



NEW HAMPSHIRE

Department of Justice

Office of the Attorney General

First Supplement

to

Report of the Attorney General
to the Governor and Executive Council

Financial Resources Mortgage, Inc.

Michael A. Delaney
Attorney General

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Associate Attorney General

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Assistant Attorney General

May 21, 2010

First Supplement to the Report of the Attorney General

The Attorney General submits this First Supplement to the Report of the Attorney General to the Governor and Executive Council on Financial Resources Mortgage, Inc. (“FRM”) dated May 12, 2010 (“Report”) to address questions that arose at the presentation of the Report to the Governor and Council.¹

In an email dated September 15, 2009, Senior Assistant Attorney General Peter Roth (“Senior AAG Roth”) alerted Deputy Bank Commissioner Robert Fleury about a “lending opportunity” advertised by FRM. Senior AAG Roth wrote: “There’s something very not right about this” and included a link to a FRM website. The property at issue was located on Clinton Street in Concord, New Hampshire. Senior AAG Roth also noted that the house described on the website was listed for sale for \$750,000, but the value stated on the website was listed at \$2,844,050 and that the appraiser involved had lost his license. A copy of the email is attached to this First Supplement.

Deputy Commissioner Fleury forwarded the email from Sr. AAG Roth to Mary Jurta, Director, Consumer Credit Division and to Kim Griffin, Supervisor of Examinations. Ms. Jurta responded to Deputy Commissioner Fleury, as well as to Commissioner Hildreth,² with comments and recommendations. She recommended that “our new AG partner head up an investigation for us and involve Securities Bureau personnel . . . and the REAB.” Ms. Jurta also described some of the things that the Banking Department knew at that time about FRM, the appraiser and the property on Clinton Street. She recommended that “. . . someone such as the new AG who knows what will be needed to prove criminal fraud should direct the investigation . . .” Ms. Jurta suggested that the Banking Department write to FRM to demand that it register as a mortgage loan originator and to suggest that it is publicly offering securities in the form of fractional interests in mortgages. Also attached to this Supplemental Report is a copy of her letter to FRM dated October 13, 2009. She did not copy Senior AAG Roth on the internal Banking emails.

These email exchanges raised questions as to what prompted the initial email from Senior AAG Roth to Banking, whom Ms. Jurta was referencing in her comment regarding the “new AG partner” and whether a criminal referral was made to DOJ. In order to respond to these questions, the DOJ interviewed Senior AAG Roth and Ms. Jurta.

In stating that “there’s something very not right about this,” Senior AAG Roth confirmed that he was referring to what appeared to him to be the utilization of a false appraisal and an attempt to sell property that, at the time, was under the control of a Chapter 7 bankruptcy trustee.

¹ This is a “First” Supplement in the event the Governor and Executive Council or the Legislature have additional questions that require additional supplements. As was noted in the Report, it was intended to outline the involvement of the respective agencies from 2000 through early 2009 when the most significant regulatory activity occurred. It did not address investigations or events occurring in 2009, the year FRM and CLM failed. Because the September 2009 email between the Department of Justice and Banking related to communications between the agencies, however, the email chain was included as an exhibit to the Report along with the other DOJ documents relating to FRM and referenced in footnote 87 of the Report.

² This email exchange occurred at a time when Mr. Hildreth was recused from involvement with FRM. The other instances in which Mr. Hildreth was involved with FRM are documented in the Report.

In September of 2009, Kevin Guay was the record title holder of the Clinton Street real estate, but he was in bankruptcy. He had filed a Voluntary Petition for Relief under Chapter 11 in September of 2008. In June 2009, the case was converted to Chapter 7. Senior AAG Roth represented the New Hampshire Department of Environmental Services (“DES”) with regard to its claim against Mr. Guay for alleged wetlands violations. Mr. Guay’s strategy involved obtaining approximately \$400,000 of interim financing for improvements to the Clinton Street property and to pay arrearages due on secured debt and utilizing the bankruptcy process to restructure approximately \$5,400,000 of loans secured by real estate. FRM was Mr. Guay’s proposed interim lender. Mr. Guay filed a motion requesting permission from the court to borrow funds on an interim basis and to secure the loan with the alleged equity in the parcel at 180 Clinton Street.

As a claimant in the bankruptcy case, the DES, through Sr. AAG Roth, opposed the interim financing. DES was concerned that the additional indebtedness would impair the debtor’s ability to repay its creditors, including DES. Senior AAG Roth also concluded that the debtor had asserted inflated values of his properties on his Schedules and Statement of Affairs as compared to the assessed values. He also determined that the license of the appraiser relied upon by the debtor had been revoked in Maine, Vermont and New Hampshire. Finally, it appeared to Senior AAG Roth that the debtor’s asserted value of the property at 180 Clinton Street of approximately \$2,000,000 was substantially inflated as compared to an assessed value of approximately \$463,000.

The bankruptcy court heard the debtor’s motion for interim financing in February 2009. Armed with the information that the appraiser’s license had been revoked, Senior AAG Roth was able to disqualify the debtor’s appraiser, which prompted the debtor to withdraw his motion. Apparently unable to find interim financing from other sources, Mr. Guay moved to dismiss his case. Sr. AAG Roth objected and convinced the court to convert the case to one under Chapter 7 so that a trustee could investigate the affairs of the debtor and determine whether his property should be liquidated for the benefit of creditors. The effect of the conversion to Chapter 7 was that all property of the debtor, including 180 Clinton Street, came under the control of a bankruptcy trustee as property of a Chapter 7 estate.

In September 2009, suspecting that the debtor, despite the conversion of his case, might still try to sell or refinance his property, Senior AAG Roth investigated the website of FRM and discovered the “lending opportunity” for the Clinton Street property, which he knew at the time was under the control of a Chapter 7 bankruptcy trustee. He also believed that the likely value of the property was substantially less than the value asserted on the FRM website and that the appraiser identified on the FRM website listing was the one who had previously lost his license. That caused Senior AAG Roth to send his email to the Banking Department based on his concern that FRM may be engaged in improper lending practices.

Ms. Jurta confirmed that her reference to “our new AG partner” in her email was to a position in the process of being created at the DOJ and funded by the Banking Department to pursue criminal and civil prosecution of banking fraud. The position was created by a Memorandum of Understanding between DOJ and the Banking Department signed in September 2009. The first person hired to fill the position started work on December 9, 2009. Thus, at the

time of the September 16, 2009 email, “our new AG partner” was contemplated but not yet hired. Banking made no criminal referral to the DOJ because, by the time the individual was hired at DOJ, FRM had already closed its doors.

The email exchanges and the events that led to them do not alter the findings or the recommendations in the Report. If anything, they support the recommendation that different regulatory agencies must work together to detect this type of fraud. Although, as was described in the Report, the Banking Department missed opportunities between 2001-2006 to revoke FRM’s license, the Banking Department did react to Senior AAG’s email. Ms. Jurta suggested a joint investigation among Banking, Securities and DOJ and then sent a cease and desist letter, while alerting Securities of the need to take action. Unfortunately, these events occurred within the two months prior to the collapse of FRM, and did not prevent the additional fraud that occurred in the final months of FRM’s operations.

From: Jurta, Mary
Sent: Wednesday, September 16, 2009 12:07 PM
To: Griffin, Kim
Subject: FW: Financial Resources Mgmt.
Hi Kim...FYI

Mary L. Jurta
Director, Consumer Credit Division
NH Banking Department
53 Regional Drive, Suite 200
Concord, NH 03301
(603) 271-3561

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From: Jurta, Mary
Sent: Wednesday, September 16, 2009 12:05 PM
To: Hidreth, Peter; Fleury, Robert
Subject: RE: Financial Resources Mgmt.

Hi Bob,

We have bits and pieces, but not a complete picture and likely no jurisdiction for most of the subject properties. I recommend that our new AG partner head up an investigation for us and involve the SOS's Securities personnel (I do not know whether the number and amount of securities being issued requires registration, but the anti-fraud provisions of RSA 421-B always apply) and the REAB. Sarah and Kim have a lot of anecdotal information to offer on the players; they can debrief Katie who can then work with our new AG. Our routine examination processes have proved fruitless for the large part, so I would recommend that someone such as the new AG who knows what will be needed to prove criminal fraud should direct the investigation (unless you want Celia and Maryam to direct the investigation).

Here are some things we presume to know:

- Most of the properties listed on the website appear to be out of state or commercial properties. There are a couple of NH properties and one, the 180 Clinton Street property, is listed as commercial although it looks like a residence. However, our new definitions (HB 610) change the paying field somewhat. If the property is to be used as a residence (it no longer has to be owner occupied) by an person and the mortgage loan is primarily for personal, family or household use, we have jurisdiction if the property is located in NH. The Dover property appears to fit this description and some of the out of state descriptions definitely fit the new definition...so there may be, or may have been, other NH properties that meet it as well.
- [redacted] is an investor/borrower who had several hidden second loans done by [redacted] (not licensed). [redacted] came in to NHBD representing [redacted] and Maryam did a consent order.
- [redacted] is a licensee whom we have examined/investigated. Any questionable loans were all out of state or commercial. We recently forwarded Residential exam information to HUD on their FHA loan activity and HUD is about to investigate in October.
- [redacted] worked for and was fired from Residential and was the one who apparently convinced [redacted] to make the second mortgage loans (for which Salem did not have a license). The [redacted] was one of the hidden seconds made in Nov. 2008.
- [redacted] was at Team and Coastal and was the person who used Paintshop to alter appraisal docs. [redacted] was made aware of [redacted] by us. It would seem that Mr. [redacted] lost his appraisal license in February he should be subject to civil and criminal penalties of signing the [redacted] appraisal in June 2009 so I would involve the REAB
- Scott Farah and Financial Resources Mortgage, Inc. (our licensee) are long known to us and Securities had an open case on him. He is currently soliciting investors and breaking the mortgages into securities (the

file://Z:\CCA Exams\Examinations\Exam Reports\2008 Reviewed ROE

Both pages

██████████ transaction has a \$100,000 minimum investment with a 12 month term and a guaranteed 15% annual return). We have poked at these types of transactions when examining Financial Resources Mortgage, Inc. and all were out of state or commercial and not within our jurisdiction. Traditionally, our issue with the company has been horrible recordkeeping. The company is represented by the Gallagher firm and Susan LeDuc has been at the recent exams. Mr. Farah has one person do his books and a CPA does his taxes...and apparently they do not communicate. The last time we threatened to have an outside firm recreate his books and records at his expense but he managed, through Susan LeDuc, to get his accountant to adequately explain their financial position, line by line, so that we could determine a net worth figure.

- When I left, Securities had an open case on Scott Farah and Financial Resources for issuing unregistered notes; I do not know the outcome. Scott Farah's Father is a pastor in the area and a lot of his parishioners invested with Scott. There were problems that hit the paper, but apparently Scott made them whole and the issue/case faded.

What do you think? - Mary

Mary L. Jurta
 Director, Consumer Credit Division
 NH Banking Department
 53 Regional Drive, Suite 200
 Concord, NH 03301
 (603) 271-3561

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From: Fleury, Robert
Sent: Tuesday, September 15, 2009 4:09 PM
To: Jurta, Mary; Griffin, Kim
Subject: FW: Financial Resources Mgmt.

Robert A. Fleury
 Deputy Bank Commissioner

From: Roth, Peter [mailto:Peter.Roth@doj.nh.gov]
Sent: Tuesday, September 15, 2009 3:54 PM
To: Fleury, Robert
Subject: Financial Resources Mgmt.

Bob

See attached from <https://www.privateloanopportunities.com/?key=5200938c>

██████████ lost his appraisal license in NH in February.

This house is listed with MLS for \$750,000.

There's something very not right about this...

the owner, [REDACTED] is bankrupt and the lender has leave to foreclose on this property.

Peter

<<Concord web site listing.doc>> <<Concord Synopsis [REDACTED]>>

Concord, NH



MINIMUM PARTICIPATION - \$100,000

LENDING OPPORTUNITY

Concord, New Hampshire - Commercial Property

Loan Amount: \$1,560,000 1st Position (55% LTV)

Recommended Terms: 15%, 12 month balloon

Secured by: Appraised Value \$2,844,050

Summary: [REDACTED] is looking for a loan against this commercial property in Concord, New Hampshire. He is purchasing this property from the current owner and will make minor modifications to the building to allow it to be used as a Veterinarian Surgery. The land is 7.86 acres in size and has a 5,146 square foot building on it. The building was recently constructed and has a total of eleven rooms, including three bathrooms. Albert plans to expand the current structure in the future by adding a large addition that will house a Dog Daycare Facility. Additional features of this property include a large barn. After purchasing the land Albert plans to subdivide off approximately 5.86 acres which will meet the city guidelines to be used for commercial activity. He may develop this land himself and would also consider selling the 5.86 acres. Possible uses include a Miniature Golf Course and Batting Cages.

The City of Concord is the state capital of New Hampshire. This historic city also contains the villages of Penacook, East Concord and West Concord. Concord is located in Central New Hampshire and is a short drive from Manchester to the south, the Lakes Region and White Mountain to the north and the Seacoast area and New Hampshire's coast line to the east.

[REDACTED] has been in the technology field for most of his working life and over the years has acquired substantial net worth. He has excellent credit with a mid FICO score of 716. He plans to use \$150,000 from this loan to complete the modifications and to subdivide the property. [REDACTED] will manage this property himself and has a Veterinarian lined up to

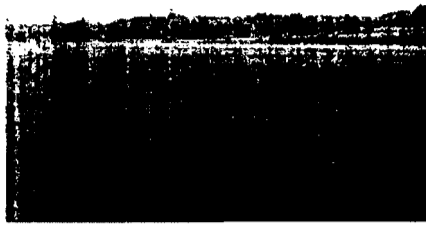
occupy this property. This new loan will be paid off when the surgery is operating and conventional financing is put in place.

██████ is looking for a loan for a period of 12 months. There is a 12 month interest reserve included for additional security.

Please call Scott Farah if you have any questions and/or would like a complete package.

[Deal Synopsis and Photos \(PDF\) - 0.29mb](#) [View Full Package](#)

Subject Land & Rear View



ITEM	SUBJECT PROPERTY	COMPARABLE NO. 1	COMPARABLE NO. 2	COMPARABLE NO. 3
Address	Concord, NH 03301		388 Loudon Road Concord, NH 03301	33 Old Loudon Road Concord, NH 03301
Proximity to Subject		5.62 miles NE	5.71 miles NE	4.78 miles NE
Sales Price	\$ N/A	\$ 1,100,000	\$ 1,200,000	\$ 1,500,000
Price per acre	\$	\$ 272,727	\$ 642,986	\$ 791,046
Data Source	Inspection	MLS# 2647328	MLS# 2768022	MLS# 2777448
Date of Sale and Time Adjustment	N/A	09/05/07	Current Listing	Current Listing
Location	Good	Good	Good	Good
Neighborhood	Neighborhood	Neighborhood	Neighborhood	Neighborhood
Road Frontage	N/A	N/A	N/A	N/A
Lot Size	7.86 acres	5.5 acres	2.21 acres	13.4 acres
Improvements	Mixed use Building	None	None	None
Zone	RC/with variance	GWP	GWP	RM
Sales or Financing Concessions	N/A	Cash	Listed on 3/13/09	Listed on 5/13/09
Indicate Value of Subject		<input checked="" type="checkbox"/> + <input type="checkbox"/> - \$ 643,250	<input checked="" type="checkbox"/> + <input type="checkbox"/> - \$ 643,250	<input checked="" type="checkbox"/> + <input type="checkbox"/> - \$ 643,250
Indicate Value of Subject		\$ 1,743,250	\$ 1,943,250	\$ 4,643,250

Comments on Market Data See Addenda

Comments and Conditions of Appraisal: The land is being appraised as is with improvements. This report is subject to the attached Statement of Limiting Conditions only. The availability of data is extremely limited due to the current market conditions.

Final Recommendation: The final estimate of value is most closely supported by the sales comparison approach with support from the value per acre approach. The cost and income approaches were not considered applicable or relevant.

ESTIMATE THE MARKET VALUE AS OF: June 26, 2009 to be \$ 2,844,050

Philip J. Korkosz Did Did not Physically Inspect Property
Appraiser Review Appraiser (if applicable)

Jurta, Mary

From: Fleury, Robert
Sent: Friday, September 18, 2009 9:32 AM
To: Jurta, Mary; Hildreth, Peter
Subject: RE: Financial Resources Mgmt.
Sounds like a plan.

Thanks Mary

Robert A. Fleury
Deputy Bank Commissioner

From: Jurta, Mary
Sent: Thursday, September 17, 2009 9:30 AM
To: Hildreth, Peter; Fleury, Robert
Subject: FW: Financial Resources Mgmt.

On further reflection and to get the ball rolling (which is often the most difficult part), I can take a first stab at this by writing Mr. Farah a letter indicating that he needs to be licensed as a mortgage loan originator and cannot continue to negotiate mortgages without the license (or we could issue a C&D based on the website info where he is listed as the contact for the investments/mortgage pieces); the letter could include that it appears that he is publicly offering securities in the form of fractional interests in mortgages and should contact the Securities Bureau to see if he needs to obtain authority from them (and the letter can cc the Bureau of Securities Regulation). This would be my first recommendation but since the information was not directed to me from the AG's office, I look to you for authority... - Mary

Mary L. Jurta
Director, Consumer Credit Division
NH Banking Department
53 Regional Drive, Suite 200
Concord, NH 03301
603/271-3561

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Robert A. Fleury
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10/13/2009

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Bob.

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the owner, Kevin Guay is bankrupt and the lender has leave to foreclose on this property.

Peter

<<Concord web site listing.doc>> <<Concord Synopsis 180 clinton.pdf>>

10/13/2009



State of New Hampshire

Banking Department

53 Regional Drive, Suite 200
Concord, New Hampshire 03301

Telephone: (603) 271-3561

FAX: (603) 271-1090 or (603) 271-0750

PETER C. HILDRETH
BANK COMMISSIONER

ROBERT A. FLEURY
DEPUTY BANK COMMISSIONER

October 13, 2009

Scott Farah
15 Northview Drive
PO Box 1158
Meredith, NH 03253-5640

Dear Mr. Farah,

Reference is made to the New Hampshire mortgage banker license of Financial Resources Mortgage, Inc. and to your current advertisements (<https://www.privateloanopportunities.com/?key=5200936c>) on the internet for investors and mortgagors. In the advertisements you personally on behalf of your company are soliciting persons for mortgage loans and yet you are not licensed as a mortgage loan originator in violation of RSA 397-A and the S.A.F.E. Act. You must immediately cease all such operations, remove the website and confirm to us in writing on or before October 20, 2009 that you have done so.

Additionally, it appears that you are publicly offering securities in the form of fractional interests in mortgages and should contact the New Hampshire Securities Bureau to see if you need to obtain authority from them prior to making such solicitations. As you are aware, Financial Resources Mortgage, Inc. is licensed as a mortgage banker to fund mortgages from its own money under RSA 397-A, but the company is not chartered as a bank, savings institution or trust company under federal law or the laws of this state.

Sincerely,

Mary L. Juris
Director, Consumer Credit

cc: Attorney Barry Glennon
Deputy Director
Bureau of Securities Regulation
Department of State
107 North Main Street, #204
Concord, NH 03301