

1 State of New Hampshire Banking Department

2

3 In re the Matter of:) Case No.: 08-BD-006
)
 4 State of New Hampshire Banking)
)
 5 Department,)
) Staff Petition
 6 Petitioner,)
)
 7 and) September 2, 2008
)
 8 "328 Milton Street, Cincinnati, Ohio)
)
 9 45202-0926", Clarissa A. Kin, Brent)
)
 10 E. Niese, Kenneth Michael, Catherine)
)
 11 Michael, DOES INDIVIDUALS 1-100, and
 12 DOES COMPANIES 1-100,
 13 Respondents

14
15 STATEMENT OF ALLEGATIONS

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

19 1. On or about July 8, 2008, the Department received a written
20 communication from Financial Institution A, a state-chartered
21 co-operative bank located in New Hampshire, regarding a mailing
22 from Respondent "328 Milton Street, Cincinnati, Ohio 45202-0926"
23 ("Respondent 328 Milton").

24 2. Financial Institution A indicated in the July 2, 2008 letter
25 that this solicitation to Consumer A fraudulently used the
name of Financial Institution A in violation of Senate Bill
0315.

- 1 3. Respondents' solicitation advised that Consumer A may qualify
2 for Mortgage Life and Disability coverage.
- 3 4. Respondents' solicitation further advised that available
4 benefits include:
- 5 a. in case of death, the program/plan would pay the mortgage
6 amount in the event of the consumer's death,
7 b. in case of disability, the program/plan provides money to
8 make the consumer's mortgage payment if the consumer cannot
9 work due to disability,
10 c. in case of unemployment, the program/plan pays the
11 consumer's premium payments for up to six months, and
12 d. a return of premium, wherein the program/plan returns 100%
13 of the consumer's premium at the end of the term if it is not
14 used.
- 15 5. Respondents' solicitation references the bank name in two
16 places on the solicitation itself:
- 17 a. At the very top of the solicitation preceded by "Lender:";
18 and
19 b. In the middle of the solicitation preceded by the name of
20 the Consumer A and loan amount.
- 21 6. Respondents fail to properly, clearly and conspicuously
22 reference in bold face type in the same font as is
23 predominately used in the solicitation that Respondents are
24 not affiliated with, authorized by, endorsed by any financial
25 institution and that loan information is retrieved from public
 records.
7. An internet Google search for Respondent 328 Milton turned up
 records for a home recently sold in Hamilton County, Ohio.

- 1 8. The Hamilton County Auditor's records revealed that as from
2 August 24, 2004 to June 4, 2008, Respondent 328 Milton
3 belonged to Respondent Clarissa A. Kin and Respondent Brent E.
4 Niese.
- 5 9. The Hamilton County Auditor's records further revealed that as
6 of June 4, 2008, Respondent 328 Milton belongs to Respondent
7 Kenneth Michael and Respondent Catherine Michael.
- 8 10. The Department has yet to determine an actual business name
9 related to this solicitation addressed to Consumer A.
10 Therefore, Respondent John Doe Individuals 1-100 and
11 Respondent John Doe Companies 1-100 are hereby used in their
12 place for currently unknown Respondents.
- 13 11. Respondents do not appear to have received any authorization
14 (written or otherwise) to use the full or abbreviated name,
15 trade name, service mark, or trademark of Financial
16 Institution A.

17 **ISSUES OF LAW**

- 18 II. The staff of the Department alleges the following issues of law:
- 19 12. The Department re-alleges the above-stated facts in
20 paragraphs 1 through 11.
- 21 13. The Department has jurisdiction over state-chartered banks
22 pursuant to RSA 383:9 ("Duties").
- 23 14. Pursuant to RSA 384:12-a, IV ("Cease and Desist Order"), the
24 Bank Commissioner (hereinafter "Commissioner") may issue and
25 serve upon an individual or business entity a cease and desist
order for any act or conduct that is in violation of RSA
384:67 ("Unauthorized and Deceptive Use").

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

7 16. Pursuant to RSA 384:67, IV, for the purposes thereof, the
8 term "financial institution" shall include a state-chartered
9 bank as defined in RSA 384-B:1, I.

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

16 18. Pursuant to RSA 384:67, I (c), no individual or business
17 entity shall, without the prior written authorization of a
18 financial institution, include specific loan information
19 relative to a specifically identified consumer that is
20 publicly available "(1) in any written or electronic
21 solicitation, unless the advertisement or solicitation clearly
22 and conspicuously states on the front page or introduction in
23 bold-faced type that is the same font size as is predominately
24 used in the advertisement or solicitation disclosing that such
25 individual or business entity is not sponsored by or
affiliated with, and that such solicitation is not authorized
by, the financial institution and that the information was
received from public records."

1 RELIEF REQUESTED

2 III. The staff of the Department requests the Commissioner take the
3 following action:

- 4 1. Find as fact the allegations contained in Section I of the
5 Statement of Allegations of this Petition.
6 2. Make conclusions of law relative to the allegations contained
7 in Section II of the Statement of Allegations (Issues of Law)
8 of this Petition.
9 3. Pursuant to RSA 384:12-a, IV, order Respondents to immediately
10 Cease and Desist from any violations of RSA 384:67.
11 4. Pursuant to RSA 384:68, order Respondents to immediately Cease
12 and Desist from any violations of RSA 384:67.
13 5. Take such other legal administrative and legal actions as are
14 necessary for enforcement of the New Hampshire banking laws,
15 the protection of New Hampshire citizens, and to provide other
16 equitable relief.

17 RIGHT TO AMEND

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

23 Respectfully Submitted:

24 /s/
25 _____
Maryam Torben Desfosses
Staff Attorney