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State of New Hampshire Banking Department

In the Matter of:)	Case No.: 09-129
)	
State of N.H. Banking Department)	
)	
and)	
)	
Proficio Mortgage Ventures, LLC;)	
)	
Proficio Bank; NHB Holdings;)	Consent Order as to all Respondents
)	
Alan H. Verch; Patricia A. Freeman;)	
)	
Andrew A. Verhovec, Sr.;)	
)	
Donald Wayne LaPlume;)	
)	
Brian D. Battersby; Stephen Craig)	
)	
Whitney, and Steven Lee Hurd.)	
)	

Respondents

CONSENT ORDER

The State of New Hampshire Banking Department (the Department) finds and Orders as follows:

Respondents

1. Proficio Mortgage Ventures, LLC (Proficio Mortgage) is a Delaware limited liability company with principal offices at 105 E. Robinson, Suite 220, Orlando, FL 32801. It is a subsidiary of Proficio Bank and is engaged in the business of mortgage lending. Proficio Mortgage has continuously held a New Hampshire mortgage banker license since July 19, 2007. On or about August 26, 2009, Proficio Mortgage applied to the Department for a Claremont, New Hampshire branch license. That application remains pending.
2. Proficio Bank (Proficio Bank) is a Utah state chartered, non-member depository institution with principal offices at 420 East South Temple, Suite 520, Salt Lake City, UT 84111. Proficio Bank is regulated by the State of Utah and the Federal

1 Deposit Insurance Corporation. It is the parent company of Proficio Mortgage and
2 has the power, directly or indirectly, to direct the management and policies of
3 Proficio Mortgage. *See* RSA 397-A:1, V-a.

- 4 3. NHB Holdings Inc. (NHB Holdings) is a Florida corporation with principal offices
5 at 6622 Southpoint Drive So., Suite 155, Jacksonville, FL. It is the parent company
6 of Proficio Bank and has the power, directly or indirectly, to direct the management
7 and policies of Proficio Mortgage. *See* RSA 397-A:1, V-a.
- 8 4. Donald Wayne LaPlume, Brian David Battersby, Stephen Craig Whitney, and
9 Steven Lee Hurd were “registered mortgage loan originators”. *See* RSA 397-A:1
10 XXI-a. Each was an employee who acted for Proficio Mortgage, and each was an
11 employee of Proficio Mortgage for all relevant time periods in the Complaint and
12 Show Cause Order alleging unlawful conduct on their part. *See* RSA 397-A:4.
- 13 5. Patricia A. Freeman, Andrew A. Verhovec, Sr., and Alan H. Verch were senior
14 officers with Proficio Mortgage.

15 **Jurisdiction**

- 16 6. The commissioner has jurisdiction to revoke, deny, or suspend a license of a
17 licensee and/or assess fines, penalties, and costs and order restitution pursuant RSA
18 397-A:1, *et seq.* and, more specifically, RSA 397-A:3; RSA 397-A:17, and RSA
19 397-A:21.
- 20 7. The commissioner may, issue, amend, or rescind such orders as are reasonably
21 necessary to carry out the provisions of RSA 397-A. RSA 397-A:20, IV.
- 22 8. The commissioner may, for good cause shown, abate all or a portion of fees or
23 delinquency penalties assessed under RSA 397-A. RSA 397-A:20, V.
- 24 9. All actions taken by the commissioner pursuant to RSA 397-A shall be taken only
25 when the commissioner finds such action necessary or appropriate to the public
interest or for the protection of consumers and consistent with the purposes fairly
intended by the policy and provisions of New Hampshire Banking Law. RSA 397-
A:20, VI.

- 1 10. Each Respondent is a “Person” within the meaning of RSA 397-A:1, XVIII.
- 2 11. Proficio Bank is the direct owner of Proficio Mortgage and NHB Bank is the direct
- 3 owner of Proficio Bank. Each such direct owner is presumed to be a control
- 4 person. RSA 397-A:1, V-a, and VI-a.

5 **Statement of Facts**

- 6 12. Premier Mortgage Capital, Inc. (Premier) was a mortgage banker and formerly held
- 7 a New Hampshire mortgage banker license as early as October 11, 2007. It
- 8 operated a branch office in Claremont, New Hampshire. Premier’s mortgage banker
- 9 license was revoked by the Department on July 28, 2009 by Default Order.
- 10 13. On or about June 30, 2009, Proficio Mortgage undertook, by agreement with
- 11 Premier, to (a) integrate Premier’s operating systems and facilities (including but
- 12 not limited to its Claremont, New Hampshire branch office); (b) hire former Premier
- 13 personnel, including but not limited to Respondents LaPlume, Whitney, Battersby,
- 14 and Hurd; and (c) process pending loan applications and close those loans.
- 15 14. From July 31, 2009 (at which time RSA 397-A:3, IV came into effect mandating
- 16 that branch office locations shall obtain a license prior to conducting business) until
- 17 the cessation of its New Hampshire business in March 2010, Proficio Mortgage
- 18 originated and processed not less than nineteen (19) mortgage loans from an
- 19 unlicensed branch office. *See* RSA 397-A:3, IV (eff. July 31, 2009).
- 20 15. Each of the mortgage loans discussed in the March 30, 2010 Staff Complaint was
- 21 processed in-house by Proficio Mortgage, not by a third party processor.
- 22 16. On or about October 26, 2009, the Department conducted a scheduled examination
- 23 in Florida of the business affairs of Proficio Mortgage. *See* RSA 397-A:12.
- 24 Proficio Mortgage was open and forthcoming in the course of the examination with
- 25 respect to its efforts to comply with RSA 397-A:3, IV (eff. July 31, 2009).
17. On January 11, 2010, the Department mailed its December 4, 2009 Report of
- Examination to Proficio Mortgage, along with an Invoice for \$21,653.90. By check
- dated February 10, 2010 and posted by the Department on February 23, 2010,
- Proficio Mortgage made timely payment of the Invoice.

1 18. On March 30, 2010 the Department issued an Order to Show Cause and Cease and
2 Desist Order, along with a Staff Complaint against Respondents.

3 19. Pierce Atwood LLP thereafter appeared on behalf of each of the Respondents,
4 requested a hearing and waived the requirement that it take place within ten (10)
5 days.

6 **Violation(s) of Law**

7 **Proficio Mortgage:** 1 Count each for failure to supervise employees LaPlume,
8 Battersby, and Whitney, for a total of 3 Counts.
9 RSA 397-A:6, I

10 1 Count for each loan originated, for a total of 19 Counts
11 of conducting business at an unlicensed branch.

12 RSA 397-A:3, I.

13 **Proficio Bank:** 1 Count of failure to supervise.
14 RSA 397-A:21, V.

15 **NHB Holdings:** 1 Count of failure to supervise.
16 RSA 397-A:21, V.

17 **Respondents' Consent**

18 20. The Respondents agree to the entry of this Consent Order.

19 21. The Respondents knowingly waive their right of hearing and appeal.

20 **Order**

21 22. **Whereas**, the Commissioner finds there is sufficient evidence in the record for a
22 finding that Respondent Proficio Mortgage and, by virtue of their control of
23 Proficio Mortgage, Proficio Bank and NHB Holdings failed to comply with New
24 Hampshire law; and

25 23. **Whereas**, the Commissioner finds this Consent Order necessary, appropriate, in the
public's best interest, and consistent with the purposes of New Hampshire banking
laws.

1 **24. Now Therefore, it is Ordered:**

- 2 a. This case is dismissed as to Alan H. Verch, Patricia A. Freeman and
3 Andrew A. Verhovec, Sr., as each sustained the burden of proof that he or
4 she neither knew nor should have known of the existence of facts by reason
5 of which the liability is alleged to exist. This case is dismissed as to Donald
6 Wayne LaPlume, Brian David Battersby, Stephen Craig Whitney, and
7 Steven Lee Hurd, as each was an employee of a subsidiary of a federally
8 regulated bank and a registered loan originator.
- 9 b. Proficio Mortgage having timely paid the January 11, 2010 Invoice that
10 accompanied the December 4, 2009 Report of Examination, that portion of
11 the Staff Complaint which states that Proficio Mortgage failed to make
12 timely payment thereof is dismissed.
- 13 c. Each of the mortgage loans discussed in the March 30, 2010 Staff
14 Complaint having been processed in-house by Proficio Mortgage, not by a
15 third party processor, that portion of the Staff Complaint which states that
16 Proficio Mortgage used the services of an unlicensed third party processor
17 is dismissed.
- 18 d. Proficio Mortgage shall pay to the Department the sum of seven thousand
19 five hundred dollars (\$7,500) (3 counts x \$2,500), as an administrative fine,
20 for its failure to supervise employees, agents, loan originators and branch
21 officers, contrary to RSA 397-A:6, I.
- 22 e. Proficio Mortgage shall pay to the Department the sum of forty-seven
23 thousand five hundred dollars (\$47,500) (19 counts x \$2,500), as an
24 administrative fine, for conducting business without a valid branch license
25 on and after July 31, 2009, contrary to RSA 397-A:14, IV(d).

- 1 f. Proficio Bank shall pay to the Department the sum of two thousand five
2 hundred dollars (\$2,500) (1 count x \$2,500), as an administrative fine, for
3 its failure to supervise, pursuant to RSA 397-A:21, V.
- 4 g. NHB Holdings shall pay to the Department the sum of two thousand five
5 hundred dollars (\$2,500) (1 count x \$2,500), as an administrative fine, for
6 its failure to supervise, pursuant to RSA 397-A:21, V.
- 7 h. The public having suffered no material harm on account of Proficio
8 Mortgage's operation of an unlicensed branch office in Claremont, New
9 Hampshire, there is no occasion for an award of restitution.
- 10 i. All payments shall be made by certified check or other guaranteed funds,
11 payable to "State of New Hampshire". Proficio Mortgage, Proficio Bank
12 and NHB Holdings shall tender such payments upon their execution and
13 delivery of this Consent Order.
- 14 j. In all other respects, the Staff Complaint is dismissed and the March 30,
15 2010 Order to Show Cause and Cease and Desist Order is vacated.

16 25. This Consent Order may be revoked and the Department may pursue any and all
17 remedies available under law if the Department later finds that the Respondents
18 knowingly or willfully withheld information that was used and relied upon in this
19 Consent Order.

20 26. This Consent Order is binding on all heirs, assigns, and/or successors in interest.

21 27. This Consent Order shall become effective on the date the Commissioner signs it.

22 28. Upon the effective date of this Consent Order, the Department shall not seek further
23 reimbursement, refunds, penalties, fines, costs, or fees regarding the facts,
24 allegations or findings set forth herein or in the March 30, 2010 Staff Petition and
25 Order to Show Cause and Cease and Desist Order.

1 **WHEREFORE**, based on the foregoing, we have set our hands to this Consent Order,
2 upon its execution by Peter C. Hildreth, Bank Commissioner.

3
4 **Entered and SO ORDERED**, this 25th day of October, 2010.

5
6
7 /s/ Robert A. Fleury for
8 Peter C. Hildreth,
9 New Hampshire Bank Commissioner
By Robert A. Fleury, Deputy Bank Commissioner

10 Executed this 21st day of October, 2010 by:

11
12 /s/
13
14 Lawrence Edelman, Esquire, as legal representative for Respondents
15 Proficio Mortgage Ventures, LLC; Proficio Bank; NHB Holdings;
16 Alan H. Verch; Patricia A. Freeman; Andrew A. Verhovec, Sr.;
17 Donald Wayne LaPlume; Brian D. Battersby; Stephen Craig Whitney;
18 and Steven Lee Hurd

19 **Mailing List**

20 State of New Hampshire Banking Department, Legal Division.
21 State of New Hampshire Banking Department, Licensing Division
22 Lawrence M. Edelman, Esquire (Counsel for Respondents)
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