

1 State of New Hampshire Banking Department

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3 In re the Matter of:) Case No.: 08-BD-002
)
 4 State of New Hampshire Banking)
) Staff Petition
 5 Department,)
)
 6 and) July 02, 2008
)
 7 Mortgage Protection Associates (d/b/a)
)
 8 www.mortgageprotectionassociates.net))
)
 9 Respondent)
)
 10)
)
 11)

12 STATEMENT OF ALLEGATIONS

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

16 1. On or about June 26, 2008, the Department received a written
17 communication from Financial Institution A, a federally
18 chartered savings bank or association located in New
19 Hampshire, regarding Respondent Mortgage Protection
20 Associates, d/b/a www.mortgageprotectionassociates.net),
21 (hereinafter "MPA").

22 2. Financial Institution A indicated in the letter that a married
23 couple (Consumer A and Consumer B) had been solicited via
24 written correspondence by Respondent MPA to participate in a
25 low cost mortgage life insurance and disability program for a

1 fee, to enable Consumer A and Consumer B to protect their
2 mortgage loan in case of an unexpected occurrence.

3 3. On or about June 30, 2008 the Department received a written
4 communication from Financial Institution B, a New Hampshire
5 state-chartered bank, regarding Respondent MPA.

6 4. Financial Institution B indicated in the letter that a married
7 couple (Consumer C and Consumer D) had been solicited via
8 written correspondence by Respondent MPA to participate in a
9 low cost mortgage life insurance and disability program for a
10 fee, to enable Consumer C and Consumer D to protect their
11 mortgage loan in case of an unexpected occurrence.

12 5. Both of Respondent MPA's solicitations advised that without
13 this plan, Consumer A's and Consumer B's and Consumer C's and
14 D's family would still be responsible to make monthly mortgage
15 payments.

16 6. Both of Respondent MPA's solicitations further advised that
17 benefits can include:

18 a. in case of death, the program/plan would pay the mortgage
19 amount in the event of borrower or co-borrower death,

20
21 b. in case of disability, the program/plan provides money to
22 make the consumer's mortgage payment if the consumer cannot
23 work due to disability,

24 c. in case of unemployment, the program/plan pays the
25 consumer's Policy Premium for up to six months, and

1 d. a return of premium, wherein the program/plan returns 100%
2 of the consumer's premium at the end of the term.

3 7. Both of Respondent MPA's solicitations reference the bank name
4 in three places on the solicitation itself:

5 a. At the very top of the solicitation preceded by "Re: Your
6 Loan With" and followed by the loan amount and date,

7
8 b. Above the names of the Consumers towards the top of the
9 solicitation, and

10 c. Between the words "Lender" and "Amount" with a date of the
11 loan, in the middle of the solicitation.

12 8. Both of Respondent MPA's solicitations reference the loan date
13 in two places on the solicitation itself:

14 a. At the very top of the solicitation preceded by "Re: Your
15 Loan With [the name of the institution] for [the loan amount]
16 dated", and

17 b. After the words "Lender: [name of the institution and loan
18 amount" in the middle of the solicitation.

19
20 8. Respondent MPA fails with both solicitations to reference that
21 it is not sponsored by or affiliated with, and that such
22 solicitation is not authorized by, the particular financial
23 institution and that the information was retrieved from public
24 records.

25 9. Respondent MPA does not appear to have received any
authorization (written or otherwise) to use the full or

1 abbreviated name, trade name, service mark, or trademark of
2 Financial Institution A or B.

3 **ISSUES OF LAW**

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

5 1. The Department re-alleges the above-stated facts in paragraphs
6 1 through 9.

7 2. The Department has jurisdiction over state-chartered banks
8 pursuant to RSA 383:9 ("Duties").

9 3. Pursuant to RSA 384:12-a, IV ("Cease and Desist Order"), the
10 Bank Commissioner (hereinafter "Commissioner") may issue and
11 serve upon an individual or business entity a cease and desist
12 order for any act or conduct that is in violation of RSA
13 384:67 ("Unauthorized and Deceptive Use").

14 4. Pursuant to RSA 384:68 ("Enforcement"), the Commissioner may
15 issue a cease and desist order against any individual or
16 business entity which engages in any act or conduct that
17 violates RSA 384:67 involving a financial institution under
18 the jurisdiction of the Commissioner and may bring legal
19 action to enforce the order.

20 5. Pursuant to RSA 384:67, IV, for the purposes thereof, the term
21 "financial institution" shall include both a state-chartered
22 bank as defined in RSA 384-B:1, I and federally chartered
23 savings bank or association.

24 6. Pursuant to RSA 384:67, I (a), no individual or business
25 entity shall, without the prior written authorization of a
 financial institution, "use the full or abbreviated name,
 trade name, service mark, or trademark of any financial
 institution in any written, electronic, or oral advertisement
 or solicitation for products and services."

1 7. Pursuant to RSA 384:67, I (c), no individual or business
2 entity shall, without the prior written authorization of a
3 financial institution, include specific loan information
4 relative to a specifically identified consumer that is
5 publicly available "(1) in any written or electronic
6 solicitation, unless the advertisement or solicitation clearly
7 and conspicuously states on the front page or introduction in
8 bold-faced type that is the same font size as is predominately
9 used in the advertisement or solicitation disclosing that such
10 individual or business entity is not sponsored by or
11 affiliated with, and that such solicitation is not authorized
12 by, the financial institution and that the information was
13 received from public records."

RELIEF REQUESTED

14 The staff of the Department requests the Commissioner take the
15 following action:

16 1. Find as fact the allegations contained in Section I of the
17 Statement of Allegations of this Petition.

18 2. Make conclusions of law relative to the allegations contained
19 in Section II of the Statement of Allegations (Issues of Law) of this
20 Petition.

21 3. Pursuant to RSA 384:12-a, IV, order Respondent to immediately
22 Cease and Desist from any violations of RSA 384:67.

23 4. Pursuant to RSA 384:68, order Respondent to immediately Cease
24 and Desist from any violations of RSA 384:67.

25 5. Take such other legal administrative and legal actions as are
 necessary for enforcement of the New Hampshire banking laws, the
 protection of New Hampshire citizens, and to provide other equitable
 relief.

RIGHT TO AMEND

The Department reserves the right to amend this Petition for Relief and to request that the Banking Department Commissioner take additional administrative action. Nothing herein shall preclude the Department from bringing additional enforcement action under RSA 384:12-a, RSA 384:67 or RSA 384:68 or any regulations thereunder.

Respectfully Submitted:

 /S/

Maryam Torben Desfosses
Staff Attorney