

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 09-128  
 )  
 3 State of New Hampshire Banking )  
 )  
 4 Department, )  
 )  
 5 Petitioner, ) Cease and Desist Order  
 )  
 6 and )  
 )  
 7 C L and M, Inc. (a/k/a Commercial )  
 )  
 8 Project Loan Servicing), and Donald E. )  
 )  
 9 Dodge, )  
 )  
 10 Respondents )

---

11 NOTICE OF ORDER

12 This Cease and Desist Order commences an adjudicative proceeding under  
13 the provisions of RSA Chapter 397-B and RSA Chapter 541-A.

14 LEGAL AUTHORITY AND JURISDICTION

15 Pursuant to RSA 397-B:3,VIII, the Commissioner has the authority to  
16 issue a cease and desist order against any registrant or person whom he  
17 believes is in violation of the provisions of RSA Chapter 397-B or any rule  
18 or order thereunder.

19 Pursuant to RSA 397-B:4,I(a), any mortgage servicing company which  
20 services first or second mortgage loans secured by real property located in  
21 the state of New Hampshire shall be required to register with the Banking  
22 Department ("Department").

23 Pursuant to RSA 397-B:6,II and RSA 397-B:3,IX, the Commissioner has  
24 the authority to suspend, revoke or deny any registration or application,  
25 bar any person from registration and to impose administrative penalties of

1 up to \$2,500.00 for each violation of New Hampshire banking law and rules.

2 Pursuant to RSA 397-B:6,I violations of RSA 397-B (escrow accounts)  
3 by the mortgage servicer will make the mortgage servicer liable to the  
4 mortgagor for: (a) any penalties, interest, or other charges levied by the  
5 taxing authority or insurance company as a result of such violation; and  
6 (b) any actual damages suffered by the mortgagor as a result of such  
7 violation, including, but not limited to, late payment penalties and  
8 associated interest, and any amount which would have been paid by an  
9 insurer for a casualty or liability claim had the insurance policy not been  
10 cancelled for nonpayment by the mortgage servicing company; and (c) in the  
11 case of any successful action to enforce the foregoing liability, the costs  
12 of the action, together with reasonable attorney's fees as determined by  
13 the court.

14 Pursuant to RSA 397-B:3,III the Commissioner may issue, amend, or  
15 rescind such orders as are reasonably necessary to comply with the  
16 provisions of RSA Chapter 397-A.

17 Pursuant to RSA 397-B:9, the Department may make such public or  
18 private investigations within or outside New Hampshire as it deems necessary  
19 to determine compliance with RSA Chapter 397-B and the rules adopted  
20 thereunder.

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

1 may order restitution for a person or persons adversely affected by such  
2 conduct.

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

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

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

1                   STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF

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

4                                   ORDER

5           WHEREAS, finding it necessary and appropriate and in the public  
6 interest, and consistent with the intent and purposes of the New Hampshire  
7 banking laws; and

8           WHEREAS, finding that the allegations contained in the Staff Petition,  
9 if proved true and correct, form the legal basis of the relief requested;

10          It is hereby ORDERED, that:

- 11               1. Respondents and any and all officers, members, managers,  
12               employees, independent contractors, or agents, operating on  
13               behalf of Respondent C L and M, Inc. and its successors or  
14               assigns (collectively "C L and M") are hereby ordered to  
15               cease and desist from conducting business;
- 16               2. Respondents and any and all officers, members, managers,  
17               employees, independent contractors, or agents, operating on  
18               behalf of Respondent C L and M and its successors or assigns  
19               (collectively "C L and M") are hereby ordered to cease and  
20               desist from violating New Hampshire state law and federal  
21               law;
- 22               3. Respondents and any and all officers, members, managers,  
23               employees, independent contractors, or agents, operating on  
24               behalf of Respondent C L and M and its successors or assigns

1 (collectively "C L and M") are hereby ordered to cease and  
2 desist from destroying documents;

3 4. Respondents and any and all officers, members, managers,  
4 employees, independent contractors, or agents, operating on  
5 behalf of Respondent C L and M and its successors or assigns  
6 (collectively "C L and M") are hereby ordered to cease and  
7 desist from directly or indirectly advising, directing or  
8 ordering former employees and independent contractors from  
9 taking files;

10 5. Respondent C L and M, Inc. (a/k/a Commercial Project Loan  
11 Servicing) ("Respondent C L and M") shall show cause why  
12 penalties in the amount of \$10,000.00 should not be imposed  
13 against it;

14 6. Respondent Donald E. Dodge ("Respondent Dodge") shall show  
15 cause why penalties in the amount of \$10,000.00 should not be  
16 imposed against him;

17 7. Respondent Financial Resources shall provide within five (5)  
18 business days of this Cease and Desist Order an accurate  
19 consumer accounts list\*\* for the following categories of  
20 loans for New Hampshire consumers and/or for the loans on New  
21 Hampshire real estate which Respondent C L and M services:

22 \*\*The consumer accounts list shall include the following information:

23 i. the name, address and telephone number of the  
24 consumer;

25 ii. the address of the of the subject property;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

- iii. the loan number;
- iv. the amount of all prepaid loan fees submitted by the consumer;
- v. the amount of each loan;
- vi. status of the loan;
- vii. the purpose of the loan (i.e., purchase or refinance);
- viii. contact information for the broker and/or lender who referred the loan to Respondent C L and M;
- ix. contact information for anyone who referred the loan to Respondent C L and M to service;
- x. status of what is being done with the loan;
- xi. the amount of any charges and/or fees charged to and collected from consumers, including those in escrow for the payment of taxes and insurance premiums;
- xii. contact information for Respondent C L and M.

\*\* This consumer accounts list shall be updated every Monday at 9:00 a.m. Eastern Standard Time and the updates shall be sent to Mary Jurta at legal@banking.state.nh.us. Respondents shall continue to update the consumer accounts list until all of the servicing of such loans has been accounted, placed with another servicer, or withdrawn by the consumer. Respondents shall ensure that the consumer is in the same position with the new servicer if the loan had Respondents continued to service the loans.

- 1           8. Within five (5) days of the date of this Cease and Desist  
2           Order, Respondents shall submit to the Department  
3           Respondents' balance sheet and year-to-date income statement,  
4           prepared as of the date of submission, and attested by a duly  
5           authorized officer of the Corporation. The balance sheet  
6           shall indicate Respondents' cash position at each of its  
7           depository banks as well as Respondents' bank account  
8           information. The balance sheet and year-to-date statement  
9           shall be sent to Ms. Mary Jurta at [legal@banking.state.nh.us](mailto:legal@banking.state.nh.us).  
10          This should also include all escrow accounts held, serviced  
11          or managed by Respondents on behalf of its consumer clients.
- 12          9. Respondents shall immediately place any monies received by  
13          the date of this Cease and Desist Order in a separate escrow  
14          account maintained at a federally insured bank. Within five  
15          (5) days of the date of this Cease and Desist Order,  
16          Respondents shall provide written proof that funds have been  
17          placed in an escrow account maintained in a federally insured  
18          bank to Ms. Mary Jurta, Director of Consumer Credit at  
19          [legal@banking.state.nh.us](mailto:legal@banking.state.nh.us).
- 20          10. Nothing in this Cease and Desist Order shall prevent the  
21          Department from taking any further administrative action  
22          under New Hampshire law.
- 23          11. The above named Respondents shall be jointly and severally  
24          liable for the above amounts alleged in Paragraphs 1 through  
25          10 above.





1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 09-128  
 )  
 3 State of New Hampshire Banking )  
 )  
 4 Department, ) Staff Petition  
 )  
 5 Petitioner, ) November 13, 2009  
 )  
 6 and )  
 )  
 7 C L and M, Inc. (a/k/a Commercial )  
 )  
 8 Project Loan Servicing), and Donald E. )  
 )  
 9 Dodge, )  
 )  
 10 Respondents )

11 I. STATEMENT OF ALLEGATIONS

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

14 Facts Common on All Counts:

- 15 1. Respondent C L and M, Inc. (a/k/a Commercial Project Loan
- 16 Servicing) (hereinafter "Respondent C L and M") is an
- 17 unregistered mortgage servicing company.
- 18 2. Respondent Donald E. Dodge (hereinafter "Respondent Dodge") is
- 19 the 100% owner, President and control person of Respondent C L
- 20 and M.

21 Violation of RSA 397-B:4,I(a) Operating without a Mortgage Servicer

22 Registration (4 Counts):

- 23 3. Paragraphs 1 through 2 are hereby realleged as fully set forth
- 24 herein.
- 25 4. Department Examiners have discovered at least four mortgage

1 residential loans serviced by the above named Respondents.

2 5. The amount of restitution is yet to be determined, but the four  
3 consumers shall be hereby known as Consumer A, Consumer B,  
4 Consumer C, and Consumer D.

5 **II. ISSUES OF LAW**

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

7 1. The Department realleges the above stated facts in Paragraphs 1  
8 through 5 as fully set forth herein.

9 2. The Department has jurisdiction over the licensing and regulation  
10 of persons engaged in mortgage servicing pursuant to NH RSA 397-  
11 B:2.

12 3. RSA 397-B:3,III provides the Commissioner may issue, amend, or  
13 rescind such orders as are reasonably necessary to comply with the  
14 provisions of RSA Chapter 397-A.

15 4. RSA 397-B:3,VIII provides that the Commissioner has the authority  
16 to issue a cease and desist order against any registrant or person  
17 whom he believes is in violation of the provisions of RSA Chapter  
18 397-B or any rule or order thereunder.

19 5. RSA 397-B:4,I(a) provides that any mortgage servicing company  
20 which services first or second mortgage loans secured by real  
21 property located in the state of New Hampshire shall be required  
22 to register with the Department. Each of the above named  
23 Respondents violated this provision on at least four (4) occasions  
24 as alleged above.

25 6. RSA 397-B:6,II and RSA 397-B:3,IX provide the Commissioner has the

1 authority to suspend, revoke or deny any registration or  
2 application, bar any person from registration and to impose  
3 administrative penalties of up to \$2,500.00 for each violation of  
4 New Hampshire banking law and rules.

5 7. RSA 397-B:6,I provides violations of RSA 397-B (escrow accounts)  
6 by the mortgage servicer will make the mortgage servicer liable to  
7 the mortgagor for: (a) any penalties, interest, or other charges  
8 levied by the taxing authority or insurance company as a result of  
9 such violation; and (b) any actual damages suffered by the  
10 mortgagor as a result of such violation, including, but not  
11 limited to, late payment penalties and associated interest, and  
12 any amount which would have been paid by an insurer for a casualty  
13 or liability claim had the insurance policy not been cancelled for  
14 nonpayment by the mortgage servicing company; and (c) in the case  
15 of any successful action to enforce the foregoing liability, the  
16 costs of the action, together with reasonable attorney's fees as  
17 determined by the court.

18 8. RSA 397-B:9 provides the Department may make such public or  
19 private investigations within or outside New Hampshire as it deems  
20 necessary to determine compliance with RSA Chapter 397-B and the  
21 rules adopted thereunder.

22 9. RSA 397-B:3,IX provides in part that the Commissioner may by  
23 order, upon due notice and opportunity for hearing, assess  
24 penalties or deny, suspend, or revoke a registration or  
25 application if it is in the public interest and the applicant,

1           respondent, or registrant, any partner, officer, member, or  
2           director, any person occupying a similar status or performing  
3           similar functions, or any person directly or indirectly  
4           controlling the applicant, respondent, or registrant: (a) has  
5           violated any provision of RSA Chapter 397-B or rules thereunder,  
6           or (b) has not met the standards established in RSA Chapter 397-  
7           B.

8           10. RSA 397-B:6,II provides that any person who, either knowingly or  
9           negligently, violates any provision of RSA Chapter 397-B, 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          11. RSA 397-B:6,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 registrant or person  
22          acting as a common law agent who materially aids in the acts  
23          constituting the violation, either knowingly or negligently, may,  
24          upon notice and opportunity for hearing, and in addition to any  
25          other penalty provided for by law, be subject to suspension,

1 revocation, or denial of any registration or license, including the  
2 forfeiture of any application fee, or the imposition of an  
3 administrative fine not to exceed \$2,500, or both. Each of the  
4 acts specified shall constitute a separate violation, and such  
5 administrative action or fine may be imposed in addition to any  
6 criminal or civil penalties 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-B:3,VIII, order the above named Respondents  
15 and any and all officers, members, managers, employees,  
16 independent contractors, or agents, operating on behalf of  
17 Respondent C L and M and its successors or assigns (collectively  
18 "C L and M") to cease and desist from conducting business;
- 19 4. Pursuant to RSA 397-B:3,VIII, order the above named Respondents  
20 and any and all officers, members, managers, employees,  
21 independent contractors, or agents, operating on behalf of  
22 Respondent C L and M and its successors or assigns (collectively "  
23 C L and M") to cease and desist violating New Hampshire state law  
24 and federal law;
- 25 5. Pursuant to RSA 397-B:3,VIII, order the above named Respondents

1 and any and all officers, members, managers, employees,  
2 independent contractors, or agents, operating on behalf of  
3 Respondent C L and M and its successors or assigns (collectively  
4 "C L and M") to cease and desist destroying documents;

5 6. Pursuant to RSA 397-B:3,VIII, order the above named Respondents  
6 and any and all officers, members, managers, employees,  
7 independent contractors, or agents, operating on behalf of  
8 Respondent C L and M and its successors or assigns (collectively  
9 "C L and M") to cease and desist from directly or indirectly  
10 advising, directing or ordering former employees and independent  
11 contractors from taking files;

12 7. Pursuant to RSA 397-B:6,II and 397-B:3,IX, order Respondent Dodge  
13 to show cause why he should not be banned or removed from office;

14 8. Pursuant to RSA 397-B:3,IX, order Respondents to rescind, give  
15 restitution, or disgorge profits;

16 9. Assess fines and administrative penalties in accordance with RSA  
17 397-B:6,II, for violations of RSA Chapter 397-B, in the number and  
18 amount equal to the violations set forth in section II of this  
19 Staff Petition; and

20 10. Take such other administrative and legal actions as necessary for  
21 enforcement of the New Hampshire Banking Laws, the protection of  
22 New Hampshire citizens, and to provide other equitable relief.

