

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 08-378  
) )  
3 State of New Hampshire Banking )  
) Order to Show Cause and Cease and  
4 Department, ) Desist Order  
) )  
5 Petitioner, )  
) )  
6 and ) Consent Order as to James Arthur  
) Lesmerises  
7 First Call Mortgage Company, Inc., )  
) )  
8 Kathleen L. Donovan, Carl D. )  
) )  
9 McFadden, George Vanderheiden, Peter )  
) )  
10 S. Lynch and Carolyn A. Lynch as )  
) )  
11 Joint Tenants, James Arthur )  
) )  
12 Lesmerises, David Allen Kesler, )  
) )  
13 Dennis Wright, )  
) )  
14 Respondents )  
) )

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15  
16 CONSENT ORDER

17 I. This Consent Order (hereinafter referred to as "Consent Order") is  
18 entered between the New Hampshire Banking Department ("the  
19 Department") and Respondent James Arthur Lesmerises ("Respondent  
20 Lesmerises"). The Department and Respondent Lesmerises do hereby  
21 stipulate and agree to the following:

- 22 1. The term "this action" shall refer to the Department's September  
23 24, 2008 Staff Petition.
- 24 2. Respondent Lesmerises was at all relevant times from March 26,  
25 2007 until July 2007 the Branch Manager for Respondent First Call

1 Mortgage Company, Inc.'s Bedford, New Hampshire branch office.

2 3. Without constituting an admission by the above named Respondent,  
3 of any allegations made or implied by this action; and solely  
4 for the purpose of settlement of all matters in this action,  
5 Respondent Lesmerises stipulates that while he was the Bedford,  
6 New Hampshire Branch Manager, two loan files submitted to the  
7 Andover office of Respondent First Call Mortgage Company, Inc.  
8 at about the same time for the same consumer listed two separate  
9 addresses as the consumer's primary residence.

10 4. In consideration of the mutual promises and representations set  
11 forth herein, and in further consideration of the Department's  
12 reliance upon the substantial accuracy and good faith of the  
13 representations and submissions made to it by Respondent  
14 Lesmerises, the Department and Respondent Lesmerises intending  
15 to be legally bound herein, agree to the terms and conditions  
16 below.

17 II. For purposes of amicably resolving and closing this action, Respondent  
18 Lesmerises and the Department do hereby agree to the following terms  
19 and conditions:

20 1. Respondent Lesmerises agrees that he has voluntarily entered  
21 into this Consent Order without reliance upon any discussions  
22 between the Department and Respondent Lesmerises, without  
23 promise of a benefit of any kind (other than concessions  
24 contained in this Consent Order), and without threats, force,  
25 intimidation, or coercion of any kind. Respondent Lesmerises

1 further acknowledges his understanding of the nature of the  
2 allegations set forth in this action, including the potential  
3 penalties provided by law.

4 2. Respondent Lesmerises agrees to waive any and all rights to a  
5 hearing and appeal regarding the allegations set forth in this  
6 action.

7 3. Respondent Lesmerises agrees that he will not deny the factual  
8 basis for this Consent Order to which he has stipulated above  
9 and will not give conflicting statements about such facts or his  
10 involvement in the stipulated facts.

11 4. Respondent Lesmerises agrees that all terms of this Consent  
12 Order are contractual and none is a mere recital.

13 5. Respondent Lesmerises represents and warrants that he has all  
14 the necessary rights, powers and ability to carry out all of the  
15 terms of this Consent Order which are applicable to Respondent  
16 Lesmerises.

17 6. Respondent Lesmerises represents and warrants that he can  
18 accomplish the full relief contemplated and required herein and  
19 that all parents, subsidiaries, affiliates, and successors  
20 necessary to effectuate the full relief contemplated by this  
21 Consent Order are parties to this Consent Order.

22 7. Respondent Lesmerises represents and warrants that he has  
23 obtained all third-party approvals necessary to comply with the  
24 Consent Order.

1 8. Respondent Lesmerises acknowledges that the Department is  
2 relying upon the representations and warranties of Respondent  
3 Lesmerises stated herein, in making its determination in this  
4 matter.

5 9. Respondent Lesmerises agrees that he is subject to potential  
6 administrative penalties of at least \$47,500.00 as a result of  
7 the allegations stated in this action.

8 10. The Department agrees to accept monies in lieu thereof in the  
9 amount of \$2,500.00 in penalties from Respondent Lesmerises,  
10 which shall be paid contemporaneously with the execution of this  
11 Consent Order.

12 11. Respondent Lesmerises hereby acknowledges that failure to make  
13 payment as agreed above may result in civil and/or criminal  
14 penalties.

15 12. The provisions of this Consent Order shall not limit, estop, or  
16 otherwise prevent the Department, or any federal or state agency  
17 or department, from taking any other action affecting Respondent  
18 Lesmerises.

19 13. Failure to comply with the terms of this Consent Order as  
20 related to the underlying Cease and Desist Order shall result in  
21 imposition of further administrative penalties and possible  
22 criminal liability.

23 14. This Consent Order shall become effective immediately upon the  
24 date of its issuance.

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1           15. The provisions of this Consent Order shall remain effective and  
2           enforceable except to the extent that, and until such time as,  
3           any provisions of this Consent Order shall have been modified,  
4           terminated, suspended, or set aside by the Bank Commissioner or  
5           upon an order of a court of competent jurisdiction.

6 III. This Consent Order represents the resolution of and discharge of any  
7           basis for any civil or administrative proceeding by the Department  
8           against Respondent Lesmerises for violations enumerated in this action  
9           only; provided, however, this release does not apply to facts not  
10          known by the Department or not otherwise provided by Respondent  
11          Lesmerises to the Department as of the date of this Consent Order nor  
12          to actions for restitution under RSA 383:10-d, or any possible actions  
13          related to the examination just completed. Such facts would include,  
14          but not be limited to, any consumer harm from Respondent Lesmerises's  
15          action. The Department expressly reserves its right to pursue any  
16          administrative, civil or criminal action or remedy available to it  
17          should the above named Respondents breach this Consent Order or in the  
18          future violate the Act or rules and orders promulgated thereunder.

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22                           [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]  
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25

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

4  
5 Recommended this 12th day of May, 2009 by

6 \_\_\_\_\_  
/s/

7 Maryam Torben Desfosses, Hearings Examiner, Banking Department

8 Executed this 18th day of May, 2009 by

9 \_\_\_\_\_  
/s/

10 Attorney Arpiar G. Saunders, as legal representative for Respondent James  
11 Arthur Lesmerises

12  
13 **SO ORDERED,**

14 Entered this 12th day of June, 2009.

15 \_\_\_\_\_  
/s/

16 Peter C. Hildreth,  
17 Bank Commissioner