialists, Inc. ("Respondent TMS"),
16 Michael Gill ("Respondent Gill") and Lisa Tracy ("Respondent Tracy")
17 (hereby collectively known as "Respondents"), do hereby enter this
18 Agreement and stipulate to the following:

- 19 1. Respondent TMS was licensed under NH RSA 397-A by the Department to
20 engage in mortgage brokering and mortgage banking business in New
21 Hampshire during the time period referenced in the July 23, 2008
22 Staff Petition.
- 23 2. Respondents MG and LT were at all times relevant principals of
24 Respondent TMS, as that term is defined in RSA 397-A.
- 25 3. Respondents aver that no altered documents have been used to
obtain a loan from any lender, as that term is defined in RSA
397-A, and that no consumer harm has resulted from the activities
set forth in the July 23, 2008 Staff Petition.

1 II. For purposes of amicably resolving and closing the above-referenced
2 matter, Respondents agree to the following terms and conditions and the
3 Department accepts the same:

- 4 1. Respondents agree that they have voluntarily entered into this
5 Consent Order without reliance upon any discussions between the
6 Department and Respondents, without promise of a benefit of any kind
7 (other than concessions contained in this Consent Order), and
8 without threats, force, intimidation, or coercion of any kind. The
9 Respondents further acknowledge their understanding of the nature of
10 the offenses alleged in the July 23, 2008 Staff Petition, including
11 the penalties provided by law.
- 12 2. Respondents agree to waive any and all rights to a hearing and
13 appeal regarding the allegations set forth in the July 23, 2008
14 Staff Petition.
- 15 3. Respondents agree that all terms of this Consent Order are
16 contractual and none is a mere recital.
- 17 4. Respondents agree they are subject to potential administrative
18 penalties of \$600,000 and license revocation as a result of the
19 allegations stated in the July 23, 2008 Staff Petition.
- 20 5. The Department agrees to accept monies in lieu thereof in the amount
21 of \$50,000 in penalties from Respondent Gill, \$50,000 in penalties
22 from Respondent Tracy and \$300,000 from Respondent TMS, all to be
23 paid contemporaneously with the execution of this Consent Order.
24 \$150,000 of the \$300,000 due from Respondent TMS shall be paid to
25 the National Mortgage Licensing System administered by the State
Regulatory Registry, LLC and \$150,000 of the same \$300,000 due from
Respondent TMS shall be paid to the New Hampshire Housing Finance
Authority for foreclosure prevention and new homeowner assistance
programs.
6. The Department agrees to accept penalties in the amount of \$25,000
for failure to pre-screen telephone numbers from the National Do Not
Call List. This fine shall be paid to the New Hampshire Banking
Department.
7. Respondents acknowledge that the penalties above are in addition to
the examination fee yet to be billed by the Department.
8. Within sixty (60) days of the effective date of this Consent Order,
Respondent TMS shall engage an independent auditing firm ("Auditing

1 Firm") to conduct an onsite daily review, as defined below, of all
2 New Hampshire mortgage loan files processed by Respondent TMS from
3 August 1, 2007 through the date the Auditing Firm begins its review
4 and a reasonable sample, as determined by the Auditing Firm, of New
5 Hampshire loans from March 25, 2005 through July 31, 2007.

6 Respondent TMS shall obtain the prior written approval of the Bank
7 Commissioner of the Auditing Firm proposed by Respondent TMS before
8 such review is initiated. The Auditing Firm's review shall begin no
9 later than 120 days after the effective date of this Consent Order.

10 9. The goal of the Auditing Firm's review of Respondent TMS's books and
11 records is to review Respondent TMS's mortgage broker activity in
12 New Hampshire, including, but not limited to, Respondent TMS's
13 practices relating to: the placement of loan applications into
14 alternative documentation loan programs (stated income; no income;
15 no asset verification; no income verification; no ratio loans; low
16 and no documentation loans; etc.); application completion
17 procedures; verification and due diligence procedures; internal
18 policies and quality control procedures; relationships and
19 interactions with appraisers and the criteria for their appraiser
20 selection; privacy policies and practices, including security of
21 computer and electronic transmissions; compliance with the
22 provisions of each Lender-Broker agreement and/or Lender Guidelines,
23 which govern Respondent TMS's mortgage broker activity; and
24 Respondent TMS's compliance with the state and federal laws and
25 regulations governing the conduct and operation of those engaged in
the business of a mortgage broker and mortgage banker in New
Hampshire.

10. The Auditing Firm shall prepare and submit a draft written report to
the Bank Commissioner detailing the auditor's findings within 120
days of the commencement of the review. Respondent TMS and the
Department shall have thirty (30) days to provide comments to the
Auditing Firm. The Auditing Firm shall submit to the Bank
Commissioner and Respondent TMS a final report within thirty (30)
days of receipt of Respondent TMS's and the Department's comments.

11. The Auditing Firm shall continue to review all New Hampshire loan
transactions, as they occur, for compliance with state and federal
law, regulations and orders for a period of eighteen (18) months
from the date the Auditing Firm begins its review.

- 1 12. For a period not to exceed three years, Respondent TMS shall engage
2 the Auditing Firm to conduct a review addressing the matters set
3 forth in Paragraph 9 with the following timeline. If the Auditing
4 Firm discovers any evidence of fraud or fraudulent activities, the
5 Auditing Firm must inform the Department within one (1) business
6 day. Within forty-five (45) days of completion of the following
7 reviews, the Auditing Firm shall prepare and submit to the Bank
8 Commissioner a written report detailing the auditor's findings:
9 a. The eighteen (18) month review set out in Paragraph 11, which
10 again shall be an onsite daily review;
11 b. A six (6) month review, to begin after the eighteen (18) month
12 review is complete; and
13 c. A twelve (12) month review, to begin after the six (6) month
14 review is complete.
- 15 13. Within sixty (60) days of the effective date of this Consent Order,
16 Respondent TMS shall hire a compliance manager, acceptable to the
17 Department, to oversee a new compliance office at TMS.
- 18 14. Within 120 days of this hiring, TMS shall submit to the Bank
19 Commissioner Respondent TMS's revised written compliance program
20 designed to ensure and maintain compliance by Respondent TMS with
21 the state and federal laws and regulations and orders governing the
22 conduct and operation of those engaged in the business of a mortgage
23 broker and mortgage banker in New Hampshire. The compliance
24 program, at a minimum, shall:
25 a. Provide for a loan review process to assess the compliance of
Respondent TMS, and all applicable employees, staff, agents, and
independent contractors who operate on behalf of Respondent TMS,
with (i) the statutes, regulations, regulatory bulletins, and
other relevant provisions of law applicable to those engaged in
the business of a mortgage broker and mortgage banker in New
Hampshire and (ii) the provisions of this Consent Order. Such
procedures and policies shall be designed to prevent the
recurrence of the alleged violations addressed in the July 23,
2008 Staff Petition;
b. Ensure that Respondent TMS's compliance manager shall have
responsibility for all consumer compliance and related matters,
including, but not limited to, monitoring Respondent TMS's
compliance and ensuring that corrective action is taken to

1 address all alleged violations and areas of concern previously
2 identified by the Department; and

- 3 c. Provide adequate training to applicable staff persons, conducted
4 by qualified and trained personnel, which includes, but is not
5 limited to, proper instruction and ongoing training to ensure
6 proper implementation and execution of the revised policies and
7 procedures implemented pursuant to this Consent Order.
8 d. Provide for books and records retention and document destruction
9 procedures to include, but not be limited to, maintenance and
10 preservation of (i) all original paper documents, (ii) all e-mail
11 transmissions and receipts from or to each business computer and
12 all business related email transmissions and receipts from or to
13 privately owned computers, (iii) complete New Hampshire loan
14 files, (iv) all documentation provided by any potential lenders
15 and the final lender for each New Hampshire loan application, and
16 (v) all documents related to appraisals associated with each New
17 Hampshire loan application.
18 e. Ensure all telephone calls are pre-screened against the National
19 Do Not Call List, such review being conducted and documented
20 every 31 days, and that a written list shall be kept and calls
21 will not be made to any person who has been called by TMS and has
22 requested not be called again or has stated that they are on the
23 National Do Not Call List.

24 15. Respondent TMS shall comply with all laws and regulations applicable
25 to its conducting the business of a mortgage broker, including, but
not limited to, RSA 397-A and the rules and orders promulgated
thereunder.

16 16. On the thirtieth (30th) day after the end of each calendar quarter
17 following the date of this Consent Order, beginning with the
18 calendar quarter ending September 30, 2008, Respondent TMS shall
19 furnish written progress reports to the Bank Commissioner, detailing
20 the form, content, and manner of any actions taken to address each
21 Section of this Consent Order and results thereof. The written
22 progress reports shall further describe any initiatives implemented
23 by Respondent TMS during the preceding calendar quarter to improve
24 Respondent TMS's practices in the area of consumer compliance and
25 the results thereof.

1 17. The reporting requirements to the Bank Commissioner, contained in
2 Section 16 of this Consent Order, shall remain in effect and shall
3 not be amended or rescinded without prior written modification,
4 termination, or suspension of the applicable provisions of this
5 Consent Order from the Bank Commissioner.

6 18. In consideration of the foregoing Consent Order, the Department
7 agrees not to pursue formal measures relative to this matter, to
8 suspend or revoke Respondent TMS's mortgage banker license under RSA
9 397-A while this Consent Order is in effect. However, the
10 provisions of this Consent Order shall not limit, estop, or
11 otherwise prevent the Department, or any federal or state agency or
12 department, from taking any other action affecting Respondent TMS,
13 or any of its officers and directors, or their successors or
14 assigns.

15 19. Failure to comply with the terms of this Consent Order shall
16 constitute grounds for license suspension and/or revocation pursuant
17 to applicable provisions of RSA 397-A.

18 20. This Consent Order shall become effective immediately upon the date
19 of its issuance.

20 21. The provisions of this Consent Order shall remain effective and
21 enforceable except to the extent that, and until such time as, any
22 provisions of this Consent Order shall have been modified,
23 terminated, suspended, or set aside by the Bank Commissioner or upon
24 an order of a court of competent jurisdiction.

25 This Consent Order represents the resolution of and discharge of any basis
for any civil or administrative proceeding by the Department against the
Respondents for violations arising as a result of or in connection with any
actions or omissions by the Respondents through the date of this Consent
Order as it applies to the allegations in this action; provided, however,
this release does not apply to facts not known by the Department or not
otherwise provided by the Respondent to the Department as of the date of this
Consent Order nor to actions for restitution under RSA 383:10-d, or any
possible actions related to the examination just completed. Such facts would
include, but not be limited to, any consumer harm from the actions of the
Respondents or altered documents having been released outside the confines of
Respondent TMS. The Department expressly reserves its right to pursue any
administrative, civil or criminal action or remedy available to it should the

1 Respondents breach this Consent Order or in the future violate the Act or
2 rules and orders promulgated thereunder.

3
4 **WHEREFORE**, based on the foregoing, we have set our hands to this Agreement,
5 with it taking effect upon the signature of Peter C. Hildreth, Bank
6 Commissioner.

7 Recommended this 18th day of August, 2008 by

8 _____
/ S /

9 Maryam Torben Desfosses, Staff Attorney, Banking Department

10 Executed this 18th day of August, 2008.

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/ S /

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13 Michael Gill for The Mortgage Specialists, Inc., Respondent

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15 _____
/ S /

16 and Michael Gill, Respondent

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/ S /

19 and Lisa Tracy, Respondent

20 **SO ORDERED,**

21 Entered this 18th day of August, 2008.

22
23
24 _____
/ S /

25 Peter C. Hildreth,
Bank Commissioner