

1 State of New Hampshire Banking Department

2

3 In re the Matter of:) Case No.: 09-054
)
 4 State of New Hampshire Banking)
) Consent Order
 5 Department,)
)
 6 Petitioner,)
)
 7 and)
)
 8 Family Financial Education)
)
 9 Foundation, William Richards Cluny,)
)
 10 and Craig B. Welling,)
)
 11 Respondents)
)

12
13 CONSENT ORDER

14 I. This Consent Order (hereinafter referred to as "Consent Order") is
 15 entered between the New Hampshire Banking Department ("the
 16 Department"), Respondent Family Financial Education Foundation
 17 ("Respondent Family Financial"), Respondent William Richard Cluny
 18 ("Respondent Cluny") and Respondent Craig B. Welling ("Respondent
 19 Welling") (hereinafter collectively referred to as "Respondents").
 20 Respondents do hereby stipulate and agree to the following:

- 21 1. The term "this matter" shall refer to the Respondent Family
 22 Financial's unlicensed debt adjustment activity in the State
 23 of New Hampshire prior to its licensure on June 20, 2007.
- 24 2. The Department is authorized by New Hampshire RSA 399-D:1 to
 25 regulate debt adjustment services performed in the State of

1 New Hampshire or on behalf of a person located in the State
2 of New Hampshire.

3 3. RSA 399-D:13 authorizes the Department to investigate alleged
4 violations of laws or rules to determine whether any person
5 has violated or is about to violate any provision of RSA
6 Chapter 399-D, rule or order given under RSA Chapter 399-D or
7 other applicable state and federal laws and regulations.

8 4. RSA 399-D:22 authorizes the Department to perform
9 examinations of Respondents' debt adjustment business.

10 5. Respondents acknowledge that RSA 399-D:14,I states in part
11 that "No licensee shall be entitled to any fee against the
12 debtor, upon any contract, until the debt adjustment program
13 is arranged and approved by the debtor."

14 6. This matter concerns two (2) New Hampshire consumers
15 ("debtors") whose fees Respondents refunded pursuant to the
16 Department's examination of this matter.

17 7. The Department and Respondents would like to avoid formal
18 proceedings, and further expense, and to finally resolve this
19 matter under the terms and conditions set forth below.

20 8. The terms of this Consent Order are a fair and reasonable
21 disposition of this matter and are in the public interest.

22 9. In consideration of the mutual promises and representations
23 set forth herein, and in further consideration of the
24 Department's reliance upon the substantial accuracy and good
25 faith of the representations and submissions made to it by
Respondents, the Department and Respondents intending to be

1 legally bound herein, agree to the terms and conditions
2 below.

3 II. For purposes of amicably resolving and closing the above-referenced
4 matter, each of the above named Respondents and the Department hereby
5 agree to the following terms and conditions:

6 1. Respondents agree they have voluntarily entered into this
7 Agreement without reliance upon any discussions between the
8 Department and Respondents, without promise of a benefit of
9 any kind (other than concessions contained in this Consent
10 Order) and without threats, force, intimidation, or coercion
11 of any kind. Respondents further acknowledge their
12 understanding of the nature of the offenses alleged herein,
13 including the penalties provided by law.

14 2. The Respondents agree to waive any and all rights to a
15 hearing and appeal thereof.

16 3. The Respondents agree that they will not deny the factual
17 basis for this Consent Order to which they have stipulated
18 above and will not give conflicting statements about such
19 facts or their involvement in the stipulated facts.

20 4. The Respondents agree that all terms of this Consent Order
21 are contractual and none is a mere recital.

22 5. Respondent Family Financial represents and warrants that it
23 has all the necessary rights, powers and ability to carry out
24 all of the terms of this Consent Order which are applicable
25 to Respondent Family Financial.

1 6. Respondent Cluny represents and warrants that he has all the
2 necessary rights, powers and ability to carry out all of the
3 terms of this Consent Order which are applicable to
4 Respondent Cluny.

5 7. Respondent Welling represents and warrants that he has all
6 the necessary rights, powers and ability to carry out all of
7 the terms of this Consent Order which are applicable to
8 Respondent Welling.

9 8. Respondents represent and warrant that they can accomplish
10 the full relief contemplated and required herein and that all
11 parents, subsidiaries, affiliates, and successors necessary
12 to effectuate the full relief contemplated by this Consent
13 Order are parties to this Consent Order.

14 9. Respondents represent and warrant that they have obtained all
15 third-party approvals necessary to comply with the Consent
16 Order.

17 10. Respondents acknowledge that the Department is relying upon
18 the representations and warranties of Respondents, stated
19 herein, in making its determination in this matter.

20 11. Subject to the terms of this Consent Order, the Respondents
21 consent to the entry of an administrative penalty of
22 \$1,000.00, which shall be paid to the Department
23 contemporaneously with the execution of this Consent Order.

24 12. Subject to the terms of this Consent Order, the Respondents
25 consent to provide copies within 30 (thirty) days of
 cancelled checks reflecting payment was indeed made to the

1 two (2) New Hampshire debtors or if payment has not been
2 made, to provide such checks made out to each New Hampshire
3 debtor to the Department along with the addresses of those
4 two (2) New Hampshire debtors.

5 13. Respondents acknowledge they are jointly and severally liable
6 for all payments and refunds referenced herein.

7 14. The Respondents acknowledge that failure to make payment as
8 agreed above may result in civil and/or criminal penalties.

9 15. This Consent Order shall become effective immediately upon
10 the date of its issuance.

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

17 III. This Agreement represents the complete and final resolution of, and
18 discharge of any basis for any civil or administrative proceeding by
19 the Department against the Respondents for violations arising as a
20 result of or in connection with any actions or omissions by the
21 Respondents through the date of this Order as it applies to unlicensed
22 activity; provided, however, this release does not apply to facts not
23 known by the Department or not otherwise provided by the Respondents
24 to the Department as of the date of this Consent Order. The
25 Department expressly reserves its right to pursue any administrative,
civil or criminal action or remedy available to it should the above

