

1 State of New Hampshire Banking Department

2	In re the Matter of:) Case No.: 09-127
)
3	State of New Hampshire Banking)
4	Department,) Order to Show Cause and
)
5	Petitioner,) Cease and Desist Order
)
6	and)
)
7	Financial Resources Mortgage, Inc.)
)
8	(f/k/a Financial Resources & Assistance))
)
9	of The Lakes Region, Inc. and f/k/a)
)
10	Financial Resources National, Inc.),)
)
11	and Scott D. Farah,)
)
12	Respondents)

13 NOTICE OF ORDER

14 This Order to Show Cause and Cease and Desist Order commences an
15 adjudicative proceeding under the provisions of RSA Chapter 397-A and RSA
16 Chapter 541-A.

17 LEGAL AUTHORITY AND JURISDICTION

18 Pursuant to RSA 397-A:17, the Banking Department of the State of New
19 Hampshire (hereinafter the "Department") has the authority to issue an order
20 to show cause why license revocation and penalties for violations of New
21 Hampshire Banking laws should not be imposed.

22 Pursuant to RSA 397-A:17,II(a), the Commissioner has the authority to
23 order or direct persons subject to RSA Chapter 397-A to cease and desist
24 from conducting business, including immediate temporary orders to cease and
25 desist.

1 Pursuant to RSA 397-A:17,II(b), the Commissioner has the authority to
2 order or direct persons subject to RSA Chapter 397-A to cease any harmful
3 activities or violations of RSA Chapter 397-A, including immediate
4 temporary orders to cease and desist.

5 Pursuant to RSA 397-A:17,II(c), the Commissioner has the authority to
6 enter immediate temporary orders to cease business under a license if the
7 Commissioner has determined that such license was erroneously granted or
8 the licensee is currently in violation of RSA Chapter 397-A, or rules or
9 order thereunder.

10 Pursuant to RSA 397-A:17,II(e)(1) the Commissioner has the authority
11 to remove or ban from office or employment, including license revocation,
12 any person conducting business under RSA Chapter 397-A who violates RSA
13 Chapter 397-A.

14 Pursuant to RSA 397-A:17,VIII, in addition to any other penalty
15 provided for under RSA Chapter 397-A or RSA 383:10-d, after notice and
16 opportunity for hearing, the Commissioner may enter an order of rescission,
17 restitution, or disgorgement of profits directed to a person who has
18 violated RSA Chapter 397-A, or a rule or order thereunder.

19 Pursuant to RSA 397-A:17,IX, in addition to any other penalty
20 provided for under RSA Chapter 397-A, after notice and opportunity for
21 hearing, the Commissioner may assess fines and penalties against a mortgage
22 loan originator in an amount not to exceed \$25,000.00 (for each violation)
23 if the Commissioner finds the mortgage loan originator has violated or
24 failed to comply with the S.A.F.E. Mortgage Licensing Act of 2008, Public
25 Law 110-289, Title V or any regulation or order issued thereunder.

1 Pursuant to RSA 397-A:17,X, an action to enforce any provision of RSA
2 Chapter 397-A shall be commenced within 6 years after the date on which the
3 violation occurred.

4 Pursuant to RSA 397-A:18, the Department has the authority to issue a
5 complaint setting forth charges whenever the Department is of the opinion
6 that the licensee or person over whom the Department has jurisdiction is
7 violating or has violated any provision of RSA Chapter 397-A, or any rule or
8 order thereunder.

9 Pursuant to RSA 397-A:18,II, the Department has the authority to issue
10 and cause to be served an order requiring any person engaged in any act or
11 practice constituting a violation of RSA Chapter 397-A or any rule or order
12 thereunder, to cease and desist from violations of RSA Chapter 397-A.

13 Pursuant to RSA 397-A:20,IV the Commissioner may issue, amend, or
14 rescind such orders as are reasonably necessary to comply with the
15 provisions of RSA Chapter 397-A.

16 Pursuant to RSA 397-A:21, the Commissioner has the authority to
17 suspend, revoke or deny any license and to impose administrative penalties
18 of up to \$2,500.00 for each violation of New Hampshire banking law and
19 rules.

20 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct
21 that is or may be an unfair or deceptive act or practice under RSA Chapter
22 358-A and exempt under RSA 358-A:3,I or that may violate any of the
23 provisions of Titles XXXV and XXXVI and administrative rules adopted
24 thereunder. The Commissioner may hold hearings relative to such conduct and
25 may order restitution for a person or persons adversely affected by such

1 conduct.

2 **NOTICE OF RIGHT TO REQUEST A HEARING**

3 The above named Respondents have the right to request a hearing on
4 this Order to Show Cause and Cease and Desist Order, as well as the right to
5 be represented by counsel at each Respondent's own expense. All hearings
6 shall comply with RSA Chapter 541-A. Any such request for a hearing shall be
7 in writing, and signed by the Respondent or the duly authorized agent of the
8 above named Respondent, and shall be delivered either by hand or certified
9 mail, return receipt requested, to the Banking Department, State of New
10 Hampshire, 53 Regional Drive, Suite 200, Concord, NH 03301. Such hearings
11 will be scheduled within 10 days of the Department's receipt of the request.
12 If the Respondent fails to appear at the hearing after being duly notified,
13 such person shall be deemed in default, and the proceeding may be determined
14 against the Respondent upon consideration of the Order to Show Cause and Cease
15 and Desist Order, the allegations of which may be deemed to be true.

16 If any of the above named Respondents fails to request a hearing within
17 30 calendar days of receipt of such order or reach a formal written and
18 executed settlement with the Department within that time frame, then such
19 person shall likewise be deemed in default, and the orders shall, on the
20 thirty-first day, become permanent, and shall remain in full force and effect
21 until and unless later modified or vacated by the Commissioner, for good cause
22 shown.

23 **STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF**

24 The Staff Petition dated November 13, 2009 (a copy of which is
25 attached hereto) is incorporated by reference hereto.

1 behalf of Respondent Financial Resources and its successors
2 or assigns (collectively "Financial Resources") are hereby
3 ordered to cease and desist from directly or indirectly
4 advising, directing or ordering former employees and
5 independent contractors from taking files;

6 5. Respondent Financial Resources Mortgage, Inc. (f/k/a
7 Financial Resources & Assistance of The Lakes Region, Inc.
8 and f/k/a Financial Resources National, Inc.) ("Respondent
9 Financial Resources") shall show cause why penalties in the
10 amount of \$15,000.00 should not be imposed against it;

11 6. Respondent Scott D. Farah ("Respondent Farah") shall show
12 cause why penalties in the amount of \$15,000.00 should not be
13 imposed against him plus any additional penalty not to exceed
14 \$25,000.00 pursuant to RSA 397-A:17, IX;

15 7. Respondent Financial Resources shall provide within five (5)
16 business days of this Order to Show Cause and Cease and
17 Desist Order an accurate pipeline report** for the following
18 categories of loans for New Hampshire consumers and/or for
19 the loans on New Hampshire real estate:

- 20 a. loans that have closed, but have not yet funded;
- 21 b. loans that have been approved but that have not closed;
- 22 c. applications that have been received, but no decision
23 has been made on approving the applications; and
- 24 d. applications that are in the initial stages of review
25 and document gathering;

1 **The pipeline report shall include the following information:

- 2 i. the name, address and telephone number of the
3 applicant consumer;
- 4 ii. the address of the of the subject property;
- 5 iii. the loan number;
- 6 iv. the amount of all prepaid loan fees submitted by the
7 applicant consumer;
- 8 v. the amount of each loan;
- 9 vi. status of the loan;
- 10 vii. the purpose of the loan (i.e., purchase or
11 refinance);
- 12 viii. contact information for the broker who referred the
13 loan to Respondent Financial Resources;
- 14 ix. contact information for anyone referred the loan to
15 Respondent Financial Resources to broker;
- 16 x. status of what is being done with the loan;
- 17 xi. contact information for the broker/lender where the
18 loan is placed, should Respondent Financial
19 Resources not fund the loan itself.

20 ** This pipeline report shall be updated every Monday at 9:00 a.m.
21 Eastern Standard Time and the updates shall be sent to
22 legal@banking.state.nh.us. Respondents shall continue to update the
23 pipeline report until all of the loans have been funded, placed with
24 another broker or lender, or withdrawn by the applicant. Respondents
25 shall ensure that the consumer is in the same position with the new

1 lender or broker as the consumer would have been if the loan had been
2 funded or brokered with Respondent Financial Resources.

3 8. Upon the date of this Order to Show Cause and Desist Order,
4 Respondents shall release any liens filed on any New
5 Hampshire real property or filed on property owned by New
6 Hampshire consumers as a result of a residential mortgage
7 loan closing with Respondent Financial Resources but not
8 being funded.

9 9. Within five (5) days of the date of this Order to Show Cause
10 and Cease and Desist Order, Respondent shall submit to the
11 Department Respondents' balance sheet and year-to-date income
12 statement, prepared as of the date of submission, and
13 attested by a duly authorized officer of the Corporation.
14 The balance sheet shall indicate Respondents' cash position
15 at each of its depository banks as well as Respondents' bank
16 account information. The balance sheet and year-to-date
17 statement shall be sent to legal@banking.state.nh.us.

18 10. Respondents shall immediately place any monies and fees
19 previously collected from New Hampshire consumers relative to
20 any existing or pending mortgage loan or application received
21 by the date of this Order to Show Cause and Cease and Desist
22 Order in a separate escrow account maintained at a federally
23 insured bank. Within five (5) days of the date of this Cease
24 and Desist Order, Respondents shall provide written proof
25 that such monies and fees have been placed in an escrow

1 account maintained in a federally insured bank to Ms. Mary
2 Jurta, Director of Consumer Credit at
3 legal@banking.state.nh.us.

4 11. Nothing in this Order to Show Cause and Cease and Desist
5 Order shall prevent the Department from taking any further
6 administrative action under New Hampshire law.

7 12. The above named Respondents shall be jointly and severally
8 liable for the above amounts alleged in Paragraphs 1 through
9 11 above.

10 13. The above named Respondents shall show cause why, in addition
11 to the penalties listed in Paragraphs 1 through 12 above,
12 Respondent Financial Resources' license should not be
13 revoked;

14 It is hereby further ORDERED that:

15 14. Along with the administrative penalties listed for the above
16 named Respondents, any rescission, restitution or
17 disgorgement of profits shall be immediately paid; and

18 15. Failure to request a hearing within 30 days of the date of
19 receipt or valid delivery of this Order shall result in a
20 default judgment being rendered and administrative penalties
21 imposed upon the defaulting Respondent(s).

22 SIGNED,

23
24 Dated: 11/13/09

/s/

PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-127
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) November 13, 2009
)
 6 and)
)
 7 Financial Resources Mortgage, Inc.)
)
 8 (f/k/a Financial Resources & Assistance)
)
 9 of The Lakes Region, Inc. and f/k/a)
)
 10 Financial Resources National, Inc.),)
)
 11 and Scott D. Farah,)
)
 12 Respondents)

13 I. STATEMENT OF ALLEGATIONS

14 The Staff of the Banking Department, State of New Hampshire (hereinafter
15 "Department") alleges the following facts:

16 Facts Common on All Counts:

- 17 1. Respondent Financial Resources Mortgage, Inc. (f/k/a Financial
18 Resources & Assistance of The Lakes Region, Inc. and f/k/a
19 Financial Resources National, Inc.) (hereinafter "Respondent
20 Financial Resources") has been licensed as a Mortgage Banker from
21 at least May 18, 1989 (with an amended license date of October
22 30, 2008).
- 23 2. Respondent Scott D. Farah (hereinafter "Respondent Farah") is the
24 100% owner, Chief Executive Officer, President and control person
25 of Respondent Financial Resources.

1 Violation of RSA 397-A:3,II Loan Originator Operating Without a License (1
2 Count):

3 Violation of RSA 397-A:3,III Employment of Unlicensed Loan Originator (1
4 Count):

5 3. Paragraphs 1 through 2 are hereby realleged as fully set forth
6 herein.

7 4. Respondent Farah is not licensed in either NMLS or with the
8 Department as a loan originator as is required under the current
9 law.

10 5. Respondent Farah failed to ensure he was properly licensed as a
11 mortgage loan originator prior to continuing his relationship
12 with Respondent Financial Resources.

13 6. Respondent Financial Resources failed to ensure Respondent Farah
14 was a licensed mortgage loan originator prior to maintaining his
15 employment.

16 Violation of Gramm-Leach-Bliley Act, Title V, Section 501(a) via RSA 397-
17 A:2,III (1 Count):

18 Violation of RSA 397-A:11,I Record Keeping: Failure to Properly Maintain
19 Records (1 Count):

20 Violation of RSA 397-A:11,IV Record Keeping: Failure to Preserve Original
21 Records (1 Count):

22 7. Paragraphs 1 through 6 are hereby realleged as fully set forth
23 herein.

24 8. The Department conducted an un-announced examination of Respondent
25 Financial Resources on November 10, 2009 and discovered the

1 office was closed but one of the entrances was unlocked.

2 9. Upon examination, the Department Examiners noticed Shred-It Bins
3 located in the office.

4 10. The Shred-It Bins contained numerous loan documents, including
5 entire loan files and appraisals, as well as financial records.

6 11. The documents in the Shred-It Bins may have been originals, which
7 Respondents are required to preserve.

8 **Violation of RSA 397-A:10, III Failure to Provide Notification of Closing (1**
9 **Count) :**

10 12. Paragraphs 1 through 10 are hereby realleged as fully set forth
11 herein.

12 13. Respondents were required by statute to provide ten (10) business
13 days notice to the Department prior to the effective date of the
14 office closure.

15 14. To date, Respondents still have not provided actual notice to the
16 Department of such closure.

17 **II. ISSUES OF LAW**

18 The staff of the Department alleges the following issues of law:

19 1. The Department realleges the above stated facts in Paragraphs 1
20 through 14 as fully set forth herein.

21 2. The Department has jurisdiction over the licensing and regulation
22 of persons engaged in mortgage banker or broker activities
23 pursuant to NH RSA 397-A:2 and RSA 397-A:3.

24 3. RSA 397-A:2, III requires persons subject to or licensed under RSA
25 Chapter 397-A to abide by applicable federal laws and regulations,

1 the laws and rules of the State of New Hampshire, and the orders
2 of the Commissioner. Any violation of such law, regulation, order,
3 or rule is a violation of RSA Chapter 397-A. Each of the above
4 named Respondents violated this statute on at least one occasion
5 as alleged above.

6 4. RSA 397-A:10,III provides that licensees shall provide written
7 notice to the Department of any proposed closing of any licensed
8 office no later than ten (10) business days prior to the effective
9 date of such change or closure. Each of the above named
10 Respondents violated this provision on at least one occasion as
11 alleged above.

12 5. RSA 397-A:3,II provides that it is unlawful for any individual to
13 transact business in this state as an originator unless such
14 individual is licensed under RSA Chapter 397-A. Further, the
15 originator's license is only in effect when such originator is
16 associated with a particular licensed mortgage banker or mortgage
17 broker. Each of the above named Respondents violated this
18 provision on at least one occasion as alleged above.

19 6. RSA 397-A:3,III provides that it is unlawful for any mortgage
20 banker or mortgage broker to employ, retain, or otherwise engage
21 an originator unless the originator is licensed. Each of the
22 above named Respondents violated this provision on at least one
23 occasion as alleged above.

24 7. The Gramm-Leach-Bliley Act, Title V, Sec. 501(a) states that it is
25 the policy of the Congress that each financial institution has an

1 affirmative and continuing obligation to respect the privacy of
2 its customers and to protect the security and confidentiality of
3 those customers' nonpublic personal information. Each of the
4 above named Respondents violated this provision on at least one
5 occasion as alleged above.

6 8. RSA 397-A:11,I provides that the licensee shall maintain such
7 records as will enable the department to determine whether the
8 licensee's business is in compliance with the provisions of this
9 chapter and the rules adopted pursuant to it. Such records shall
10 be maintained in a readily accessible location and made available
11 for examination at the licensee's New Hampshire principal office
12 or its New Hampshire branch office location or the office of its
13 New Hampshire agent for a period of at least 3 years after the
14 loan is closed, if the loan is not retained in the licensee's loan
15 portfolio, or 3 years after the loan is paid in full, if the loan
16 is retained in the licensee's loan portfolio. Licensees may
17 maintain photocopies, microfilm, or microfiche copies of original
18 documents. Each of the above named Respondents violated this
19 provision on at least one occasion as alleged above.

20 9. RSA 397-A:11,IV provides that licensees must preserve all original
21 business records for as long as the commissioner shall prescribe.
22 Each of the above named Respondents violated this provision on at
23 least one occasion as alleged above.

24 10. RSA 397-A:17 provides the Banking Department of the State of New
25 Hampshire (hereinafter the "Department") has the authority to

1 issue an order to show cause why license revocation and penalties
2 for violations of New Hampshire Banking laws should not be
3 imposed.

4 11. RSA 397-A:17,II(a) provides the Commissioner has the authority to
5 order or direct persons subject to RSA Chapter 397-A to cease and
6 desist from conducting business, including immediate temporary
7 orders to cease and desist.

8 12. RSA 397-A:17,II(b) provides the Commissioner has the authority to
9 order or direct persons subject to RSA Chapter 397-A to cease any
10 harmful activities or violations of RSA Chapter 397-A, including
11 immediate temporary orders to cease and desist.

12 13. RSA 397-A:17,II(c) provides the Commissioner has the authority to
13 enter immediate temporary orders to cease business under a
14 license if the Commissioner has determined that such license was
15 erroneously granted or the licensee is currently in violation of
16 RSA Chapter 397-A, or rules or order thereunder.

17 14. RSA 397-A:17,I provides in part that the Commissioner may by
18 order, upon due notice and opportunity for hearing, assess
19 penalties or deny, suspend, or revoke a license or application if
20 it is in the public interest and the applicant, respondent, or
21 licensee, any partner, officer, member, or director, any person
22 occupying a similar status or performing similar functions, or
23 any person directly or indirectly controlling the applicant,
24 respondent, or licensee: (a) has violated any provision of RSA
25 Chapter 397-A or rules thereunder, or (b) has not met the

standards established in RSA Chapter 397-A.

15. RSA 397-A:17,II(e) (1) provides that the Commissioner may issue an order or directive to remove or ban from office or employment, including license revocation, any person conducting business under RSA Chapter 397-A who violates RSA Chapter 397-A.

16. RSA 397-A:17,VIII provides that in addition to any other penalty provided for under RSA Chapter 397-A or RSA 383:10-d, after notice and opportunity for hearing, the Commissioner may enter an order of rescission, restitution, or disgorgement of profits directed to a person who has violated RSA Chapter 397-A, or a rule or order thereunder.

17. RSA 397-A:17,IX provides that in addition to any other penalty provided for under RSA Chapter 397-A, after notice and opportunity for hearing, the Commissioner may assess fines and penalties against a mortgage loan originator in an amount not to exceed \$25,000.00 if the Commissioner finds the mortgage loan originator has violated or failed to comply with the S.A.F.E. Mortgage Licensing Act of 2008, Public Law 110-289, Title V or any regulation or order issued thereunder.

18. RSA 397-A:17,X provides an action to enforce any provision of RSA Chapter 397-A shall be commenced within 6 years after the date on which the violation occurred.

19. RSA 397-A:18,I provides that the Department may issue a complaint setting forth charges whenever the Department is of the opinion that the licensee or person over whom the Department has

1 jurisdiction, has violated any provision of RSA Chapter 397-A or
2 orders thereunder.

3 20. Pursuant to RSA 397-A:18,II, the Department has the authority to
4 issue and cause to be served an order requiring any person
5 engaged in any act or practice constituting a violation of RSA
6 Chapter 397-A or any rule or order thereunder, to cease and
7 desist from violations of RSA Chapter 397-A.

8 21. RSA 397-A:21,IV provides that any person who, either knowingly or
9 negligently, violates any provision of RSA Chapter 397-A, may
10 upon hearing, and in addition to any other penalty provided for
11 by law, be subject to an administrative fine not to exceed
12 \$2,500.00, or both. Each of the acts specified shall constitute
13 a separate violation, and such administrative action or fine may
14 be imposed in addition to any criminal penalties or civil
15 liabilities imposed by New Hampshire Banking laws.

16 22. RSA 397-A:21,V provides that every person who directly or
17 indirectly controls a person liable under this section, every
18 partner, principal executive officer or director of such person,
19 every person occupying a similar status or performing a similar
20 function, every employee of such person who materially aids in the
21 act constituting the violation, and every licensee or person acting
22 as a common law agent who materially aids in the acts constituting
23 the violation, either knowingly or negligently, may, upon notice
24 and opportunity for hearing, and in addition to any other penalty
25 provided for by law, be subject to suspension, revocation, or

1 denial of any registration or license, including the forfeiture of
2 any application fee, or the imposition of an administrative fine
3 not to exceed \$2,500, or both. Each of the acts specified shall
4 constitute a separate violation, and such administrative action or
5 fine may be imposed in addition to any criminal or civil penalties
6 imposed.

7 **III. RELIEF REQUESTED**

8 The staff of the Department requests the Commissioner take the following
9 action:

- 10 1. Find as fact the allegations contained in section I of this Staff
11 Petition;
- 12 2. Make conclusions of law relative to the allegations contained in
13 section II of this Staff Petition;
- 14 3. Pursuant to RSA 397-A:17,II (a), (b) and (c) and RSA 397-A:18,II,
15 order the above named Respondents and any and all officers,
16 members, managers, employees, independent contractors, or agents,
17 operating on behalf of Respondent Financial Resources and its
18 successors or assigns (collectively "Financial Resources") to
19 cease and desist from conducting business;
- 20 4. Pursuant to RSA 397-A:17,II (a), (b) and (c) and RSA 397-A:18,II,
21 order the above named Respondents and any and all officers,
22 members, managers, employees, independent contractors, or agents,
23 operating on behalf of Respondent Financial Resources and its
24 successors or assigns (collectively "Financial Resources") to
25

1 cease and desist violating New Hampshire state law and federal
2 law;

3 5. Pursuant to RSA 397-A:17,II (a),(b) and (c) and RSA 397-A:18,II,
4 order the above named Respondents and any and all officers,
5 members, managers, employees, independent contractors, or agents,
6 operating on behalf of Respondent Financial Resources and its
7 successors or assigns (collectively "Financial Resources") to
8 cease and desist destroying documents;

9 6. Pursuant to RSA 397-A:17,II (a),(b) and (c) and RSA 397-A:18,II,
10 order the above named Respondents and any and all officers,
11 members, managers, employees, independent contractors, or agents,
12 operating on behalf of Respondent Financial Resources and its
13 successors or assigns (collectively "Financial Resources") to
14 cease and desist from directly or indirectly advising, directing
15 or ordering former employees and independent contractors from
16 taking files;

17 7. Pursuant to RSA 397-A:17, order each of the above named
18 Respondents to show cause why their license should not be revoked;

19 8. Pursuant to RSA 397-A:17,II(e)(1), order Respondent Farah to show
20 cause why he should not be banned or removed from office;

21 9. Pursuant to RSA 397-A:17,VIII, order Respondents to rescind, give
22 restitution, or disgorge profits;

23 10. Pursuant to RSA 397-A:17,IX, order Respondent Farah to show
24 cause why he should not be assessed an additional penalty not to
25 exceed \$25,000.00.

