

STATE OF NEW HAMPSHIRE
BUREAU OF SECURITIES REGULATION
DEPARTMENT OF STATE
CONCORD, NEW HAMPSHIRE

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)
T. Gary Coyne)
)
Respondent)
_____)

NoINV.00-007

CONSENT ORDER

I. For purposes of settling the above-referenced matter and in lieu of further administrative proceedings, T. Gary Coyne, (hereinafter referred to as "Coyne"), has submitted an offer of settlement, which the Bureau of Securities Regulation, Department of State, State of New Hampshire (hereinafter referred to as "the Bureau") has determined to accept. Accordingly, the Respondent does hereby consent to the following findings, conclusions, undertakings and sanctions:

STATEMENT OF FACTS

1. Financial Resources and Assistance of the Lakes Region, Inc. (hereinafter "FRA"), is a business entity with a principal office located at 15 Northview Drive, PO Box 1158, Meredith, New Hampshire 03235. FRA was incorporated in the State of New Hampshire on or about 5/18/89. Scott D. Farah (hereinafter "Farah"), is the President and sole owner of FRA. FRA is a licensed New Hampshire mortgage broker and small loan lender engaged in the business of consumer and mortgage lending. Coyne, is the sole proprietor of Coyne Associates located at 60 Pleasant Street, PO Box 568, Meredith, New Hampshire 03235. Coyne, is also engaged in the business of consumer and mortgage lending, and during all times material to this consent order, his principal office was located at the address of FRA, and he used the letter head and office equipment of FRA. During all times material to this petition, Coyne acted with the apparent and or actual authority of Farah and FRA.
2. On or about January 1996, investor #1, of Pompano Beach, Florida, was introduced to Coyne through a friend. Through a series of phone

conversations with Coyne, investor #1 agreed to invest in a series of promissory notes dated 2/26/96, 2/29/96, and 3/19/96. Investor #1 was lead to believe by Coyne, that he was working with FRA. The 2/26/96 note was issued by Coyne from his office location at FRA in the amount of \$20,000, and investor #1 made a check out to FRA in the amount of \$20,000 for this note. The note has no maturity date and promises to pay investor #1 \$500.00 per month while the note was outstanding. \$500.00 payments were made by Coyne for eleven months and then the payments stopped. Coyne paid back the principal of \$20,000 in December of 1997. The \$20,000 principal was due and payable on demand. The 2/29/96 note was issued by Coyne for \$60,000 from his office at the FRA location, and investor #1 made a check out for \$50,000 to FRA for this note which promises to pay investor #1 \$10,000 in interest plus the principal and was to mature on 6/29/96. The 3/19/96 note was issued by Farah and FRA from the FRA Meredith office location to investor #1 in the amount of \$22,500, and investor #1 wire transferred \$20,000 for this note to FRA. The note was to mature on 5/19/96. Investor #1 was paid \$23,000 on this note on or about 10/25/96.

3. Investor #1 was induced by Coyne to invest in the three promissory notes listed in paragraph 2 through statements by Coyne that the money would be invested in mortgages. In actuality, the money for the 2/26/96 and 3/19/96 notes was placed in the general operating account of FRA and commingled with the funds of FRA for general operating expenses. Neither Coyne, Farah, or any representative of FRA informed investor #1 of this material information.

STATEMENTS OF LAW

1. Coyne is a "Person" within the meaning of RSA 421-B:2.
2. The promissory notes are "securities" within the meaning of RSA 421-B:2.
3. The distribution of the securities listed above constitute "sales" within the meaning of RSA 421-B:2.
4. Pursuant to RSA 421-B:3,II, it is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly: To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading. Coyne violated this section by indicating to investor #1 that the money for the 2/26/96 and 3/19/96 promissory notes listed above would be invested in mortgages and

by omitting the actual fact that the money would be deposited in the sole bank account of FRA which was used for the general business operations of FRA.

5. Pursuant to RSA 421-B:23, whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule under this chapter, he shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. Coyne, is subject to this section for violations of RSA421-B:3.
6. Pursuant to RSA 421-B:26,III, any person who, either knowingly or negligently, violates any provisions of this chapter may, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation or denial of any registration or license, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation. Coyne is subject to a suspension, revocation, or denial, and a fine for a violation of RSA 421-B:3.

II. In view of the foregoing, the Respondent agrees to the following undertaking and sanctions:

1. Respondent agrees that that they have voluntarily consented to the entry of this Order and represents and avers that no employee or representative of the Bureau has made any promise, representation or threat to induce his execution.
2. Respondent agrees to waive his right to an administrative hearing and any appeal therein under this chapter.
3. Respondent agrees to cease and desist from violations under this chapter.
4. Upon execution of this order by Respondent, Respondent, agrees to pay an administrative fine in the amount of One Thousand Dollars (\$1,000) to the State of New Hampshire. Payment shall be made by 1) United States postal money order, certified check, bank cashier's check, or bank money order; 2) made payable to the State of New Hampshire; and 3) hand-delivered or mailed to the Bureau of Securities Regulation, Department of

State, State House, Room 204, Concord, New Hampshire, 03301, under the following terms and conditions: Five Hundred Dollars (\$500) shall be due and payable upon execution of this Order, and two equal installments of Two Hundred and Fifty Dollars (\$250) shall be due and payable on November 1st, 2002, and the second due on December 1st, 2002.

5. Respondent agrees that this Order is entered into for purposes of resolving the matter as described herein. This order shall not be construed to restrict the Bureau's right to initiate an administrative investigation or proceeding relative to conduct by Respondent which the Bureau has no knowledge at the time of the date of final entry of this order.
6. The Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in this consent agreement or create the impression that the consent agreement is without factual basis. Nothing in this provision affects the Respondent's testimonial obligations or right to take legal positions in litigation in which the State of New Hampshire is not a party.

III. Based on the foregoing, the Bureau deems it appropriate and in the public interest to accept and enter into this Order. **THEREFORE, IT IS HEREBY ORDERED THAT:**

1. Respondent cease and desist from further violations of the act.
2. Respondent pay an administrative fine in the amount of One Thousand Dollars (\$1,000) upon terms and conditions stated above. Failure to make timely payments as stipulated shall constitute a violation of this order.
3. Respondent comply with the above-referenced undertakings.

Executed this 10th day of October, 2002.

[Redacted signature]

T. Gary Coyne

Please print name below:

[Redacted name]

Michael Burke, Esq.

Entered this _____ day of _____, 2002.

Mark Connolly
Deputy Secretary of State

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

_____)	
SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
SCOTT D. FARAH,)	
DONALD E. DODGE,)	
FINANCIAL RESOURCES MORTGAGE, INC, and)	JURY TRIAL DEMANDED
C L and M, INC.,)	
Defendants)	
and)	
)	
CENTER HARBOR CHRISTIAN CHURCH,)	
)	
Relief Defendant.)	
)	
_____)	

COMPLAINT

Plaintiff Securities and Exchange Commission (“the Commission” or “SEC”) alleges the following against Defendants Scott D. Farah (“Farah”), Donald E. Dodge (“Dodge”), Financial Resources Mortgage, Inc. (“FRM”), C L and M, Inc. (“CLM”) (collectively, “the Defendants”), and Relief Defendant Center Harbor Christian Church and hereby demands a jury trial:

PRELIMINARY STATEMENT

1. From at least 2005, Defendants Farah and Dodge, acting through their businesses FRM and CLM, operated a fraudulent ponzi scheme that defrauded at least \$20 million from at least 150 investors. The scheme involved raising investor money to fund purported loans to specific real estate projects and other businesses. Defendant Farah and his business, FRM, offered to

investors annual returns of 12% to 20%, depending on the specific project purportedly being funded. Defendants Farah and FRM falsely represented to investors that invested monies would be segregated and invested in the specific project that the investors had agreed to fund.

2. From at least 2005, the Defendants in fact did not segregate investor money and used investor money for a variety of purposes not authorized by the offering documents, including paying returns to earlier investors, paying personal expenses, paying operating expenses of FRM and CLM, including Defendants Farah's and Dodge's salaries, donating money to the Center Harbor Christian Church (a non-denominational church owned by Defendant Farah's father and of which Defendant Farah was the treasurer), and for personal investments in speculative businesses. By November 2009, the Defendants had diverted so much money from FRM and CLM that they had no funds left with which to operate and FRM and CLM abruptly ceased operations.

3. Through the activities alleged in this Complaint, Defendants Farah and FRM engaged in: (1) fraud in the offer or sale of securities, in violation of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 17q(a)]; (2) fraudulent or deceptive conduct in connection with the purchase or sale of securities, in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; and (3) the offer and sale of unregistered securities, in violation of Sections 5(a) and (c) of the Securities Act [15 U.S.C. §§ 77e(a) and (c)].

4. Through the activities alleged in this Complaint, Defendants Dodge and CLM engaged in: (1) fraud in the offer or sale of securities, in violation of Section 17(a) of Securities Act [15 U.S.C. § 17q(a)] and (2) fraudulent or deceptive conduct in connection with the purchase or sale of securities, in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule

10b-5 thereunder[17 C.F.R. § 240.10b-5], or in the alternative, conduct that aided and abetted Defendant Farah's and/or Defendant Financial Resources Mortgage's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

5. Accordingly, the Commission seeks among other things: (1) entry of a permanent injunction prohibiting the Defendants from further violations of the relevant provisions of the federal securities laws; (2) disgorgement of the Defendants' ill-gotten gains, plus pre-judgment interest; (3) the imposition of civil monetary penalties upon the Defendants due to the egregious nature of their violations; and (4) disgorgement by the Relief Defendant of all unjust enrichment and/or ill-gotten gain received from Defendants.

JURISDICTION AND VENUE

6. The Commission is an agency of the United States of America established by Section 4(a) of the Exchange Act [15 U.S.C. §78d(a)].

7. This Court has jurisdiction over this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§77t and 77v] and Sections 21 and 27 of the Exchange Act [15 U.S.C. §§78u and 78aa]. Venue is proper in this District because Defendants FRM and CLM and the Relief Defendant are headquartered in New Hampshire and Defendants Farah and Dodge live in New Hampshire. Many of the acts and practices alleged in this Complaint occurred in this District.

8. In connection with the conduct described in this Complaint, the Defendants directly or indirectly made use of the mails or the means or instruments of transportation and communication in interstate commerce.

9. The Defendants' conduct involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements, and resulted in substantial loss, or significant risk of substantial loss, to other persons.

DEFENDANTS

10. Scott D. Farah, age 46, is a resident of Meredith, New Hampshire. Defendant Farah was the president and founder of FRM, a mortgage brokerage company. His primary duties at FRM involved soliciting investors to fund construction and other loans.

11. Donald E. Dodge, age 66, is a resident of Belmont, New Hampshire. Defendant Dodge was the president, director, secretary, and treasurer of CLM, FRM's purported loan servicer. He is also principal of Dodge Financial, Inc. ("Dodge Financial"), a New Hampshire corporation that served as trustee for numerous trusts organized by the Defendants to hold interests in real estate in connection with the Defendants' fraudulent ponzi scheme, and owned and operated Greatland Project Development, Corp. ("Greatland"), a New Hampshire corporation involved in various transactions in connection with the Defendants' fraudulent ponzi scheme, including granting and holding numerous mortgages, despite having no other assets, or any income other than funds provided to it by CLM.

12. FRM was a mortgage brokerage company with a principal place of business at 15 Northview Drive in Meredith, New Hampshire.

13. CLM was an unlicensed loan servicing company incorporated in New Hampshire and Nevada, with a principal place of business in Meredith, New Hampshire, in the same building as FRM. CLM serviced all loans brokered through FRM.

RELIEF DEFENDANT

14. Center Harbor Christian Church is a non-denominational church founded, operated, and privately owned by Defendant Farah's father, Robert P. Farah. Robert Farah is the church's pastor. Until recently, Defendant Farah served as the church's treasurer. Center Harbor Christian Church was incorporated as a non-profit in New Hampshire in 1983.

DETAILED ALLEGATIONS

Background

15. In 1989, Defendants Farah and Dodge and two other individuals created the corporation now known as Financial Resources Mortgage, Inc. and served as co-owners. Approximately fifteen years ago, Defendant Farah became the sole owner of FRM.

16. In 2005, at the request of Defendant Farah, Defendant Dodge formed CLM to service all loans brokered by FRM. Dodge and CLM were responsible for, among other things, maintaining funds provided by investors to fund specific loans, disbursing funds to borrowers, and making interest payments to investors. At all times, Defendant Dodge was the sole owner of CLM.

17. Upon information and belief, Dodge and a business partner formed Dodge Financial in 1989, and at some later date Dodge became sole owner. Dodge Financial became the operating entity for CLM and as such, was the entity through which Defendant Dodge received his salary.

18. From at least 2005, Defendants Farah and FRM solicited investors to invest in loans to fund commercial real estate projects and other businesses.

19. Defendants Farah and FRM solicited investors, by among other methods, mailing postcards to persons whose names appeared on a targeted mailing list of previous private

mortgage lenders purchased from a commercial database company. The postcards lured investors by promising high-interest returns for private mortgage lenders.

20. When a prospect indicated an interest in being a private mortgage lender, Defendant Farah added the prospect's name to FRM's list of prospective lenders. Approximately every other week, Defendants Farah and FRM would mail all prospective lenders a two to five page summary of each approved borrower's request for funding (the "investment solicitation materials"). If interested in investing in a particular loan, prospective lenders would call Defendant Farah to request the full underwriting file. Typically, if the prospective lender decided to invest in the loan, the prospective lender would, at Defendant Farah's request, send the funds required for that particular loan to CLM by wire or postal mail.

21. For approximately the first two years of operations, CLM had one account at Citizens Bank dedicated to servicing loans structured by Defendants Farah and FRM, in which Defendants Dodge and CLM deposited all investor funds (CLM had several other accounts at Citizens Bank dedicated to other purposes, such as operations). At or around the end of its second year of operation, Defendant Dodge found it increasingly difficult to reconcile the massive CLM servicing account due to its numerous, frequent transactions, and therefore caused CLM to open a second loan servicing account at Citizens Bank. Thereafter, to assist in the account reconciliation process, Defendants Dodge and CLM alternated between the two servicing accounts every three months, using just one servicing account exclusively while allowing time for transactions in the other servicing account to clear. Defendants Dodge and CLM did not at any time segregate funds in the servicing accounts by individual investor or borrower. Any time an investor sent money to CLM to fund a particular project, the funds went

into one of the two servicing accounts. At no time did CLM have more than five accounts at Citizens Bank, nor did CLM ever have more than two loan servicing accounts.

22. FRM purportedly structured many loans that were set up so that the holder of the note and mortgage was a trust, on which Dodge Financial was trustee. Defendants used the trust structure so that more than one investor could fund a particular loan and yet all retain the first position as creditors, which among other things, made it easier for Farah to attract investors and thereby raise more funds for the Defendants' fraudulent scheme. When the loan was structured through a trust, the trust was the first position creditor, and each investor owned a beneficial interest in the trust proportionate to his, her, or its contribution to the loan. The Defendants achieved a similar result through "simultaneous closings" whereby Defendant Dodge's company, Greatland, was the holder of the note and mortgage and, at the closing of the loan transaction, simultaneously issued two or more assignments to the investors who had funded the loan, so that each investor held a first position.

23. Defendant Farah represented to prospective and actual investors that an investor's funds would be used to fund only the specific loan that the investor agreed to fund, and for no other purpose. The Defendants did not disclose to prospective and actual investors that, in fact, all investor funds were pooled together into the CLM servicing accounts from which the Defendants routinely withdrew funds for, among other things, funding other loans, paying returns to other investors, paying personal expenses, paying operating expenses of FRM and CLM, including Defendants Farah's and Dodge's salaries, donating money to charity, in particular the Center Harbor Christian Church (a non-denominational church owned by Defendant Farah's father and

of which Defendant Farah was the treasurer), and for personal investments in speculative businesses.

24. With respect to many of the loans, Defendant Farah told investors that there was a prepaid interest component. In these instances, Defendant Farah represented to investors that CLM would withhold one year's worth of interest (or some other amount depending on the term of the loan) from the borrower and reserve the funds in an escrow account from which to pay interest to the investor for one year (or other specified period). In fact, CLM in all instances pooled the prepaid interest in one of the general CLM servicing accounts at Citizens Bank and did not in any instance hold the reserve funds in a separate account for the particular loan for which it was reserved or for any particular investor.

25. Many of the loans structured by Defendant Farah and FRM were purportedly construction loans. For construction loans, only a portion of the total loan were to be disbursed to the borrower at closing. The Defendants represented to investors that the remainder of the principal, and any prepaid interest component, were to be held in an account maintained by CLM and disbursed over time as the construction progressed in response to requisitions periodically submitted by the borrower with proof of performance, such as an invoice. CLM maintained those funds [to the extent that they were maintained] in the commingled general servicing accounts at Citizens Bank.

26. Many of the loans structured by Defendant Farah and FRM were defaulted on by the borrowers. When a loan was defaulted on, CLM continued to pay interest to the investor out of its commingled servicing accounts at Citizens Bank.

27. In many instances, Defendants Farah and FRM represented to prospective investors that they planned to have more than one investor fund a loan. In those instances, Defendants Farah

and FRM indicated the required minimum investment in the investment solicitation materials. If an investor chose to provide only the minimum investment, or some amount less than the full amount requested by the borrower, Defendant Farah would direct the investor to send the funds to CLM, which would maintain them towards partial funding of the loan. However, a loan would not close, and no funds would be disbursed to the borrower, until fully funded, which could take weeks or even months.

28. Defendant Farah represented to investors that the borrower would pay, and the investor would receive, interest on the entire principal from the date of investment, even on loan requests that had not yet been fully funded and construction loans that had been only partially disbursed to the borrower. In fact, in these instances, CLM, FRM, or some combination thereof used investor money to make interest payments to investors.

29. Defendant Farah often encouraged investors to “rollover” principal funds towards a new loan, and thereby frequently avoided returning principal to investors. The Defendants used other investors’ funds from the CLM servicing accounts to pay “interest” to investors for the period between the payoff of the former loan and the closing of the new loan.

30. In June 2005, Defendant Farah, on his own behalf, as borrower, and Defendant Dodge, on behalf of CLM, as lender, signed a Discretionary Line of Credit Agreement. The Discretionary Line of Credit Agreement had an original ceiling of \$4 million that was later increased to \$10 million. Pursuant to the Discretionary Line of Credit Agreement, on numerous occasions, at Defendant Farah’s request, CLM transferred money from one of its loan servicing accounts maintained at Citizens Bank to one of FRM’s accounts at Citizens Bank, or to some third party specified by Defendant Farah.

31. From June 2005 to November 2009, Defendant Farah frequently drew off this line of credit, exceeding the \$10 million ceiling and misappropriating for his own use, and for the use of FRM, a total of at least \$20,348,321.43 of investor funds. Neither Defendant Farah nor Defendant Dodge disclosed to any prospective or actual investor that CLM had entered into a Discretionary Line of Credit, nor that investor monies had been and would continue to be used to fund the Discretionary Line of Credit.

Illustrative Fraud against Maine Investors

32. In the Fall of 2007, Defendant Farah and FRM sent a postcard marketing a higher rate of interest on mortgages to prospective investors (a husband and wife) residing in Kittery Point, Maine ("the Maine investors") whose names had appeared on the mailing list that Defendants Farah and FRM purchased from a commercial database. In or around November 2007, in response to the mailing, the Maine investors called the telephone number listed on the postcard and were put in contact with Defendant Dodge. Defendant Dodge told the Maine investors that Defendants Dodge and Farah had been working in the mortgage business for over twenty years and explained FRM's operations. Defendant Dodge scheduled an appointment for the Maine investors to meet personally with Defendants Dodge and Farah at the office of FRM in Meredith, New Hampshire.

33. In or around January 2008, the Maine investors met with Defendants Farah and Dodge at the office of FRM. Defendants Farah and Dodge also brought the Maine investors to CLM's office and introduced them to other employees of FRM and/or CLM. At the meeting, Defendant Farah told the Maine investors that high interest rates were available because the people applying for the loans had bad credit and therefore would not qualify for conventional mortgages. Defendant Farah told the Maine investors that, on a typical twelve month loan, FRM would hold

back from the borrower and maintain in an escrow account the equivalent of one year's worth of monthly interest payments, which would establish for the borrower a record of prompt payment, which would in turn enable the borrower to qualify for a conventional mortgage in the future.

34. Following the meeting, the Maine investors began receiving monthly solicitations from Defendant Farah via electronic mail and United States Postal Service, alerting them to various investment opportunities. The Maine investors soon learned through these mailings that the investment opportunities were not limited to mortgages or construction loans, and included other business loans. When interested in a particular investment opportunity, the Maine investors contacted Defendant Farah to indicate their interest. If the investment opportunity was still available, Defendant Farah sent to the Maine investors via overnight mail additional information such as the borrower's name, social security number, employment history, tax returns for the past 1-3 years, credit reports, and, if applicable, an appraisal of the property.

35. In all instances, the Maine investors provided money to CLM to fund loans to third parties with the belief that the invested funds would be deposited into a CLM bank escrow account. Defendant Farah told the Maine investors that he did not have access to any of the funds in any CLM bank account. In fact, indirectly, Defendant Farah had virtually unfettered access to the Maine investors' funds, and all other funds in the CLM servicing accounts, through the unsecured Discretionary Line of Credit Agreement he and Dodge had executed.

36. In most instances, the Maine investors' contribution to the loan made up only a portion of the total sum that the borrower purportedly requested. In some instances, the Maine investors received documents showing that their contribution to the loan was represented by a proportionate beneficial interest in a trust and that other investors who were funding the same

loan also held proportionate beneficial interests in the same trust. In all instances where their loan was made through a trust, Dodge Financial was identified as trustee of that trust.

37. The Maine investors raised a concern to Defendant Farah regarding whether the size of the bank account holding their invested funds would be at risk for exceeding the Federal Deposit Insurance Company ("FDIC") insurance limits. In response to their concern, Defendant Farah told the Maine investors that he used many separate accounts at many different banks.

Defendant Farah told the Maine investors that the invested funds were kept in a separate account from the money of other investors and never in a bank account that exceeded the FDIC insurance limits. In fact, as was the case with all investor funds, the Maine investors' funds were never segregated and were instead deposited into one of CLM's two servicing accounts at Citizens Bank, which frequently had balances that substantially exceeded FDIC insurance limits.

38. In all instances in which a loan closed, the Maine investors received interest ranging from 13% to 20%, from the day the funds were received by CLM. Defendant Farah told the Maine investors that the borrowers were willing to fund interest payments prior to the closings, before any funds had been disbursed, because the borrowers who requested loans through FRM really needed the loans, typically did not qualify for conventional lending, and understood that it might take days, weeks, or months to find enough investors to fully fund the loan. Defendant Farah told the Maine investors that the borrowers understood that in order to get investors to commit to fund a portion of the loan, Defendant Farah had to offer investors a return on their investment from the day their money was invested, and the borrowers would have to pay that interest while Defendant Farah continued to raise the balance of the funds necessary to close the loan.

39. In fact, upon information and belief, borrowers did not pay interest prior to the closing of the loan. Instead, any interest was paid from CLM's commingled servicing account.

40. From 2008 through November 2009, the Maine investors invested in several loans through Defendants Farah and FRM, two of which are detailed below.

Earth Protection Systems, Inc.

41. In or around early to mid August 2008, Scott Farah notified the Maine investors of a lending opportunity requiring a minimum investment of \$50,000 for a term of twelve months at an interest rate of 20%. According to documents provided to the Maine investors by Scott Farah, the borrower, Oskar Klenart of Earth Protection Systems, was seeking a loan against purchase orders for his unique new product, the "Earth Cell Module" that purportedly not only stops erosion on shorelines, but also reverses the erosion damage that has already occurred to an area.

42. On or about August 29, 2008, the Maine investors deposited \$50,000 into a CLM account at Citizens Bank which allegedly resulted in a 2% beneficial ownership interest in the 2008 CPR Trust, for which Dodge Financial served as trustee. According to documents that one or more of the Defendants provided to the Maine investors, the 2008 CPR Trust held a \$2,500,000 promissory note. Prior their investment in the Earth Protection Systems, Inc. loan, Defendant Farah told the Maine investors that he had personally invested in the Earth Protection Systems, Inc. loan.

43. In fact, on information and belief, although Mr. Klenart did seek money from Farah to fund his project, he thought that he had entered into a lending agreement with Defendant Farah who was funding the loan with personal funds and Mr. Klenart was unaware of a promissory note or a trust.

44. The Maine investors believed that their \$50,000 investment would be used to fund the loan to Earth Protection Systems, Inc. on receipt of purchase orders and for no other purpose. They relied on CLM to process the loan by, among other things, making distributions to the borrower based on purchase orders, escrowing interest payments held in reserve from the borrower, and sending monthly interest payments to them.

Foreclosure Investment Borrower

45. In or around late October 2008, Defendant Farah telephoned one of the Maine investors and exclaimed, “. . . [h]ave I got a deal for you!” Defendant Farah proceeded to tell the Maine investor that he had known the borrower, a very successful business man, for over twenty years. Defendant Farah told the Maine investor that the borrower was in the business of buying foreclosures from banks all over the country at “pennies on the dollar” and then turning around and offering the mortgages back to the people who had been foreclosed upon at an affordable rate. Defendant Farah told the Maine investor that the borrower had been very successful in this business in the savings and loan crisis of the 1980’s and that the borrower would really “rake in money.” Scott Farah provided the Maine investors with a spreadsheet purporting to be the borrower’s ongoing business and with a letter purportedly signed by the borrower. Scott Farah told the Maine investors that he himself had invested a large “chunk of money” in the loan.

46. On or about November 12, 2008 the Maine investors invested \$50,000 in a purported loan to the borrower with an interest rate of 18% secured by a portfolio of residential mortgages. They received a letter from CLM acknowledging receipt of their \$50,000 and stating that they would earn 18% from November 13 until the date of closing and 18% from the date of closing. They received a first interest payment of \$1,972.60 for the period November 13, 2008 through

January 31, 2009. Thereafter, they received regular interest payments on their investment through October 30, 2009.

47. Despite receiving regular interest payments, the Maine investors never received closing papers concerning the purported loan. About four to six weeks after their November 2008 investment, one of the Maine investors began to call Defendant Farah periodically to ask why they had not received any paperwork on the loan. Each time, Defendant Farah told the Maine investor that the loan had not closed yet but that it would close within the next month.

Defendant Farah told the Maine investor that the reason the loan had not closed was because the government was in the process of changing the regulations and that the borrower did not want to proceed with the loan until the regulations were finalized. Defendant Farah urged the Maine investor not to worry because the borrower was making interest payments on the loan. In fact, upon information and belief, the borrower was not the source of the interest payments that CLM had been sending to the Maine investors in connection with their investment in the purported loan to the borrower. Instead, Donald Dodge and CLM were using pooled investor funds from the CLM servicing account to make interest payments to the Maine investors on the purported loan to the borrower.

48. Upon information and belief, although the borrower knew Defendant Farah he had never told Defendant Farah that he wanted to borrow money through FRM or otherwise do business with Defendant Farah.

49. The Maine investors believed that the Defendants would use their \$50,000 investment to fund the loan to the borrower secured by a portfolio of residential mortgages, and for no other purpose. The Maine investors relied on CLM to process the loan by, among other things,

making distributions to the borrower based on purchase orders, escrowing interest payments held in reserve from the borrower, and sending them the borrower's monthly interest payments.

C. The Relief Defendant.

50. The Center Harbor Christian Church ("CHCC") was established in 1983 by Scott Farah's father, who serves as its pastor. Scott Farah served as the Center Harbor Christian Church's treasurer from 1993 until recently, and Donald Dodge at one time served as an elder of the Center Harbor Christian Church.

51. CHCC received fund transfers from FRM totaling at least \$475,000 and from CLM totaling at least \$130,000. CHCC also received transfers totaling at least \$64,000 from Defendant Farah and his wife. The relationship between the Defendants and the Relief Defendant and the transfers indicate diversion and misuse of the investor funds.

FIRST CLAIM FOR RELIEF
(Violation of Section 17(a) of the Securities Act)

(All Defendants)

52. The Commission repeats and incorporates by reference the allegations in paragraphs 1-51 above as if set forth fully herein.

53. The Defendants, directly or indirectly, acting intentionally, knowingly or recklessly, in the offer or sale of securities by the use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails: (a) have employed or are employing devices, schemes or artifices to defraud; (b) have obtained or are obtaining money or property by means of untrue statements of material fact or omissions to state a material fact necessary in order to make the statements made, in the light of the circumstances under which

they were made, not misleading; or (c) have engaged or are engaging in transactions, practices or courses of business which operate as a fraud or deceit upon purchasers of the securities.

54. As a result, the defendants have violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. §77q(a)].

SECOND CLAIM FOR RELIEF
(Violation of Section 10(b) of the Exchange Act and Rule 10b-5)

(All Defendants)

55. The Commission repeats and incorporates by reference the allegations in paragraphs 1-51 above as if set forth fully herein.

56. The Defendants, directly or indirectly, acting intentionally, knowingly or recklessly, by the use of means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities: (a) have employed or are employing devices, schemes or artifices to defraud; (b) have made or are making untrue statements of material fact or have omitted or are omitting to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) have engaged or are engaging in acts, practices or courses of business which operate as a fraud or deceit upon certain persons.

57. As a result, the Defendants have violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

THIRD CLAIM FOR RELIEF
(Aiding and Abetting Violations of Section 10(b) of the Exchange Act and Rule 10b-5)

(Donald Dodge and C L and M, Inc.)

58. The Commission repeats and incorporates by reference the allegations in paragraphs 1-51 above as if set forth fully herein.

59. Farah and FRM violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] as alleged in the Complaint.

60. Dodge and CLM knew or were reckless in not knowing that Farah's and FRM's conduct was improper and substantially assisted in the in the fraud alleged in the Complaint.

61. By the reason of the foregoing, Dodge and CLM aided and abetted Farah's and FRM's violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] and are liable pursuant to Section 20(e) of the Exchange Act [15 U.S.C. §78t(e)].

FOURTH CLAIM FOR RELIEF
(Violations of Section 5(a) and 5(c) of the Securities Act)

(Scott Farah and Financial Resources Mortgage, Inc.)

62. The Commission repeats and incorporates by reference the allegations in paragraphs 1-51 above as if set forth fully herein.

63. The notes and equity interests issued by the Defendants are "securities" within the meaning of Section 2(1) of the Securities Act [15 U.S.C. §77b(a)(1)] and Section 3(a)(10) of the Exchange Act [15 U.S.C. §78c(a)(10)]. No registration statement was filed with respect to these securities, and no exemption from registration was available.

64. The Defendants, directly or indirectly: (a) have made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell, through the use or medium of a prospectus or otherwise, securities as to which no registration statement has been in effect and for which no exemption from registration has been available; and/or (b) have made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, through the use or medium of a prospectus or otherwise, securities as to which no registration statement has been filed and for which no exemption from registration has been available.

65. As a result, the Defendants have violated and, unless enjoined, will continue to violate Sections 5(a) and (c) of the Securities Act [15 U.S.C. §§77e(a), and (c)].

FIFTH CLAIM FOR RELIEF
(Unjust Enrichment)

(Relief Defendant)

66. The Commission repeats and incorporates by reference the allegations in paragraphs 1-51 of the Complaint as if set forth fully herein.

67. The Relief Defendant has received investor funds under circumstances dictating that, in equity and good conscience, it should not be allowed to retain such funds.

68. As a result, the Relief Defendant is liable for unjust enrichment and should be required to return its ill-gotten gains, in an amount to be determined by the Court.

PRAAYER FOR RELIEF

WHEREFORE, the Commission requests that this Court:

A. Enter a preliminary injunction against Defendants Farah and Dodge, order freezing assets against Dodge and Center Harbor Christian Church, and order for other equitable relief against the Defendants and the Relief Defendant in the form submitted with the Commission's motion for such relief, and, upon further motion, enter a comparable preliminary injunction, order freezing assets, and order for other equitable relief;

B. Enter a permanent injunction restraining the Defendants and each of their agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in the conduct described above, or in conduct of similar purport and effect, in violation of:

1. Sections 5(a) and (c) of the Securities Act [15 U.S.C. §§77e(a) and (c)] (Farah and FRM only);
2. Section 17(a) of the Securities Act [15 U.S.C. §77q(a)]; and
3. Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5];

C. Require the Defendants to disgorge their ill-gotten gains and losses avoided, plus pre-judgment interest, with said monies to be distributed in accordance with a plan of distribution to be ordered by the Court;

D. Order the Defendants to pay an appropriate civil monetary penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)];

E. Require the Relief Defendant to disgorge all unjust enrichment and/or ill-gotten gain received from Defendants, plus prejudgment interest, with said monies to be distributed in accordance with a plan of distribution to be ordered by the Court;

F. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

G. Award such other and further relief as the Court deems just and proper.

Plaintiff hereby requests that this matter be tried before a jury.



Deena R. Bernstein (BBO # 558721)

Senior Trial Counsel

Attorneys for Plaintiff

SECURITIES AND EXCHANGE COMMISSION

33 Arch Street, 23rd Floor

Boston, MA 02110

(617) 573-8813

(617) 573-4590 (fax)

bernsteind@sec.gov

Dated: April 9, 2010

**STATE OF NEW HAMPSHIRE
BUREAU OF SECURITIES REGULATION
DEPARTMENT OF STATE
CONCORD, NEW HAMPSHIRE**

IN THE MATTER OF:

**Financial Resources and Assistance
of the Lakes Region, Inc.**

Scott Farah

RESPONDENTS

**No. INV 00-007
06-049**

CONSENT AGREEMENT

- I. For purposes of settling the above-referenced matter and in lieu of further administrative proceedings, Scott Farah and Financial Resources and Assistance of the Lakes Region, Inc. (hereinafter referred to as "Farah" and "FRA") have submitted an offer of settlement, which the Bureau of Securities Regulation, Department of State, State of New Hampshire (hereinafter referred to as "the Bureau") has determined to accept. Accordingly, solely for the purposes of this proceeding, and without admitting or denying The Facts, The Law, or any other allegations herein, the Respondents do hereby consent to the entry of this Consent Agreement as set forth below:

The Facts

1. FRA is a business entity with a principal office located at 15 Northview Drive, PO Box 1158, Meredith, New Hampshire 03235. FRA was incorporated in the State of New Hampshire on or about 5/18/89. Farah is the President and sole owner of all of the outstanding voting common stock of FRA. FRA is a licensed New Hampshire mortgage broker and small loan lender engaged in the business of consumer and mortgage lending.
2. From 1996 to the present, ("relevant time period"), Farah and FRA issued a series of preferred stock, promissory notes, accounts, and participation agreements, (hereinafter "the securities") to investors at varying rates of interest payable periodically over the term of the investment.

3. Based on Bureau records, at the time of the issuance of the securities listed in paragraph 2, certain of the securities issued were not registered, exempt from registration, or a federal covered security as defined by RSA 421-B.
4. Based on Bureau records, at the time of the issuance of the securities listed in paragraph 2, FRA and Farah did not have an issuer-dealer license or an agent's license related thereto, respectively, and were not authorized to sell certain of the securities.
5. The Bureau commenced an adjudicative proceeding against the Respondents pursuant to RSA 421-B (the "Chapter") by means of a Staff Petition for Relief dated November 5, 2001 ("Petition"). On November 8, 2001, the New Hampshire Secretary of State issued an Order to Show Cause, Order to Cease and Desist against the Respondents ("Order"). On September 13, 2002, the Bureau filed an amended Petition For Relief.

The Law

1. Pursuant to New Hampshire RSA 421-B:11, it is unlawful for any person to offer or sell any security in this state unless it is registered under the Chapter, the security or transaction is exempted under RSA 421-B:17, or it is a federally covered security. Respondents Farah and FRA are in violation of RSA 421-B:11 with respect to certain issuances of securities.
 2. During the relevant time period described above, neither Farah nor FRA, or any other person acting on FRA's behalf, was licensed to offer or sell securities in the State of New Hampshire nor were all of such securities exempt under RSA 421-B.
 3. Pursuant to RSA 421-B:6, it is unlawful for any person to transact business in this state as an issuer-dealer or agent unless such person is licensed under this chapter. Respondents are in violation of this section with respect to certain issuances of securities.
 4. Pursuant to RSA 421-B:23 and RSA 421-B:26, the Bureau, under the authority of the Secretary of State, can order the Respondents to cease and desist, the payment of restitution, and a fine for violations of RSA 421-B.
- II. In view of the foregoing, the Respondents agree to the following undertakings and sanctions:
1. Respondents agree that that they have voluntarily consented to the entry of this Agreement and represent and aver that no employee or representative of the Bureau has made any promise, representation or threat to induce their execution.

2. Respondents agree to waive their right to an administrative hearing and any appeal therein under the Chapter.
3. Respondents agree to cease and desist from violations of RSA 421-B:11 and RSA 421-B:6,I as described above.
4. Upon execution of this Agreement by FRA and Farah, Respondents agree to pay an administrative fine in the amount of Twenty Thousand Dollars (\$20,000) to the State of New Hampshire. Payment shall be made by 1) United States postal money order, certified check, bank cashier's check, or bank money order; 2) made payable to the State of New Hampshire; and 3) hand-delivered or mailed to the Bureau of Securities Regulation, Department of State, State House, Room 204, Concord, New Hampshire, 03301.
5. Respondents agree to make restitution and to redeem the outstanding securities, including interest owed, from any remaining investors currently holding securities of the Respondents. Redemption shall be paid in the time frame as described in the letter of Respondents' counsel to the Bureau dated October 12, 2006, with the attached schedules of outstanding capital debt; provided however, that the securities issued to [REDACTED] shall be redeemed no later than 09/30/07. Therefore, by 09/30/07, all investors shall be paid in full, and a report of those payments and confirmation of payment in full shall be sent to the Bureau periodically as the payments are made.
6. Respondents agree that in the event Respondents receive notice of the apparent existence of a holder of securities of FRA other than those known to Respondents and disclosed to the Bureau prior to the date hereof, whether in form of shares of preferred stock, an unsecured promissory note or an 'account,' so called, or otherwise, Respondents will take the actions set forth in this paragraph. Respondents will immediately cause such investigation of such securities issuance as deemed necessary and appropriate to verify the holder's claim of ownership. In the event the Respondents agree with such claim ("verified securities"), they will take such actions as are necessary to redeem such verified securities in full and will provide a copy of such redemption correspondence to the Bureau. In the event the Respondents are unable to verify a claim of securities ownership within 30 days of receipt of such a claim, or are unable to fully redeem verified securities within 90 days of the receipt of a claim, Respondents will provide written notice to the Bureau of such a disputed claim or the proposed time frame within which such verified securities will be redeemed in full. Respondents further agree to cooperate with the Bureau in resolving such a disputed claim or the proposed time frame within which verified securities will be redeemed in full.

7. Respondents agree that this Agreement is entered into for purposes of resolving the matters as described herein and all pending matters before the Bureau regarding Respondents. The Bureau agrees that this Agreement is entered into to resolve all claims asserted in the Petition and the Order as well as all pending matters before the Bureau regarding Respondents. This Agreement shall not be construed to restrict the Bureau's right to initiate an administrative investigation or proceeding relative to conduct by Respondents which the Bureau has no knowledge at the time of the date of final entry of this Agreement. Should the Respondents fail to comply with any aspect of this Agreement, this Agreement may be vacated, and the Bureau may proceed with enforcement action.
8. The Respondents may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in this Agreement or create the impression that the Agreement is without factual basis. Nothing in this provision affects the Respondent's testimonial obligations or right to take legal positions or factual positions in litigation or proceedings in which the Bureau is not a party.

III. Based on the foregoing, the Bureau deems it appropriate and in the public interest to accept and enter into this Consent Agreement. **THEREFORE, IT IS HEREBY ORDERED THAT:**

1. Respondents will cease and desist from violations of the Chapter discussed above, particularly RSA 421-B:11 and RSA 421-B:6,I.
2. Respondents will pay an administrative fine to the Bureau in the amount of Twenty Thousand Dollars (\$20,000).
3. Respondents will make restitution and redeem its outstanding securities as described above.
4. Respondents will comply with the above-referenced undertakings.

Executed this 24th day of January, 2007.


on behalf of FRA
(Please print name below:)

Scott FARAH

Scott Farah
Its President

Executed this 24th day of January, 2007



Scott Farah

Entered this 25 day of Jan, 2007.



Mark Connolly, Director
Bureau of Securities Regulation

**STATE OF NEW HAMPSHIRE
BUREAU OF SECURITIES REGULATION
DEPARTMENT OF STATE
CONCORD, NEW HAMPSHIRE**

IN THE MATTER OF:

**Financial Resources and Assistance
of the Lakes Region, Inc.**

Scott Farah

RESPONDENTS

**No. INV 00-007
06-049**

AMENDMENT TO CONSENT AGREEMENT

I. For purposes of settling the above-referenced matter and in lieu of further administrative proceedings, Scott Farah and Financial Resources and Assistance of the Lakes Region, Inc. (hereinafter referred to as "Farah" and "FRA") and the Bureau of Securities Regulation, Department of State, State of New Hampshire (hereinafter referred to as "the Bureau"), entered into a Consent Agreement dated as of January 25, 2007; the terms, conditions and undertakings set forth in the Consent Agreement are incorporated by reference herein. Respondents have requested and the Bureau has agreed to a revision of the restitution and redemption schedule set forth in the Consent Agreement; the parties hereby agree that the Consent Agreement is amended as set forth below:

The Facts

1. In the Consent Agreement, the Respondents agreed to make restitution and to redeem the outstanding securities, including interest owed, from any then remaining investors currently holding securities of the Respondents. The Consent Agreement provides that such restitution and redemption was to be made within the time frames described in the letter of Respondents' counsel to the Bureau dated October 12, 2006, with the attached schedules of outstanding capital debt; provided however, that the final redemption of securities was to occur no later than 09/30/07.
2. The redemption schedule provided that securities held by certain "[REDACTED]" (" [REDACTED] ") were to be redeemed no later than 06/30/07; the securities held by certain "[REDACTED]" (" [REDACTED] ") were to be redeemed no later than 09/30/07.

3. On or before June 30, 2007, the Respondents verbally requested, and the Bureau verbally agreed, that the Respondents could reverse the order of said remaining redemption schedule, such that [REDACTED]' securities could be redeemed on or prior to 06/30/07, and the [REDACTED] securities redeemed on or prior to 09/30/07.
4. On or prior to June 30, 2007, the Respondents redeemed the [REDACTED] securities and provided notice thereof to the Bureau dated June 8, 2007.
5. On June 28, 2007, the Bureau verbally agreed to the revision of the said redemption schedule and requested that the Respondents enter into this Amendment to Consent Agreement reflecting the revised schedule.

The Law


II. In view of the foregoing, the Respondents agree to the following undertakings and sanctions:

1. Respondents agree that that they have voluntarily consented to the entry of this Amendment to Consent Agreement and represent and aver that no employee or representative of the Bureau has made any promise, representation or threat to induce such execution.
2. Respondents agree to make restitution and to redeem the outstanding securities, including interest owed, from [REDACTED] no later than 09/30/07. Therefore, by 09/30/07, all investors shall have been paid in full, and a report and confirmation of such payment in full shall be sent to the Bureau as such final payment is made.

III. Based on the foregoing, the Bureau deems it appropriate and in the public interest to accept and enter into this Amendment to Consent Agreement. **THEREFORE, IT IS HEREBY ORDERED THAT:**

1. Except as modified hereby, the terms, conditions and undertakings set forth in the Consent Agreement remain in full force and effect.
2. Respondents will make restitution and redeem its remaining outstanding securities as described above.

Executed this 2nd day of July, 2007.



on behalf of FRA
(Please print name below:)

Scott Farah
Its President

Executed this 9th day of July, 2007



Scott Farah

Entered this 12th day of July, 2007.



Jeffrey Spill, Deputy Director
Bureau of Securities Regulation

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

* * * * *

IN RE: *

SCOTT D. FARAH and *

NO.:09-14902-JMD

FINANCIAL RESOURCES MORTGAGE, INC. *

* * * * *

STATEMENT OF DONALD E. DODGE

Statement taken at the law offices of Donchess &
Notinger, P.C., 547 Amherst Street, New Hampshire, on
Friday, February 19, 2010, commencing at 1:20 p.m.

1087 Elm Street
P.O. Box 1387
Manchester, NH
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I N D E X

ANSWERS OF: DONALD E. DODGE

<u>QUESTIONS POSED:</u>	<u>Page</u>
By Mr. Donchess	5-98

EXHIBITS FOR IDENTIFICATION:

<u>Dodge</u>	<u>Description</u>	<u>Page</u>
1	Folder re insurance	17
2	Folder re CL and M	18
3	Folder re wire transfers	18
4	Folder re income tax information	21
5	Folder re Greatland Project Development	24
6	Folder re Greatland Project Development corporation documents	24
7	Folder re Dodge Financial, Inc. tax information	26

1 EXHIBITS FOR IDENTIFICATION:

2	<u>Dodge</u>	<u>Description</u>	<u>Page</u>
3			
4	8	Folder re Dodge Financial, Inc. bank records	27
5	9	Folder re [REDACTED]	29
6	10	Folder re [REDACTED]	31
7	11	Folder re [REDACTED]	32
8	12	Folder re [REDACTED] - Donald E. Dodge personal account	48
9			
10	13	Folder re [REDACTED] Bank - Donald E. Dodge personal account	49
11			
12	14	Folder re Donald E. Dodge personal tax information	51
13	15	Folder re SMM	
14	16	Folder re lender trust information	52
15	17	Folder re line of credit	54
16	18	Folder re Scott Farah life insurance policy	72
17			
18	19	Discretionary Line of Credit Agreement and Promissory Note	78

19

20 (Exhibits 1-18 retained by Mr. Donchess. Exhibit 19 appended.)

21

22

23

1 APPEARANCES:

2

For the Trustee:

3

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9 For Donald E. Dodge:

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603-625-1254
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13

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Court Reporter:

Grace E. Holden, NH LCR No. 45

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1 DONALD E. DODGE was
2 questioned and answered as follows:

3 BY MR. DONCHESS:

4 Q. We'll begin by, because we don't need to swear him
5 in, could you give us your name and address?

6 A. Yes. It's Donald E. Dodge.

7 Q. And your address?

8 A. Is [REDACTED], New
9 Hampshire [REDACTED]

10 Q. Mr. Dodge, could you outline your educational
11 background?

12 A. Yes. I feel like just giving you my notes from my
13 previous meeting which would point out all the things that I
14 consider highlights from my education.

15 MR. HOWARD: That's right.

16 A. I was put in the retard class in the third grade
17 and then I had to beg to graduate from the eighth grade --

18 MR. HOWARD: That's a '60s term. We don't use it
19 anymore.

20 A. To graduate from the third grade -- from the eighth
21 grade to the ninth grade, I had to beg. And then I was last,
22 the very last person allowed to graduate and only after a
23 meeting in a closet with me, another retard like me, a real

1 retard, a person who was disabled mentally, and a tough guy.
2 They allowed me and the retard to graduate but I was behind him
3 in the rankings.

4 MR. HOWARD: What high school was that?

5 THE WITNESS: That was Laconia High School.

6 A. So I did get a graduation certificate which was
7 discounted by the principal saying that he was ashamed to have
8 to give the same diploma to the person who really deserved it
9 most and the person who tried the least.

10 MR. HOWARD: What year was that?

11 THE WITNESS: That was 1961.

12 Q. And I take it you have had no education since your
13 graduation?

14 A. I have lots of education. I've read lots of
15 things. I've had -- interesting things. I've learned how to
16 read.

17 Q. But I'm asking about formal education.

18 A. I've had no formal other than taking courses that
19 required me to take tests and then get certified. I became a
20 chartered financial consultant and, you know, that sort of
21 thing.

22 Q. When did you become a chartered financial
23 consultant?

1 A. Sometime in the '80s.

2 Q. Since your graduation from high school, what, in
3 general terms to begin with, has been your employment history?

4 A. I've been, for the most part, self-employed as a
5 business consultant, uneducated one of course.

6 Q. And --

7 A. Helping people in trouble mostly. That was my
8 specialty.

9 Q. At what point did you become involved with the
10 mortgage business that ended up being Financial Resources
11 Mortgage, CL and M, that group of companies?

12 A. Well, Scott became my apprentice back in the early
13 '80s, when he finished college, Scott Farah, along with one
14 other apprentice. And he was a nuisance, too smart for me. I
15 kept him busy by giving him everything I didn't want to do
16 which, primarily, was find money for people. And he did it so
17 well, he wanted to start a mortgage company and asked me to
18 cosign for him, and so I did.

19 Q. Can I just stop you here for a minute?

20 A. Yes.

21 Q. When you said that you were having him find money
22 for people, does that mean raise money for --

23 A. No. It would usually help them to prepare their

1 documents to get it qualified as a loan at a bank. These are
2 very small little businesses, a locksmith, a carpenter, a
3 roofer, a single-man operations, two or three people
4 operations. We had a major, a biggie we called him, because he
5 was wealthy and could actually pay my fee. And he needed a
6 half a million dollars. And he, Scott, found it by calling
7 around all the mortgage sources, all the money sources, from
8 bank to bank all over the world, and got a lender for 475,000,
9 something like that, and we got paid our \$500 fee for putting
10 the deal together. Then we had to find a broker that had a
11 license, which was down the end of the building that we were
12 in, in Gilford, and that guy got \$4,000. So Scott said we
13 should be what he does and get the \$4,000 instead of \$500. And
14 so I agreed to sign for him. That's how we.

15 Q. So a mortgage company was --

16 A. Was formed. Financial Resources and Assistance
17 Corporation.

18 Q. And that evolved into Financial --

19 A. Financial Resources Mortgage.

20 Q. The company you just mentioned evolved through
21 changes in name to Financial Resources Mortgage, Inc?

22 A. Yes.

23 Q. When, approximately, was that company originally

1 formed?

2 A. I believe it was 1987 it was incorporated.

3 Q. And who was the owner of that company?

4 A. He was.

5 MR. HOWARD: Scott?

6 THE WITNESS: Scott, yes.

7 A. I, initially, had some stock ownership only because
8 I had to to get his license or something. As soon as possible,
9 once he was on his own, I told him I didn't want nothing to do
10 with it, and he, eventually, agreed to buy out my ten shares or
11 whatever it was.

12 Q. He has spoken about buying out preferred
13 shareholders for a price somewhere between 2 and \$3 million.

14 A. Yes. I learned about that in 2003 or 2004, is when
15 I even knew about that. I didn't know there were all those
16 shareholders. He had wanted me to sell off my shares, and [REDACTED]
17 [REDACTED] the other person, to sell off his shares; which was, he
18 agreed, I guess, with [REDACTED] to pay him \$10,000 for his shares at
19 the time, which was many years later. And then he called me
20 and asked me if I would sell mine, and I said sure. I had been
21 after him to. I would have given them to him, but he wanted me
22 on the thing in the beginning because he felt he needed me for
23 the licenses. When he finished college, he had nothing, no

1 assets.

2 Q. So you were not one of those preferred
3 shareholders?

4 A. No.

5 Q. Do you recall what Mr. Farah paid you for your
6 shares?

7 A. Yes. It was \$10,000.

8 Q. And, approximately, what year was that?

9 A. It was over a long period of time. I told him I
10 didn't care how he did it. He would send me a check for \$250
11 here and there and then, eventually, he told me he had me all
12 paid off except for \$1,000, and he gave that to me, I believe,
13 probably around 2000 or maybe it was in 1995. I'm not sure
14 when. It just evolved over a long period of time. I never
15 paid any attention to it. He just did it as he could.

16 Q. When do you think he finished the buy-out?

17 A. It was probably -- well, it would have been in the
18 '90s. Sometime in the '90s, I guess, would be my guesstimate.
19 It could have been '95, '96, something like that.

20 Q. Now, at some point -- I would like to refer to
21 Financial Resources Mortgage, Inc. as just FRM, just for the
22 sake of brevity.

23 A. That's all right.

1 Q. At some point your firm got into the business of
2 raising money in order to make loans.

3 A. Well, he got into the business of finding lenders
4 who would lend on a loan. He remained a mortgage broker. He
5 didn't, so far as I, I have never seen him raise some funds in
6 his pocket and then him go out and buy mortgages or make
7 mortgages or make loans. All I've ever seen him do is to set
8 up, find a person who is willing to lend on this particular
9 borrower who wants money; that borrower comes first, and then
10 he contacts people to see if they are interested.

11 And so I even helped develop a mailing list by
12 contacting a company that sold mailing lists to people who had
13 done mortgages and sending out a flier. I helped even create
14 the text of it for it to go out in a postcard that would say to
15 people would you like to own another mortgage. These are
16 people who had previously made mortgages. And that's how he
17 had contacted them, was they had done mortgages. That mail out
18 process is what caused people to say, yes, put me on your list.
19 That was the purpose of it.

20 And once they went on the list, then he would send
21 it either by e-mail or by mail -- I guess he did it always by
22 mail and then some people wanted it by e-mail -- what borrowers
23 we had in the queue, how many people. If we had three

1 borrowers looking for funding, he would then send out a copy of
2 those, a two-page summary of each one to all of the lenders.
3 And then they would call him if they were interested in more
4 information or if they were interested in making the loan.
5 They would call him and then say I'm interested in that, send
6 me this, or I have some questions or whatever. And then if
7 they said they like it, then they would wire the funds to CL
8 and M. CL and M would then -- or most of the time it happened
9 that way. And then CL and M would then -- which is my company
10 that I formed later --

11 Q. We're going to get into that.

12 A. Yes.

13 Q. So my question now, the business that you've
14 described where he's finding lenders, borrowers, etc., when
15 approximately did that begin?

16 A. Well, he always had about 20 private lenders, I
17 mean 10 to 20 individuals that knew him; and when he would come
18 across a small commercial deal that they might be interested
19 in, he would call them and put them together, you know, put the
20 two parties together. He would broker the loan. So that
21 existed, you know, very early on. Even, I think, a couple of
22 my clients started doing business with him unbeknownst to me.
23 I didn't even know that they were lending for him. And then

1 over the years I would get calls from clients who said Scott
2 has just called me and said he's got a deal and what do you
3 think. And I said, well, I tell you right now I just don't
4 like the mortgage business, I don't understand it, it's
5 confusing to me, go up and take a look, gather the data, and if
6 you want to talk to me, I'll look at it with you. And that's
7 how in the early years. Then later he would even call me in
8 and ask me would you come up, I'll pay your fee, you come up
9 and meet with me and this person and look at it with us
10 together and bring up your concerns. And I would. And I would
11 bring up whatever I thought was something that would bother me,
12 I would want to see more on, and then Scott would then work the
13 deal with the guy and take it from there.

14 Q. Now, you mentioned CL and M.

15 A. That was a company.

16 Q. When did you form that?

17 A. In 2005. But I started looking into finding a
18 service company for him because I didn't want to do it. He
19 needed a service company because it was getting too much for
20 him. Around 2003 or 2004, I started researching to see if I
21 could find a servicing company.

22 Q. And so the corporation, CL and M, was initiated or
23 started, founded in 2005?

1 A. In July, around July 1, I think, or June something
2 is the official date of 2005.

3 Q. And who owned CL and M?

4 A. I did. I formed the company. After we couldn't
5 find someone that would do a reasonable job, he asked me if I
6 would set it up. And I said I will set it up with you but I
7 don't know to run it. I'll set it up for you, I'll get all the
8 information. And, of course, I had no idea what I was getting
9 into. It was very complicated. And I just, once I got it set
10 up and running, I just kept running it.

11 Q. And were you the 100 percent owner of --

12 A. Yes.

13 Q. -- of CL and M throughout its existence?

14 A. Yes, I was.

15 Q. Do you recall who the directors were?

16 A. Me.

17 Q. How many bank accounts did CL and M have during the
18 time when it was operating?

19 A. I had, I believe, I want to say six but let me just
20 go through it. I had a two money market accounts which I had
21 made minimal deposits in. They just sat there until the end.

22 Q. Well, let me stop you there. Where were these two
23 money market accounts?

1 A. All of these were at [REDACTED]. Everything was at
2 [REDACTED] Bank. So I had, I believe it was, two money market
3 accounts, technically they were money market accounts; a
4 servicing account, a single servicing account for the first two
5 years, and then I opened up a second servicing account sometime
6 toward the end or the middle of the second year when I found it
7 too difficult to reconcile the accounts. So I would switch
8 from the -- I called it original service account and then
9 service account one, number one, which really was number two.
10 But those two accounts, I would run one, run it for three
11 months, all the transactions through the original account for
12 three months, and then I would switch to service account one
13 and run all the transactions for three months, which allowed
14 the other account to clean itself out so I knew if I had an
15 excess. I always left more in there so there would be an
16 excess. I never did have a check balancer until the week
17 before we closed. I, I started out using an Excel sheet --

18 MR. HOWARD: Before we go into that, he had asked
19 about how many accounts and where they were. So you've got two
20 money markets, two servicing accounts.

21 A. Yes. I have two servicing accounts. That's four.
22 Oh, and the most, the one that I really know about is the
23 operating account, which paid the rent, paid the -- purchased

1 equipment, paid the payroll. The operating account. So that
2 would be five that would all be CL and M. And then later --
3 but that's all CL and M has out there. The other accounts
4 don't belong to CL and M, so I can describe those later.

5 Q. And do you know how many accounts or what accounts
6 FRM had?

7 A. I have no idea.

8 Q. Now I think that I saw that you brought some
9 documents with you today?

10 A. I did.

11 Q. But they're not the on the table.

12 MR. HOWARD: They're just sitting right here.

13 A. They're sitting right here.

14 Q. Would you mind getting those out?

15 A. I'm not sure, these I just, because I don't have
16 any copies of them, I just have the originals, but I brought
17 everything I would want to know if I were you.

18 MR. HOWARD: This is not going to be tightly
19 responsive to the subpoena, but I guess you can tell him, sort
20 of in general, what's in here and --

21 Q. What if we just went through one folder at a time
22 and I'll look at it and you'll tell me what you think it is.

23 A. Okay.

1 Q. Let's start, just start with the first one.

2 A. Okay. That's insurance. That's insurance.

3 Q. So you've taken out a file folder.

4 A. Workers comp, yes.

5 Q. Can I just look at the file?

6 A. Yes. Certainly.

7 MR. HOWARD: Jim, while you're looking at it, just
8 so you know, the first folder that he skipped over is a
9 privileged folder. It's memos back and forth, him and me.

10 MR. DONCHESS: Okay.

11 Q. And so the first folder we're looking at here has
12 an insurance policy in it?

13 A. Yes. I think it's the liability and a little paper
14 about the workers comp.

15 MR. DONCHESS: Could we mark that as Exhibit 1?

16 (Dodge Exhibit 1 was
17 marked for identification.)

18 Q. Okay. So why don't you just show me the next
19 folder.

20 MR. HOWARD: This is the next one.

21 A. Okay. This is pretty much my incorporation
22 documents for CL and M.

23 MR. DONCHESS: Why don't we mark that as Exhibit 2.

1 (Dodge Exhibit 2 was

2 marked for identification.)

3 Q. Why don't you show me the next folder.

4 A. This is just -- I, I haven't been able to
5 accumulate any bank account information. This just lists the
6 bank account that I did my wires from and it has probably one,
7 two, three, four wires and a scribbly. I'm not even sure what
8 this means.

9 Q. So this folder has a number of, approximately five,
10 receipts?

11 A. They just happened to be in my --

12 Q. Wait. We can't talk at the same time. You have to
13 wait until I finish my question.

14 So there are about five documents indicating
15 various transfers, wire transfers, from one of the Citizens
16 accounts. Correct?

17 A. It could be a transfer from or a transfer in. I
18 don't know if those are all from or.

19 MR. DONCHESS: Why don't we mark that as Exhibit 3.

20 (Dodge Exhibit 3 was
21 marked for identification.)

22 Q. Now you're showing me another folder.

23 A. This is all my income tax information for CL and M

1 that I could find. And I don't have the taxes because they
2 were left up there. Except I happen to have --

3 MR. HOWARD: By left up there, you mean at the
4 office that has been seized by the government?

5 THE WITNESS: Yes. In November it was.

6 A. I have my 2006, a copy of my 2006 corporate tax
7 return. And I have my sheet from where I keep a record of the
8 interest earned. This is interest income for that year. This
9 is my fee income. And that includes the carryover of the
10 interest income so I would know how much total income I had in
11 2006. And this is how I did my taxes. I listed all the
12 payouts. This is all the expenses of 2006.

13 MR. HOWARD: You've been referring to yourself in
14 the first person. You mean CL and M?

15 THE WITNESS: CL and M, right.

16 A. So this is the background summarization of
17 everything that got put on the 2006 tax return.

18 Q. Okay.

19 A. And I don't -- the 2007 is still up in Meredith.
20 Or was. But I do have my sheet on the interest income that
21 came in that year and the expenses of those bank accounts. And
22 then, for 2007, I have the total income that came in that I
23 would have prepared my tax return from. And then, for 2007,

1 this is all the expenses. So this is all the information
2 that's on my tax return. I just don't have the tax return. In
3 2007, 2008, here is the interest income and the bank expense.
4 And then this is all the -- I just summarized the total income.
5 I don't know where the summary sheet is for it. But I have all
6 the expenses, and that was the gross income that came in, and
7 then the net is in there. And then, for the last, for 2009, I
8 haven't done the tax return, but I do have my operating account
9 sheets. Because I was going to prepare my taxes. I was going
10 to prepare these sheets from this. I never got to it yet. And
11 this is every transaction. This is what my operating account
12 Excel sheet looked like. But this is for the year of, a little
13 bit of 2008. It starts here in 2009. And I added up all the
14 income stream that came in. And it totals -- on the last page
15 you can see it, but it's the same here, the total income was
16 271,000. Total expense was 309,000. I had a loss of 37,000.
17 I think that's the only year we ever had a loss.

18 MR. DONCHESS: Let's mark this as whatever the next
19 exhibit is. Can I see what it is?

20 THE WITNESS: It's income tax info.

21 MR. DONCHESS: Income tax info. Let's mark it as
22 Exhibit 4.

23

1 (Dodge Exhibit 4 was
2 marked for identification.)

3 Q. In speaking about income for CL and M, what were
4 the sources of CL and M's income?

5 A. Financial Resources -- my agreement with Financial
6 Resources was that I would submit an invoice every month.
7 First off, I was to -- we based my income on half a point for
8 every loan that closed or \$500 minimum. It looked like that
9 would not be enough if time -- if loans extended beyond their
10 due date, which most of them were 12-month loans. So I should
11 be getting every 12 months a new loan with a new \$500, that
12 should work, but not if the loan extended beyond. And I was
13 concerned that they would. And I was correct on that. So I
14 said I want to be sure. I will set up the company. If I give
15 you a bill, I'm going to give you a bill, I'm going to every
16 month give you a bill for what my expenses are, whatever they
17 are. If I have to hire three more people to make it work, I
18 will submit the bill to you and you will -- I just want to know
19 you're going to cover that bill. And he said I will.

20 Q. And so basically you billed FRM for the expenses
21 for CL and M on a monthly basis?

22 A. Usually twice a month, about every two weeks I
23 would give him an invoice for what I saw coming for the next

1 two weeks or what I had due and what was coming, and I would
2 usually make it something a little bit larger to be sure to
3 cover unexpected things. So if I thought I was going to need
4 \$12,000, I would submit a bill for 12,500 or 13,000, and then
5 he would give me an FRM check, as my fee, and those are all
6 recorded, all the transaction deposits. On occasion, if it
7 wasn't good for him to send me a check, he -- this is another
8 story because of SMM Trust was his, he would say write a check
9 out of SMM for Financial Resources for the fee that you are
10 owed, and I would do that.

11 Q. And did you pay yourself a salary out of CL and M?

12 A. Yes, I did.

13 Q. What was the salary that you paid yourself?

14 A. I had an arrangement for a base. I wanted --
15 initially he asked me what I wanted, and I said, well, I want
16 \$100 an hour, an average of 40 hours, and that would be
17 200,000, but he said he had to think about it. When we got
18 back together I told him, look, I don't want to put pressure on
19 you but what I will take, accept, is 4,000 every two weeks,
20 8,000 a month, which will come out to roughly 100,000, just
21 under, and you will -- and then I will get a half a point, as a
22 bonus, if the company has the funds available to pay me, that I
23 would earn a half a point for that, and that would pretty much

1 make up what I wanted if the business went as he thought. He
2 told me he thought it was going to be extremely profitable and
3 all that sort of thing.

4 Q. Okay.

5 A. So my base income that you'll see in there is
6 4,000, every two weeks, going out and every now and then I
7 would take a small bonus. From the amount of bonus
8 accumulation, I might take a 3,000 or a 5,000 bonus. I would
9 speak to him about it. I would submit that in my invoice and
10 then I would pay that out.

11 Q. Why don't you show me the next folder.

12 MR. HOWARD: The next couple have to do with
13 Greatland.

14 A. You had asked for Greatland. Greatland is company.
15 Greatland Project Development, Incorporated was a company that
16 I formed, I think, in 2004. I've got the papers here I think.

17 MR. HOWARD: Here.

18 A. Oh, here's the whole folder.

19 Q. Let's deal with this folder first. Why don't I
20 look at this.

21 A. Okay. I just found those, like, yesterday. I
22 didn't --

23 Q. Can we agree that this folder contains documents

1 related to Greatland Project Development?

2 A. Mm-hmm.

3 Q. You have to say yes or no.

4 A. Yes.

5 MR. DONCHESS: Why don't we mark that as the next
6 exhibit. Now, before you say anything, let us mark the
7 exhibit.

8 (Dodge Exhibit 5 was
9 marked for identification.)

10 Q. Now, the next folder you're showing me also relates
11 to Greatland Project Development.

12 A. It's all the incorporation documents and the
13 documents that never got used but I thought might be useful if
14 I died. I created a buy/sell agreement and other things. But
15 they're all corporate documents.

16 MR. DONCHESS: All right. So we're going to mark
17 that as the next exhibit.

18 (Dodge Exhibit 6 was
19 marked for identification.)

20 Q. Now, does the next folder relate to Greatland?

21 A. No.

22 Q. Before we leave Greatland, did Greatland have bank
23 accounts?

1 A. No.

2 Q. Never had any income? Never had any expenses?

3 A. Oh, it had one expense, the \$100 for the annual
4 operating fee. It never was used for what I was intending to
5 use it for.

6 Q. What did you intend it for?

7 A. I had intended to possibly do some development, and
8 I would do it in the name of Greatland Development. Because
9 Scott said that he's got a lot of clients with land, they want
10 to do developments, would you consider heading up that. And I
11 said I'll consider it but, you know, I know nothing about it.
12 So I said I am willing to set up a corporation in case we do.
13 That never happened.

14 Q. Okay. All right. What's your next folder?

15 A. The next folder is Dodge Financial, Incorporated.
16 And it's all the income tax information that I have on Dodge
17 Financial, Incorporated going back -- I think you asked since
18 2005. I found my 2005 income tax. And I have my wages for
19 2006. And then I have a dummy sheet that I create, only one
20 sheet, for 2006 because it's only my rough draft in order to
21 determine how much my tax is going to be so I can send in any
22 money with my extension. I cannot -- at this point in time we
23 don't know if I ever did the 2006 or, by mistake, sent this off

1 to the IRS. Because I signed it and dated it.

2 Q. All right. So let me just mark this folder.

3 A. Yes.

4 Q. So we can agree that this folder relates to --

5 A. It's my income tax for Dodge Financial.

6 Q. This folder relates to Dodge Financial?

7 A. Yes.

8 Q. All right. Let me mark that.

9 A. The rest of them are tax returns.

10 Q. Did Dodge Financial have any bank accounts?

11 A. Yes.

12 Q. I'll ask you about that as soon as we mark this
13 folder.

14 A. All right.

15 (Dodge Exhibit 7 was
16 marked for identification.)

17 Q. Now, what is your next folder? Is that another
18 Dodge Financial folder?

19 A. This is the bank accounts since 2005. The bank was
20 called ██████ Bank and then it became ██████ Bank.

21 And it's up to almost to current. I don't know what's happened
22 to the most recent. I had pulled them out to give information
23 and I couldn't find the last two months or three months.

1 Q. And these are bank records for Dodge Financial?

2 A. Dodge Financial since [REDACTED] Bank.

3 Q. Now, is Dodge Financial a company that you owned or
4 you own?

5 A. That's because that's in --

6 Q. Well, let's --

7 A. Dodge Financial is who I own, yes. I started that
8 company many years ago. Actually, it started with my
9 apprentice, [REDACTED], so that we could incorporate so that he
10 would be able to take over the company if I died, and he became
11 the incorporator, and then I ended buying him out for a token
12 amount, \$1,000 I think.

13 MR. DONCHESS: So let's mark that folder.

14 (Dodge Exhibit 8 was
15 marked for identification.)

16 Q. In the period of 2005 to 2009, did Dodge Financial
17 have income or revenue?

18 A. Dodge Financial was the company that CL and M
19 contracted to provide management oversight for CL and M. My
20 goal was to find someone to take over CL and M and I would just
21 turn it over to them, and Dodge Financial was going to -- it
22 could have been me, it could have been somebody that would work
23 for Dodge Financial, and they would run it in that same way,

1 but I wanted succession. If I died, I wanted somebody to be
2 able to keep running it and have a seamless operation. So
3 Dodge Financial was the operating person. So every two weeks
4 \$4,000 was paid from CL and M to Dodge Financial and then Dodge
5 Financial would pay me a salary. And I've got W-2's and all of
6 that in my tax stuff. And so you'll see the 4,000 coming into
7 Dodge Financial, and then you'll see whatever portion of that
8 gets paid out to Donald Dodge.

9 Q. Could you show me your next folder?

10 MR. HOWARD: The next several, Jim, relate to, I
11 told Deb Notinger about this, the properties that are in
12 Moultonborough that are in Don's name. It looks like there's a
13 folder for each one.

14 A. There is. There are three properties. I do not
15 know which comes first but I'm going to say [REDACTED] was the
16 first property.

17 Q. The first property that what?

18 A. Well, [REDACTED], [REDACTED], you'll hear that name.

19 Q. Let me go back. Are these properties you own?

20 A. I bought them out after they were built.

21 Q. Do you own them now?

22 A. I do own them, yes. Technically I own them.

23 MR. HOWARD: Subject to the mortgages that are on

1 them.

2 A. Subject to the mortgages. The mortgages are bigger
3 than the values.

4 Q. So there's a property at [REDACTED]?

5 A. Yes, [REDACTED]. I have them here, what the
6 mortgages are. Like 347,000, I have the tax assessment value
7 of 291.

8 Q. And this folder relates to [REDACTED]?

9 A. That's right.

10 MR. DONCHESS: Why don't we mark that.

11 (Dodge Exhibit 9 was
12 marked for identification.

13 Q. And [REDACTED] Lane, is it a vacant lot or a lot
14 with --

15 A. No. It's a house that was built. It's really a
16 glorified mobile home the way I see it. It was very poorly
17 constructed. It was an experiment between Scott and [REDACTED].
18 They built a house, sort of like two mobile homes sitting on
19 top of each other. It's a very chintzy house.

20 Q. How much is the mortgage on that? Ball park.

21 A. 300 and something thousand.

22 Q. Who holds the mortgage?

23 A. Whatever that company is on there. I have to look

1 at it.

2 Q. Is it a fair lender or is it a more traditional
3 mortgage lender?

4 A. No. That's how it -- it was originally built with
5 private lender funds and, let's say, for a \$200,000 loan from a
6 private lender, to [REDACTED], and he built and constructed
7 this house. This was supposed to be for a poor person to buy.
8 When it was constructed and completed, it was assessed at a
9 ridiculous number, 380,000, or some silly thing. Scott asked
10 me if I would buy it so that -- because we were paying -- they
11 were paying 13, 14 percent interest on it as a private lender
12 loan. It was finished but the loan term had come due. And he
13 said would you buy the house, that way we can get -- because I
14 said I don't know if I have enough credit to buy such a house.
15 He said, yes, you do, I've already checked your credit. I said
16 all right, sure, I'll buy it. And that would make the interest
17 to be 6 percent. And then that would create funds, the excess
18 funds, to build [REDACTED] and then [REDACTED], you
19 know, and so forth.

20 Q. All right. So the next folder relates to
21 [REDACTED]?

22 A. Yes.

23 Q. Does that property have a mortgage on it?

1 A. Yes.

2 Q. Do you know, approximately, the ball park amount of
3 that mortgage?

4 A. They're all in the \$300,000 range and the values of
5 the properties are all a little bit less. I can't tell you. I
6 can show it to you. All the papers are there.

7 MR. DONCHESS: Why don't we mark that as the next
8 exhibit.

9 (Dodge Exhibit 10 was
10 marked for identification.)

11 Q. Now you're showing me a folder that relates to a
12 third property?

13 A. Yes.

14 Q. Which is at [REDACTED]?

15 A. That's correct.

16 Q. Is this the same scenario, you own the property but
17 there's a mortgage on it that you think exceeds the value?

18 A. Yes. In fact, I think I have created a summary on
19 each of these. Yeah. Right here. It's 353,000 with the
20 mortgage, 348,000. I mean 353 is the assessed value and the
21 mortgage is 348. So there's one that's got maybe, but I assure
22 you it's not.

23 MR. HOWARD: When you say the assessed value, you

1 mean by the town for tax purposes?

2 THE WITNESS: Right. But the reality is they're
3 not selling and I would say it's in the 200,000 real value,
4 250,000 maybe.

5 MR. DONCHESS: So let's take a minute and mark
6 that.

7 (Dodge Exhibit 11 was
8 marked for identification.)

9 Q. Do you recall, approximately, when you purchased
10 the property at [REDACTED]?

11 A. I would have to look in the papers.

12 Q. Can you estimate a year?

13 A. That's right there. I could give it to you very
14 quickly.

15 Q. All right. So I'm going to show you -- I'm going
16 to give you back Exhibit 9. If you can tell me, approximately,
17 when you bought the property, by looking at that, that's what I
18 would like to know.

19 A. It would have been probably September, October of
20 '06.

21 Q. When did you mortgage that property?

22 A. I've got it right here, the exact date. It was
23 October 25, 2006.

1 Q. When did you mortgage that property?

2 A. When I bought it. On that date it was mortgaged.
3 I applied for a loan.

4 Q. And in between the date when you acquired a
5 mortgage of the property, in '06, and the bankruptcy filing in
6 November of 2009, how did the interest on that mortgage get
7 paid?

8 A. It was paid every month because of the excess cash
9 I was promised that he would give me, and he did, and amount,
10 every month, to cover the mortgages. Or, in other words, there
11 was left over funds from the sale of the first house. You
12 know, when it sold, they had the excess funds, and I think they
13 put 30,000 into my [REDACTED] personal account. That
14 account I used strictly for these. And I have some information
15 on that.

16 Q. Well, was someone living in this house, [REDACTED]
17 Lane?

18 A. Yes. Eventually, we found a fellow. We almost had
19 a couple of buyers. And then we have a guy that was renting
20 with an option to buy and he's since stopped making payments.
21 I never did very well on it. And he's still there.

22 Q. Who paid the interest on the mortgage?

23 A. I made the payment out of my [REDACTED] Bank account.

1 Q. You made what payment?

2 A. On the mortgage payment.

3 Q. So you made it out of your personnel funds?

4 A. No. Well, you call it my personal funds. I own
5 the account. But upon the sale of the first property, I, I'm
6 guessing now, they gave me \$30,000 to deposit in there with the
7 expectation that it would be enough. I said, well, if it's not
8 enough --

9 MR. HOWARD: Please be more clear. Enough to do
10 what?

11 THE WITNESS: Make the payments.

12 MR. HOWARD: On the next -- on this [REDACTED]?

13 THE WITNESS: On [REDACTED]. If I ran out of money,
14 they would supply me the money. Scott would make sure it was
15 supplied to me.

16 Q. And when you say when the first property sold, what
17 are you referring to as the first property?

18 A. Well, this property, when I bought it, the effect
19 of that created a profit over the private mortgage. The
20 private mortgage was 200,000. I borrowed 345,000, or whatever
21 it was, and the result was that excess cash, they paid off the
22 private lender and now Scott had those fund to use to build
23 [REDACTED] and [REDACTED] and there was another one that we

1 sold that was up on -- that was in [REDACTED]. And that
2 produced a group of money that kept it going. So they supplied
3 me or, whenever I ran low, I would say to Scott, I need money
4 to pay those mortgages, and I would get a check from [REDACTED]
5 [REDACTED] excess fund.

6 Q. So on [REDACTED], who owned the property before
7 you bought it?

8 A. [REDACTED], it would have been [REDACTED]. It's
9 right on the deed. This would be the actual deed. That's a
10 transfer from [REDACTED], as trustee of the [REDACTED] Trust, to
11 Donald Dodge.

12 Q. You're showing me a deed from Exhibit 9.

13 So what happened is that you bought the [REDACTED]
14 property from [REDACTED]?

15 A. Mm-hmm.

16 Q. You have to say yes or no.

17 A. Yes.

18 Q. And at that time there was approximately a
19 \$200,000 mortgage on it?

20 A. I'm guessing.

21 Q. You borrowed 340 or 50 thousand dollars in order to
22 make the purchase. Is that correct?

23 A. It might have been smaller than that. It might

1 have been -- the total purchase was 357,000. The new loan
2 amount would be on -- it's one more page in. Well, it looks
3 like it was 240 to the private lender and then the total amount
4 that came from the loan, I believe the new loan was 359,000.

5 Q. All right. So you bought the property and at that
6 time you borrowed \$359,000?

7 A. Yes.

8 Q. Can you say, from looking at that, from whom you
9 borrowed the money?

10 A. They had a funny name. First Magnus Financial
11 Corporation.

12 Q. And you borrowed 350 something thousand dollars.
13 Correct?

14 A. Yes.

15 Q. And the excess, the difference between the amount
16 of the loan that was paid off and the amount of this new loan
17 went where?

18 A. It went to [REDACTED] and he established an
19 account. I guess it was at Citizens. I'm not sure where it
20 was. That the funds from there, he and Scott -- I don't think
21 [REDACTED] even understands as much as I understand.

22 MR. HOWARD: Just tell him what happened.

23 A. But they would give me -- that's the --

1 Q. So [REDACTED] got the excess funds?

2 A. That's right.

3 Q. But they gave you money --

4 A. To make payments.

5 Q. Wait. Wait until I finish the question.

6 They, Farah and [REDACTED], gave you enough money to
7 hold in your personal account to make the payments?

8 A. Yes.

9 Q. And did that money ever run out?

10 A. I'm sure it did because I asked, probably within a
11 year or so, I would start asking for funds for it, but by that
12 time I think the other house had sold, so there was more money
13 in that account. It went down past -- I kept, tried to keep
14 track of it.

15 Q. Let me ask you about how the second. So you've
16 described, I think, the first transaction.

17 A. Yes.

18 Q. And I think you understand it.

19 A. Mm-hmm.

20 Q. Now, the second transaction was at [REDACTED]

21 [REDACTED]?

22 A. I think.

23 Q. And what happened there? Was it a similar

1 transaction, you bought a property for an amount greater than
2 the existing mortgage?

3 A. Yes. Because it was built with private money.

4 MR. HOWARD: Would you mind handing me the
5 folder?

6 THE WITNESS: Yes. If I have the folder, I can
7 come close to telling you the amount.

8 MR. HOWARD: I'm going to look at the folder. You
9 answer his question as best you can.

10 Q. So at [REDACTED], who was the owner before
11 you?

12 A. That one could have been owned by the church.
13 Center Harbor Christian Church may have been the technical
14 owner. In fact, I know it was because it was Center Harbor
15 Christian Church that owned the. And by the way, I think 26
16 was built after the -- I'll say [REDACTED]. So 13 was
17 built next but so was -- 26 was being built at the same time.
18 It was like two houses going up at the same time except 13 got
19 built first. When it got finished, we did find a buyer for
20 that and that closed and then it created, again, some more
21 funds.

22 Q. Were you involved as an owner or anything else in
23 13 Colonial Drive?

1 A. I tried as little as possible to be involved.

2 MR. HOWARD: Just whether you were or you weren't.

3 A. I looked at it twice. I was considering moving
4 there.

5 Q. Did you ever own it?

6 A. I own it.

7 Q. [REDACTED]

8 A. I bought it from Center Harbor Christian Church,
9 the same way as I bought [REDACTED]

10 Q. But in this case, that is [REDACTED], the
11 house was sold to someone else?

12 A. Eventually, yes, within a short. Maybe eight
13 months, nine months. Maybe it was a year. I'm not sure how
14 long it was from the time it was finished to the time the sale
15 happened. I know it was cold.

16 Q. Did you make a profit on that sale?

17 A. They made -- Center Harbor may have made a profit.
18 It may have even had a loss. I don't know.

19 MR. HOWARD: On which house?

20 THE WITNESS: On the 13. I'm not sure. Because I
21 know they discounted it. It got negotiated two or three times,
22 it went back and forth, and eventually they made a deal. And
23 they asked me to come in and sign papers and I went in and

1 signed papers.

2 Q. So you neither made nor lost money on the [REDACTED]

3 [REDACTED] transaction. Is that correct?

4 A. No. That is correct.

5 Q. All right. Now, on --

6 A. Oh, I think I lost money but I know I didn't make
7 any money. But I probably didn't lose any of my money. You
8 know, it was the money in the pool.

9 Q. What pool?

10 A. I couldn't -- in this case it would have been
11 Center Harbor Christian Church that would have possibly, they
12 would have made some money when I financed and bought it. And
13 then when it was sold, it may have sold for less than the
14 mortgage.

15 Q. All right. Now, [REDACTED] you bought that
16 property?

17 A. Yes.

18 Q. In a similar fashion that you bought [REDACTED]?

19 A. And [REDACTED] yes, I did.

20 Q. And did you pay more than the amount of the
21 existing loan on [REDACTED]?

22 A. Yes. Because the value, the value on all the
23 properties went way up when he was building them. The loan was

1 a construction loan, so that was substantially lower than what
2 the value of the property was going to be, so the financing
3 value was higher.

4 Q. So did you borrow money to purchase [REDACTED]
5 [REDACTED]

6 A. I did.

7 Q. Do you recall how much?

8 A. No. But I can tell you. Oh, 13, no, I don't.

9 Q. So whatever one. 26?

10 A. 26, I can tell you. The new loan amount was -- it
11 was two loans, the first and a second, was 56,000 and 31,000.

12 MR. HOWARD: 256.

13 A. I'm sorry. 256,000. And 31,322.91 was the second
14 mortgage.

15 Q. And you borrowed those funds in order to make the
16 purchase of --

17 A. Purchase it.

18 Q. -- of the property?

19 A. And the payoff.

20 Q. And were those funds used to build a house, those
21 borrowed funds?

22 A. No. The house had already been built by the
23 construction loan, the private lender, and then we were paying

1 off the private lender. The private lender was being paid
2 14 percent per month. The reason they asked me to do it is I
3 would qualify for a 6 percent loan, 7 percent loan, something
4 to the effect it would be a substantial savings in cost to
5 them.

6 Q. Who is them?

7 A. I guess, in this case, it would be Center Harbor
8 Christian Church and Scott.

9 Q. So you bought the property?

10 A. Yes.

11 Q. You borrowed the funds that you've just spoken
12 about in order to do so?

13 A. I borrowed the funds, right, to purchase the
14 property from the church because that was built, it was a built
15 house.

16 Q. How much did you pay for it?

17 A. And I paid, a total contract price was 320,000.

18 Q. How much did you borrow?

19 A. And I borrowed -- contract price of 325. I
20 borrowed -- total paid by the borrower was 287,322.91.

21 Q. So there were no excess funds generated by this
22 transaction?

23 A. No. There was just the -- the reason they would

1 want it was the monthly payment, instead of 14 percent, it was
2 reduced to whatever the payment was, 7 percent.

3 Q. Who lent you the money?

4 A. GMAC lent me the 31,000. And on the other
5 lender --

6 MR. HOWARD: It was just the opposite, wasn't it?
7 Turn back to the first page. This one is American Home
8 Mortgage.

9 THE WITNESS: No. American Home Mortgage is the
10 one that has the big loan.

11 MR. HOWARD: Okay.

12 A. It's down here.

13 Q. All right.

14 A. ASC. American Servicing Company.

15 Q. Who has been paying the mortgage payments since you
16 purchased the property?

17 A. I have.

18 Q. Personally?

19 A. Out of that account.

20 Q. The \$30,000 account?

21 A. Yes, we'll call it 30,000.

22 Q. And that's been replenished by Farah and [REDACTED]?

23 A. Farah, [REDACTED]. And I don't know what, if the church

1 had any funds or whatever. I have no idea.

2 Q. How long have you owned the property at [REDACTED]

4 A. 26?

5 Q. Is that the one we're talking about right now?

6 A. Yes. Yes. 18th of December 2006 was the 26

7 Colonial Drive.

8 Q. Do you still own it?

9 A. Yes.

10 Q. Okay. And has anybody tried to foreclose? Have
11 any payments been made since November?

12 A. Not since November. I may have made the November
13 payment.

14 Q. And the third property that we're talking about is
15 what, 10 Cook Lane?

16 A. [REDACTED], yes.

17 Q. And you borrowed money to purchase [REDACTED]?

18 A. Yes.

19 Q. And were there excess funds generated by that
20 transaction?

21 A. I have to look at it.

22 Q. Okay.

23 MR. HOWARD: It's the second folder down there I

1 believe.

2 THE WITNESS: Yes.

3 MR. HOWARD: Is that the closing statement? That's
4 the insurance.

5 THE WITNESS: No. That's the insurance. What date
6 was that? February of '07?

7 MR. HOWARD: '08.

8 THE WITNESS: No.

9 MR. HOWARD: '07.

10 THE WITNESS: It was February 5th of '07.

11 MR. HOWARD: Let's make sure. So the deed is
12 February 5 of '07?

13 THE WITNESS: Yes.

14 MR. HOWARD: I'm not seeing the closing statement
15 but I may have missed it.

16 THE WITNESS: I didn't put these in order. I just,
17 every time I found a piece of paper.

18 Q. So can you tell how much you purchased that for?

19 A. 395,000.

20 Q. How much did you borrow?

21 A. 355,500.

22 Q. Who paid the difference between the loan of 355 and
23 the purchase price of 390?

1 A. 41,552.04.

2 Q. Did you pay that?

3 A. What did we pay off? Okay. The payoff, yes, that
4 was, it came out of there, I guess, because the payoff was only
5 \$205,438.

6 Q. Who was the payoff to?

7 A. Oh, [REDACTED] Trust.

8 Q. When did that or -- and you gave me the date?

9 MR. HOWARD: February 5 of 2007.

10 A. Yes.

11 Q. Who did you buy the property from?

12 A. [REDACTED] -- [REDACTED] Trust. [REDACTED].

13 Q. Do you know what happened to the difference between
14 the payoff to the [REDACTED] Trust and the amount of the money you
15 borrowed?

16 A. I don't know what happened to all of it. I know
17 that a portion of it went into an account, got into the
18 accounting that I kept track of. Because every month when I
19 pull out from it, I would say I need a check for this amount
20 that it reduced that amount, and Scott got me a check.

21 Q. Why was Farah paying interest on properties that
22 you owned?

23 A. Because he, he and [REDACTED], for instance, had some

1 kind of handshake partnership deal where they would, Scott
2 would find a financing through a private lender, [REDACTED] would go
3 out and build the thing in his name and then, when it was
4 built, they would sell it and then they would share the profit
5 in some way. You would have to talk to [REDACTED] and Scott. I
6 don't know what it was. All I know is that [REDACTED] would never
7 have done this on his own and Scott had the intelligence to do
8 it.

9 Q. Why not?

10 A. He wouldn't know how. Just as I wouldn't have set
11 up a servicing company for mortgages if Scott didn't -- he
12 would have been servicing his own loans for years.

13 Q. All right. So let's look at your next folder.

14 MR. HOWARD: I believe the subpoena asked for the
15 personal bank records. So there are two folders, [REDACTED] Bank
16 and [REDACTED] Bank.

17 Q. So there's one Citizens Bank folder and one Laconia
18 Bank folder?

19 A. Yes. This is the [REDACTED] account that I wrote out
20 all the checks.

21 MR. DONCHESS: Let's mark that as the next exhibit.

22 A. That account I considered to be --

23 MR. DONCHESS: Wait. Let's mark it.

1 (Dodge Exhibit 12 was
2 marked for identification.)

3 Q. All right. Let's stay with Exhibit 12 for a
4 minute.

5 A. Okay.

6 Q. Exhibit 12 is a record of the [REDACTED] Bank account
7 where the interest, the money was held to pay the interest on
8 the three transactions, [REDACTED] [REDACTED] and
9 10 Cook Lane. Correct?

10 A. Yes. And, also, I think 13 Colonial Drive was in
11 part, in the early, you'll see some stage where I made payments
12 on that for a time until it sold.

13 Q. Does this account at [REDACTED] have any money in it
14 now?

15 A. If you look on the back page, the last page, they
16 said they had a freeze on it. Everything got frozen. So there
17 was \$2,758 in there; however, they're charging me \$125. Now I
18 think there's nothing. But maybe there is some. They keep
19 saying that it's zero.

20 Q. All right. Now, the next folder is of a bank
21 account in what bank?

22 A. [REDACTED] Bank. This has been my account
23 forever. I was with -- I mean I just took the 2005 forward.

1 Q. Is this your personal account?

2 A. It's my personal account. It's my DBA account.

3 MR. DONCHESS: Let's mark that.

4 (Dodge Exhibit 13 was
5 marked for identification.)

6 Q. Does the [REDACTED] Bank account have any
7 money in it?

8 A. Yes. They've frozen my pension that I've been
9 trying to get forever. It finally came in just after you froze
10 it. Which I didn't know. I didn't know all this had happened.
11 So they got my, my pension funds added to 6,000. There's about
12 9,000 or 8,000 or so in there that was frozen.

13 Q. And you're saying --

14 A. They bounced a bunch of checks.

15 Q. You're saying part of that is pension money?

16 A. Yes. It's my pension. And I was hoping that when
17 I get to talk to you folks, to somebody, I didn't know who to
18 talk to to see if I can get my pension released. Because it's
19 my understanding that my pension, I had applied two years ago
20 for my pension from John Hancock. It's \$147 a month. It's not
21 a huge amount of money. And when you're making a decent
22 income, it doesn't bother you that much. But I would send a
23 letter about twice a year saying, please, will you tell me how

1 to get my pension. I'm past 65. I would like to get it.
2 Finally, I made a call and I got a guy and he said he would
3 make sure it happened, and I just forgot about it. He said,
4 What's your bank account? I gave him my bank account. On
5 November 25, my back payments of \$147, since the two years,
6 this \$3,000 comes in, plus a couple, a portion of a partial
7 payment, plus, and it's all taken from me.

8 Q. So these are payments from your pension?

9 A. They're payments from my pension to me and I
10 couldn't get them. And I said, you know, I don't have any
11 money to spend. I'm having to live off credit cards. I called
12 Mark and he said I think you're going to have to talk to the
13 Bankruptcy Court or somebody, whoever has got control over
14 that.

15 Q. Okay. And what folder is next?

16 THE WITNESS: I've lost weight because of it, too.
17 This used to be tight.

18 MR. DONCHESS: Good.

19 MR. HOWARD: This is your tax information.

20 A. Yes. This is my personal tax information. This is
21 my social security.

22 Q. So let's just stop there. The folder you're
23 showing me has personal tax information?

1 A. Right.

2 MR. DONCHESS: Can we mark that as the next folder,
3 the next exhibit, please?

4 (Dodge Exhibit 14 was
5 marked for identification.)

6 Q. What's your next folder?

7 MR. HOWARD: I don't think it's relevant but go
8 ahead and tell him.

9 A. It's just part of my old business of helping people
10 with different problems. This was a gal who died and there was
11 no money and nobody would help solve the problem. It was an
12 old shack up in Conway. And so I helped put together papers
13 for the Probate Court.

14 Q. All right. So let's not bother marking that. What
15 is your next folder?

16 MR. HOWARD: SMM.

17 A. Yes.

18 Q. This next folder relates to the SMM Realty Trust?

19 A. SMM, this is the bank account information from
20 Citizens Bank.

21 MR. DONCHESS: Okay. Let's mark this.

22 A. And Dodge Financial is the trustee.

23 MR. DONCHESS: Let's mark this folder.

1 (Dodge Exhibit 15 was
2 marked for identification.)

3 Q. Now, on Exhibit 15, what is the SMM 2007 Realty
4 Trust?

5 A. It was a trust that Scott created for his wife and
6 children. SMM stands for Susan, [REDACTED] and [REDACTED]. Or Susan,
7 [REDACTED], and [REDACTED]

8 Q. And were you the trustee of that trust?

9 A. And he asked me to be the trustee of it. It was,
10 initially, going to be done for estate planning purposes.

11 Q. Does the SMM Realty Trust have assets?

12 A. I don't know. Honestly, I just don't know. I know
13 that there was mortgages that were purchased from his funds
14 that were payable to SMM. So, yes, there should be some assets
15 in there. And then there was mortgages in which SMM became the
16 borrower of funds. So every month I would get in \$60,000 from
17 all the payments, maybe more.

18 Q. From SMM?

19 A. The money that would come to SMM, from borrowers
20 making payments to SMM, as a lender. I would say maybe closer
21 to 70,000. It would be 60 to \$70,000 that would come in every
22 month. And then I would have to turn around, because SMM had
23 borrowed money, probably to buy -- to lend -- I don't know what

1 the reason was. SMM was also a borrower. And I would have to
2 pay out usually a little tiny bit less than what came in. But
3 near the end, the very end, the amount going out was even
4 greater.

5 Q. And do you have anywhere a list of the mortgages
6 that were held by SMM?

7 A. You can tell possibly -- I'm just trying to think
8 if this has the borrower.

9 MR. HOWARD: Was SMM a lender?

10 A. This is the K-1's. I know that if [REDACTED] were still
11 allowed to run the books she would be able to get everything.
12 I don't even know how to do it on her software, which is a
13 different software. In there she could produce all the
14 borrowers for any entity and all the lenders from any entity so
15 I could get a list. It's in that software that somebody has.

16 MR. HOWARD: Jim, your question was are there
17 any -- is SMM Trust the lender on any of these?

18 Q. Well, my question was do you have a list of --

19 A. I don't have it in my possession.

20 Q. -- the mortgages held where SMM is the lender of
21 those mortgages?

22 MR. HOWARD: A discrete list?

23 MR. DONCHESS: That's my first question, a discrete

1 list, yes.

2 A. I don't have -- I mean I might be able to find --

3 Q. Can you find it on this next folder that you're
4 looking at?

5 MR. HOWARD: I'm going through it right now. If
6 you want to, if you have other questions to move on to, I'll
7 see if I can find where SMM is listed. I can't say that I've
8 ever seen it, but I will look.

9 A. This is over there.

10 Q. All right. So you're just looking at documents in
11 the next folder. Right?

12 A. Yes.

13 MR. DONCHESS: Why don't we mark that folder.

14 A. It would be trusts. It's trust, lender trust
15 information.

16 MR. DONCHESS: Why don't we mark this folder.

17 MR. HOWARD: Go ahead and take that and I'll put
18 these back in this.

19 A. That one has to do with K-1's that go out and the
20 other one is through the trustee.

21 MR. DONCHESS: Why don't we mark this.

22 (Dodge Exhibit 16 was
23 marked for identification.)

1 Q. All right. So you've given me a folder, which
2 we've now marked as Exhibit 16, with a bunch of lists of the
3 trusts in it. Correct?

4 A. And the K-1 information that the trust gave out to
5 lenders. It's really lender information, not much to do with
6 borrowing.

7 Q. In terms of the mortgages on which SMM owed money,
8 do you have any list of those mortgages?

9 A. I don't have them. It's in that software.

10 Q. What's your next folder?

11 MR. HOWARD: This is the line of credit.

12 A. Yes. You had asked me to bring in information on
13 the line of credit.

14 Q. Right.

15 A. And this is my list. I went through and this is
16 every transaction, every time a note in series was issued, this
17 is the date it went, and the amount, all the way through till
18 the end.

19 Q. And this has to do with the line of credit from?

20 A. From CL and M to Financial Resources. And these
21 are all the transactions. And these are the exact transactions
22 that I have in my records.

23 Q. And you're showing me a page that --

1 A. Summarizes.

2 Q. -- ends with a total figure of 20,348,000. Is
3 that correct?

4 A. Yes.

5 Q. And you're saying that each one of these entries
6 represents a transaction in which CL and M transferred funds
7 into FRM. Right?

8 A. Yes. Yes. Or paid something on behalf of FRM. It
9 may not have gone directly. It may have gone to a bank. It
10 may have gone to a disgruntled client who was settling for
11 something. I mean I have no idea what, where it went. I, most
12 likely, would have issued the check as a wire transfer or might
13 have cut a check or might have done what's called and interbank
14 transfer, whatever it was. I made a log of it on a scribble
15 piece of paper.

16 Q. So this sheet represents loans, in essence, from --

17 A. Yes. From CL and M.

18 Q. Wait until I finish the question.

19 A. Yes.

20 Q. This sheet represents, roughly, \$20 million of
21 loans from CL and M to FRM. Correct?

22 A. That is correct.

23 Q. Why would -- why did you, representing CL and M,

1 agree to loan FRM over \$20 million?

2 A. I don't know if I have the whole written thing or I
3 can just go ahead and tell you.

4 MR. HOWARD: Just tell him.

5 A. All right. I need some more water. My voice.

6 MR. DONCHESS: Why don't we take a bathroom break.

7 (Recess taken.)

8 Q. (by Mr. Donchess) I think the pending question was
9 why would you have lent FRM over \$20 million?

10 A. I had no intentions to. I'll start off with that.

11 Q. What do you mean?

12 A. I never intended to lend FRM \$20 million.

13 Q. But you did?

14 A. Oh, I know. And it is the stupidest, dumbest thing
15 that anybody could ever do.

16 But going back to how it came about, when we, after
17 a year of trying to find companies to take over servicing, and
18 we couldn't find anybody that would be a match, they either
19 charged too much or they didn't have the ability to do a
20 service for a small company, it was agreed I would agree that I
21 would set up CL and M. I got through all the pieces that I
22 could go through, got it incorporated, or was about to get it
23 incorporated, but my concern on the whole thing was how was I

1 going to get paid to be able to support the staff that I needed
2 to do a servicing. I did not want a nightmare, to be creating
3 a nightmare and getting involved with a nightmare. I had
4 contacted Citizens Bank. They offered a -- had a program,
5 called a Sweep Account, where if you set up this sweep
6 arrangement, they would take the money out of your account on a
7 daily basis, and it would earn some interest, and then whenever
8 you called for the money, they would put it back, when you
9 wrote a check they would make it good.

10 At the same time that I was looking at that -- and
11 it was a reasonable thing to do, and I did it. I signed the
12 contract. -- Scott was calling, was talking with lenders who
13 did not want to lend on mortgages. And a couple of them, Scott
14 said, well, how would you like to set up a line of credit so
15 that I can do short-term closings, and you'll make a piece on
16 every, you know, some amount on every loan. And there was two
17 lenders that wanted to do it. One, in particular, wanted to do
18 it but his fees were way, way too high, and I said, Scott, I
19 think that's ridiculous. But he had so many loan opportunities
20 coming in --

21 Q. Who is he?

22 A. Scott. That he needed to -- he could lose them if
23 he wasn't able to fund them. They were shotgunning their

1 requests, their loan requests, all over the place and he would
2 lose some of the better credit people. People that had better
3 credit would often go with someone else because he couldn't
4 close fast enough. So this is my brilliant, 30 years of
5 business background coming into play. I came up with the idea,
6 well, CL and M is going to be sitting on construction funds for
7 as long as a year, I don't want it out a year, but if you're
8 looking at doing a closing, why can't I set up a line of credit
9 with you that you would then pay me, you know, 10 percent
10 interest, if you're earning 14, whatever it is, for the time
11 that it's out. And he said that makes sense. And I said, now,
12 I want to be sure that this still doesn't -- if I'm able to
13 make enough on the interest to cover my debt, I'm happy, but I
14 still want to be sure you're going to guarantee that I will
15 have the monthly bills covered every month, if there isn't
16 enough in the account, that Scott would honor my invoice even
17 if it wasn't justified.

18 Q. So are you telling me that you -- did CL and M lend
19 FRM over \$20 million in the expectation that FRM would pay
20 interest on that amount?

21 A. Yes. But it was never expected to be \$20 million.
22 We first set it for \$4 million as the ceiling. Because we
23 figured how many loans could he possibly close in a 12-month

1 period and then be paying it back, what could the maximum be.
2 I figured about \$4 million was the max.

3 Q. Where did CL and M get the funds to lend
4 \$20 million to FRM?

5 A. I didn't -- again, \$20 million was never any kind
6 of a plan, and there was never \$20 million in CL and M.

7 Q. That wasn't my question. Let's make it \$4 million.
8 Where did CL and M get the funds to loan FRM the first
9 \$4 million?

10 A. The same funds that the bank was going to take. If
11 I didn't, if I didn't write a check out of the account, they
12 would, every day, sweep out my account over and pay me interest
13 for one, two, three, four, five, how many days until I was
14 calling for it back. Exactly those same funds, which was the
15 lender client money, who sent it in, of which we would do the
16 closing. Let's say we got \$300,000 in from a lender and the
17 closing only required \$50,000 or \$150,000, the balance of the
18 funds to be used for the construction would sit in CL and M
19 depending on how fast the borrower worked on his project.

20 MR. HOWARD: In the servicing account?

21 THE WITNESS: In the servicing account.

22 Q. All right. So you're saying that the money that
23 CL and M loaned to FRM came from the funds of investors in

1 CL and M. Correct?

2 MR. HOWARD: The investors are in the individual
3 projects.

4 MR. DONCHESS: Wait. No. Wait. I ask a question
5 and the lawyer answered it?

6 A. I guess I'm not understanding what you're saying.

7 MR. HOWARD: I don't want you to be confused about
8 where things are.

9 MR. DONCHESS: I want his answer.

10 A. Yes. I want to hear what you said though. I
11 couldn't follow you.

12 MR. HOWARD: If the assumption in your question is
13 wrong, I don't want him to be trapped in something and you end
14 up with inaccurate information that you can't do anything with.
15 I was, actually, trying to be helpful. If you would like me
16 just to be quiet and you can walk away with inaccuracies that
17 aren't helpful to you, fine, I'll do.

18 MR. DONCHESS: Well, of course we're doing this
19 under kind of an unusual procedure; but in a deposition, which
20 I know he's not under oath, but we're basically following that
21 approach, --

22 MR. HOWARD: And I would do the same in a
23 deposition. If I know that your assumption is inaccurate, not

1 through any fault of yours, I don't want him missing that
2 inaccuracy and giving a wrong answer. I'm trying to be
3 helpful.

4 MR. DONCHESS: Well, if we were in a deposition,
5 you're not allowed to answer for the witness.

6 MR. HOWARD: I wasn't answering for him.

7 MR. DONCHESS: Or allowed to tell him what to say.
8 You're allowed to object.

9 MR. HOWARD: I wasn't doing either one. I was
10 correcting a false assumption that was in your question.

11 Q. All right. Well, my question is this: Based on
12 what you told me, it's my understanding that you were using the
13 funds from investors in CL and M to lend money to FRM. Fair to
14 say?

15 A. Well, there's no investors in CL and M.

16 Q. Okay. Well, whose money were you lending?

17 A. The lenders funds that were being held, that came
18 into CL and M, whatever wasn't dispersed for the initial
19 closing or whatever costs that went out of the initial closing
20 would go into CL and M's account and sit their until there was
21 a call from the borrower. The lender had lent those funds to
22 the borrower but the borrower can't have them until he performs
23 construction or whatever it is that he has to perform. He has

1 to show evidence that he had the plumbing done and then we
2 would issue a check to the plumber. He had to show evidence
3 that an electrician had done work and we would issue a check to
4 the electrician.

5 Q. But these were funds from people that you call
6 lenders, and I'm calling investors, who had sent funds payable
7 to CL and m. Correct?

8 A. They had sent the funds, initially, to be able to
9 own that mortgage, into CL and M, which was a servicing
10 company, and from that then we dispersed out what was necessary
11 for the closing and now they have a mortgage. The closing has
12 occurred, they have a mortgage on that property for that total
13 amount of funds securing that property, and the balance of the
14 funds that are going to help build that project are in CL
15 and M, sitting in that account.

16 Q. So you're loaning the lenders funds from CL and M
17 over to FRM. Correct?

18 A. And to the bank.

19 Q. What bank?

20 A. Citizens Bank.

21 Q. You were lending money to Citizens Bank?

22 A. Citizens Bank had set up a Sweep Account. They had
23 come in and proposed it. And I said so this is a way that we

1 can generate income, is from, and that can then reduce the
2 amount of fees that we have to charge, and you're going to call
3 for it, and when we came for it it comes back. They said yes.

4 Q. You were loaning money to Citizens Bank?

5 A. Citizens Bank. I don't know what branch it was or
6 any of that. But Citizens Bank has a Sweep Account for
7 business accounts for that purpose.

8 Q. Did they sign promissory notes and things to you?

9 A. No. We signed an agreement that they would draw it
10 out as it was available and then they would put it back as it
11 was needed. It's a very complicated agreement. I've tried
12 reading it. I gave up on it.

13 Q. Who are the parties to that agreement?

14 A. Citizens Bank, CL and M.

15 Q. All right. Well, let me ask you, for a minute,
16 about the funds that came to CL and M. The investors or
17 lenders sent funds to CL and M. Correct?

18 A. Mm-hmm.

19 Q. Correct?

20 A. Yes.

21 Q. Is that a yes?

22 A. Yes.

23 Q. And if an investor or lender sent funds with the

1 intention of investing in a particular mortgage and that, the
2 loan was a construction loan, it's my understanding that there
3 was no segregated account kept --

4 MR. HOWARD: Let him finish.

5 Q. -- for that lender or investors' funds. Fair to
6 say?

7 A. Well, I don't think that that's totally true
8 because we maintained a record of that. The software that was
9 out in the main part of --

10 Q. I wasn't asking about that. I was asking for an
11 account.

12 When an investor or a lender sent in 300,000, I
13 want a loan on Project X, --

14 A. Right.

15 Q. -- but all those funds weren't advanced
16 immediately, --

17 A. Right.

18 Q. -- was there a separate bank account kept --

19 A. No.

20 Q. -- for that lender's funds?

21 A. No, there was not.

22 Q. Were those lender's funds segregated in a separate
23 escrow account so to be held until those funds were needed for

1 the loan?

2 A. No.

3 Q. Now, many of these loans were set up as -- and to
4 go back, when these investors or lenders sent money to CL and M
5 with the intent of lending on a specific project, all of the
6 money just went into one of the two accounts that you've
7 described. Right?

8 A. Right.

9 Q. The accounts where you went back and forth and used
10 one account for three months and then used one account for
11 another?

12 A. That's right.

13 Q. Many of the loans were loans in which there was
14 so-called prepaid interest?

15 A. Mm-hmm.

16 Q. Correct?

17 A. Yes.

18 Q. In other words, the borrower agreed that the lender
19 would hold and disperse interest over a period of a year or two
20 years depending on the terms of the loan. Correct?

21 A. It was agreed that the loan that was taken by the
22 borrower would include a certain amount of funds for making the
23 payments over the next 12 months. The money, it wasn't really

1 the lender holding it. It was the borrower, you could say, has
2 the funds now to make his payments and CL and M was going to
3 hold those funds for the purpose of paying the borrower's
4 payment to the lender each month for that 12 months, six
5 months, whatever the period of the hold was, whatever the
6 amount.

7 Q. But the borrower didn't get this money?

8 A. No.

9 Q. So if the loan were \$100,000 if there were
10 14 percent of prepaid interest for a year, that was \$14,000.
11 Correct?

12 A. Yes.

13 Q. And so in that example, the \$14,000 would be
14 withheld from the borrower by CL and M?

15 A. That's correct.

16 Q. And the purpose of that withholding was supposedly
17 so that CL and M would reserve funds and pay the borrower's
18 interest for the period of one year. Correct?

19 A. That's right, yes.

20 Q. When a loan was made with a prepaid interest
21 arrangement, did CL and M keep a separate account where it
22 reserved the prepaid interest that was intended to pay the
23 interest on a particular loan for a particular period of time?

1 A. No.

2 Q. That just went into the general account?

3 A. That is correct.

4 Q. And it was these -- in fact, this prepaid interest
5 was being lent from CL and M to FRM over a long period of time.
6 Correct?

7 A. Not necessarily. I cannot tell you that if a
8 person's funds came in, if he sent in \$300,000, we paid out
9 \$150,000 at closing and there's 150,000 left, 50 of it is
10 earmarked for payments, 100 for construction, if that were the
11 scenario, there's no way that I was turning around and lending
12 out that 50,000 or that 100,000 or what have you for any
13 purpose. The money came into the account, I gave a slip of
14 paper to Diane so she would record the \$300,000 into the
15 account, and then she would segregate and keep track of --
16 whenever a payment went out to the lender, it was subtracted
17 from the lender's funds. Whenever a payment went out to a
18 construction piece, that was on the journal. So every month
19 there was a journal showing exactly what was happening to that
20 credit that came into the system.

21 Q. Well, when an investor or lender sent money with
22 the purpose of making a particular construction loan, you're
23 saying that, in a construction loan scenario, all of the funds

1 are not advanced on the date the loan closes. Correct?

2 A. And or a prepay interest loan.

3 Q. Correct? Is that correct or not correct?

4 A. Yes. Correct.

5 Q. And so an example you gave is a \$300,000

6 construction loan, maybe 150,000 is advanced at closing.

7 Correct?

8 A. It could be.

9 Q. And it could be less?

10 A. It could be less.

11 Q. And in that situation, that example where \$300,000

12 was sent by a lender or an investor where a loan was made for,

13 documented for \$300,000 but only a 100 or \$150,000 was advanced

14 at closing, did CL and M create a separate account or

15 segregated escrow account to hold that borrower's funds that

16 had not been advanced at closing?

17 A. No.

18 Q. It was all co-mingled with the other money?

19 A. It was all in the servicing account.

20 Q. Co-mingled with the funds of all the investors?

21 A. All the investors. Whatever the funds that were

22 left over went into that account and then the accounting for

23 the portion that belonged to each portion was done in the main

1 software of CL and M that triggered all the payments or paid
2 all the payments, recorded all the monies coming in, and so
3 that every person would have an idea as to what the amount that
4 their loan was, how much was the payments they were receiving,
5 how much was going out of the construction account, how much
6 was going out of the premium account.

7 Q. Where was CL and M getting the money to loan FRM --
8 where did CL and M get the money to loan FRM \$20 million?

9 MR. HOWARD: Well, he has answered it a couple of
10 different times, but you can go ahead and explain.

11 A. Again, I didn't even know it that was \$20 million.
12 And if it was any amount of money --

13 MR. HOWARD: The question, Don, is what is the
14 source of the funds.

15 A. It's all, whatever the funds were in that servicing
16 account would be, from that account, would be where the Sweep
17 Account occurred, sweep actions occurred, and where I issued
18 checks, supposedly for short-term checks, to Financial
19 Resources to be replaced, paid back, and I kept a list of each
20 one.

21 Q. So that's where the \$20 million came from?

22 A. Out of that account.

23 Q. And this is the account that the funds from lenders

1 or investors had been co-mingled with the funds from all of the
2 investors and lenders. Correct?

3 A. All the lenders funds went into a servicing account
4 and that's -- whatever wasn't paid out was still in that
5 account.

6 Q. And that's where you made the loans from?

7 A. And that's where it all would have been done from.

8 Q. What's your next folder?

9 We were talking about the line of credit. Oh, we
10 didn't mark that yet.

11 MR. DONCHESS: Can we mark the line of credit?

12 (Dodge Exhibit 17 was
13 marked for identification.)

14 (Discussion off the record.)

15 Q. (by Mr. Donchess) Let's do this on the record.
16 Are you saying that you're looking at a folder now that wasn't
17 intended to be part of the production?

18 MR. HOWARD: It's not a folder that is responsive
19 to the subpoena.

20 MR. DONCHESS: So why don't you pull that out.

21 MR. HOWARD: I have.

22 Q. Is that your last folder or?

23 MR. HOWARD: One other. That's an e-mail to me.

1 That's Scott's life insurance.

2 THE WITNESS: Yes. This is also an e-mail asking
3 about --

4 MR. HOWARD: Right. Those are e-mails to me.

5 MR. DONCHESS: Now you're pulling out some
6 attorney/client communications?

7 MR. HOWARD: Yes. Go ahead and tell him what.
8 This was not in the folder but it was right behind it. I
9 assume it's related.

10 A. Yes. Those were the documents I got from American
11 General some time ago to be able to make beneficiary changes to
12 Scott's life insurance. He had a \$10 million life insurance
13 policy with American General.

14 Q. So this folder is related to a Farah life insurance
15 policy?

16 A. Yes.

17 MR. DONCHESS: Why don't we mark that.

18 (Dodge Exhibit 18 was
19 marked for identification.)

20 Q. Let me ask you what assets you own at the present
21 time. You've talked about the three pieces of property on
22 Cook Lane and on Colonial Drive. You've talked about a couple
23 of bank accounts. What real property, real estate, in addition

1 to what you've already talked about do you own?

2 A. None.

3 Q. Do you own a house or anything?

4 A. No.

5 Q. Do you have bank accounts other than the ones
6 you've talked about?

7 A. No.

8 Q. Do you own any stocks or bonds or anything like
9 that?

10 A. No.

11 Q. Any artwork or anything?

12 A. No.

13 Q. Are you renting the location where you live?

14 A. It's a park rent. It's a mobile home.

15 Q. And you gave me some tax information, but I don't
16 think you gave me the tax return for the last couple of years.
17 Your personal return, is that --

18 A. I gave you everything that I have right up. On my
19 personal return, I gave you the 2008.

20 Q. Okay.

21 A. The tax return itself.

22 Q. Okay.

23 A. And I gave you the numbers that go into the 2009.

1 Q. Have you made a 2009 return, --

2 A. No.

3 Q. -- filed that?

4 A. I haven't.

5 Q. We talked a little bit about Greatland. And I
6 think you told me that Greatland had no bank account?

7 A. No bank account, no money, no assets, no nothing.

8 Q. But on a number of projects, or a number of pieces
9 of property, Greatland does hold mortgages?

10 A. It looks like it only on the paper.

11 Q. Let's take an example. Beaver Pond or Good Earth.
12 There are a couple of large Greatland mortgages on that
13 property?

14 A. I don't believe it.

15 Q. You mean you don't believe they're on record or?

16 A. I don't doubt that you'll see them in the
17 documents; but I don't, to my knowledge, have never held in
18 Greatland anything more than a few seconds so that it can
19 facilitate -- it's called a simultaneous closing, is what Scott
20 used. I assume it's a technical term. He used it in front of
21 the lawyers. And I don't even know how to say the word.

22 Q. What word?

23 A. Simultaneous.

1 Q. Simultaneous closing. I don't know what that means
2 either. I guess I know what it means.

3 A. Okay. Greatland becomes the lender for one second,
4 and we already have the papers drawn that assigns that loan so
5 that three people can be in first position, or five people. We
6 did it, I think, first, for a group of investors and then one
7 time we did it, I think, for a family, the same purpose for the
8 trust. The trust was to function the same way.

9 Q. Let's stick with Greatland for a second.

10 A. All right.

11 Q. So if Greatland has mortgages on the Good Earth
12 property, the Beaver Pond Development, you don't know anything
13 about that. Is that fair to say?

14 A. Existing mortgages right now?

15 Q. Yes.

16 A. I know it's not true because there's no money
17 coming in.

18 Q. What's not true? That it is not --

19 A. They can't -- well, let's put it this way, there's
20 no mortgages that have ever paid any money to Greatland because
21 Greatland doesn't receive any money and never did.

22 Q. But CL and M did put money into the Beaver Pond and
23 or the Good Earth Development?

1 A. I know those are two borrowers in the system
2 somewhere. I know that I've seen the name.

3 Q. And are you familiar with the Beaver Pond
4 Development?

5 A. Not at all.

6 Q. Do you know what I'm even talking about?

7 A. I know that it exists but I don't know where it is
8 and don't know what it is.

9 Q. It's condo projects in Laconia on [REDACTED]
10 [REDACTED].

11 A. Okay. I've heard the words [REDACTED] used
12 a lot.

13 Q. But have you ever gone out there and saw it?

14 A. No, never saw it.

15 Q. And I know you've just told me you're not very
16 familiar with it, but let me just go back.

17 So you don't really know, enough about [REDACTED],
18 to know how much money was advanced or how it was advanced or
19 anything like that?

20 A. You can throw out any name of anything you want.
21 That's true, I don't know.

22 Q. But on construction loans, didn't CL and M actually
23 at least cut the checks for requisition and requests made for

1 funds by subcontractors and the like?

2 A. Absolutely.

3 Q. And did you sign those checks?

4 A. I might have if they were brought to me. [REDACTED]
5 signed most of the checks. I probably signed some checks in
6 the early beginning, in 2005. Once I got rid of that, I
7 avoided -- it isn't that I avoided it. I just don't have the
8 time for it.

9 Q. Who had check writing authority for CL and M?

10 A. Myself and [REDACTED].

11 Q. Was she an employee of CL and M or anything?

12 A. She was contracted to do what she did, which was a
13 good job of entering everything and maintaining the inflows,
14 the outflows, recording it all. She did all the recording of
15 every transaction. And she had people working for her.

16 Q. Do you know anything about the mortgages on the
17 individual units in the [REDACTED]?

18 A. No. I know that it existed and I know that it
19 was -- there was activity because I'm familiar with the name.

20 Q. I want to show you something that we've maybe
21 looked at part of already but it's a called a Discretionary
22 Note of Line of Credit and Promissory Note. Have you seen this
23 before?

1 A. Yes.

2 MR. DONCHESS: Can we mark that as the next
3 exhibit?

4 THE WITNESS: I created the document.

5 MR. DONCHESS: Let's just mark it.

6 (Dodge Exhibit 19 was
7 marked for identification.)

8 Q. Now, the discretionary line of credit agreement and
9 promissory note was signed by a borrower, Scott Farah, and
10 which you signed for the lender CL and M. Correct?

11 A. Yes.

12 Q. And the date of that is sometime in June of '05?

13 A. That is correct.

14 Q. And who created the document?

15 A. I did.

16 Q. What was the purpose of the discretionary line of
17 credit document?

18 A. Initial purpose, the purpose that I set it up for
19 was so that if Scott came across a loan and a borrower who
20 wanted funding, good credit, just a prime borrower, and he knew
21 he had lenders, lots of them that would vie for that loan, in
22 order to facilitate a closing quickly and not losing that
23 borrower, he would call for -- an SDLN is the words we used.

1 Q. What does that mean?

2 A. Scott David loan. It's just a word that I could
3 quickly do it and know what it was for, that it was the line of
4 credit. So he would call up, I need an SDLN for \$100,000
5 before 2:00. I would then plan, before 2:00, I would do a wire
6 of \$100,000 to the Financial Resources. If he didn't give me
7 any other instructions, it would be to Financial Resources.
8 And if it was \$20,000, or whatever it was, he would call up,
9 and then I would do a sheet, I would put SDLN \$100,000,
10 \$20,000, the date, the person that I talked to at the wire
11 department, the time, and its code number and the amount, and
12 then I would stick it in a folder. And periodically, --

13 Q. All right. But let's stick with the original
14 question.

15 A. All right.

16 Q. I think the original question was -- I don't even
17 know what the original question was. But let me -- you must
18 have contemplated that CL and M was going to loan FRM up to \$10
19 million at the time you prepared the discretionary line of
20 credit. Correct?

21 A. Well, when I created it it was \$4 million, the
22 same date. I just dated the revised thing back and we dated it
23 the same date that the original line of credit which was

1 \$4 million.

2 Q. Do you know when you did the \$10 million?

3 A. I would say it was probably in 2006 or sometime
4 when we went past the 4 million and I didn't even realize we
5 had gone by it.

6 Q. And you've tried, or you've said things in response
7 to this question, but I think the answers have strayed and I
8 haven't really understood the answer. What was the purpose?
9 Why were you thinking that CL and M would be lending FRM,
10 initially, \$4 million, as you originally prepared this
11 discretionary line of credit agreement?

12 A. Well, I didn't think it would ever go to
13 \$4 million. And then I never believed it would ever go to
14 \$10 million. I put a number on it so that we would be within
15 our contractual --

16 Q. Putting aside the number, why did you think that
17 CL and M was going to be lending money to FRM over a period of
18 time?

19 A. So that he could implement those short-term -- or
20 short-term purpose to implement, to place that loan, fund it,
21 close that borrower, and then within weeks, for sure, no more
22 than, you know, a month or two, that he would have a lender who
23 would then, he would assign it. Because the loan would be

1 closed and he would assign it to whoever the new -- the lender
2 would be. And they would send in their \$100,000, if it was
3 100, or whatever it was, and we -- or I should back up. The
4 loan might be for \$300,000 but the amount to close it might
5 only be needed 50,000. He would then call for an SDLN of
6 \$50,000. I would then, later, get in \$300,000, and that would
7 come from the lender. The unfortunate thing is my records, I
8 never knew, the transactions were so many, I never knew that
9 this 300,000 included a payoff, so I never gave credit on the
10 SDLN and he never thought to give it to me.

11 Q. So I still don't get what you were trying to do.
12 It was to --

13 A. Facilitate a closing on a borrower that was good
14 quality that could be closed instantly and then the lender
15 could be found for it and it would be done, and sometimes it
16 happened within days.

17 Q. So your intent was to -- so what you're saying you
18 were trying to do was to loan money from CL and M to FRM so
19 that FRM could make a loan before the money came in from the
20 investor or the lender?

21 A. Before he even found the lender that was going to
22 take that loan. He would send out these sheets, two sheets for
23 every loan.

1 MR. HOWARD: You don't have to stray off.

2 Q. But as the amount grew from 4 million to six to ten
3 to 20, it must have become clear that this was not covering
4 just short-term borrowing for loans that were about to close.
5 Correct?

6 A. It also should be noted that I didn't know -- I
7 still don't know how much was actually paid back. So I'm
8 showing 20 million out there only because I don't know what
9 amounts that came in should be credited. And my honest belief
10 is the actual lent, I know this is still sick, the total amount
11 out is around \$10 million. I believe we never went past the
12 \$10 million. The problem is I can't reconstruct it without
13 Scott's help, and everything came apart so fast when I found
14 out that he didn't have anything, you know.

15 Q. Well, but there's no question that the transfers
16 took place --

17 A. Oh, yes.

18 Q. -- from CL and M to FRM in the amount of over
19 \$20 million?

20 A. That's correct.

21 Q. For there to have been a reduction of that debt,
22 wouldn't FRM have had to transfer money back into CL and M?

23 A. No. Because the borrower, whoever it was that was

1 actually lending on that loan to take that loan, when their
2 300,000 came in, I just recorded 300,000 for that name. I
3 didn't even know what loan it had went to. I could only record
4 it in my Excel sheet, where I kept track of all of this, just
5 recorded where, who it's from. Now, Scott has the ability to
6 say that is tied to that SDLN back three weeks ago, that 50,000
7 is now replaced and it should have been a credit on his sheet,
8 but I couldn't do it.

9 Q. So what you're saying is that lenders funds which
10 were -- wait a minute. Let me see if I understand. I think
11 you're saying that the funds of investors or lenders whose
12 loans had already been made before they paid in the funds, that
13 their transfer of funds might have reduced the loan obligation?

14 A. Right, on some.

15 Q. But you never kept track of that?

16 A. I don't know what it is.

17 Q. Weren't you interested in knowing what --

18 A. I was. I was very interested in having it paid
19 down. I was very interested. All the time I would say I don't
20 want to bug you about it but we really need to show some
21 activity on that thing. You either got to -- and you need to
22 show me what loans. Yup, we'll do it, Mr. Dodge. I promise
23 you we'll do it. We got this going right now, we got that

1 going right now, and we're going to be clearing off the
2 whole -- the whole SDLN will be cleared off within the next six
3 months with this new program I got going. Blah, blah, blah.

4 Q. What were these -- and these two rotating operating
5 accounts that you've described, what was the largest balance
6 that you ever saw in either one of those accounts?

7 MR. HOWARD: And just a question for clarification,
8 you used the word operating account. Did you mean the
9 servicing account?

10 A. You mean the servicing account?

11 Q. Well, let me just call it account. You have the
12 two rotating accounts that you used?

13 A. Servicing accounts.

14 Q. As you describe them, servicing accounts.

15 A. Yes.

16 Q. What's the largest balance that you ever recall
17 seeing in either of those accounts?

18 A. I'm not sure. Probably \$2 million, \$3 million,
19 \$4 million. I don't know.

20 Q. Were you aware of the fact that this loan business
21 was generating an increasing deficit?

22 A. Yes.

23 Q. When did you become aware of that?

1 A. Just by the fact that when this thing went beyond,
2 you know, again, my gross number gets to be 10 million and then
3 starts to go beyond that, I'm concerned. I said I know it's
4 isn't this but I've got life insurance protecting only 10
5 million. You die tomorrow and I'm concerned.

6 Q. So you knew that at some point, as these funds were
7 being advanced, that the mortgage business was developing a
8 large deficit, a large loss?

9 A. I didn't know what it was. I knew that it was
10 something and I knew I didn't like it and I knew I asked about
11 it a lot.

12 Q. You asked Scott Farah about it?

13 A. Yes.

14 Q. What kind of thing would you say?

15 A. I would say I'm concerned about, you know, if we --
16 for instance, when November came around and all this stuff with
17 the subprime and the market was collapsing, this last November,
18 I said you know what's going to happen as a result of this
19 subprime crap that's going on, this foolishness of the --
20 whoever. I don't even know who did it. I said that is going
21 to create regulations and regulations are going to create
22 audits and I, as a servicing company, even though they don't
23 have any regulations for us right at this moment, I'm going to

1 be subject to audit, and that large, we got to first get that
2 thing corrected so that --

3 Q. What thing?

4 A. The SDLN. The line of credit. I want to know what
5 it is.

6 Q. Did you ever go to Farah and say anything to the
7 effect what are we going to do about the fact that there's this
8 huge loss out there?

9 A. It wasn't a loss. I don't know of a loss. I had
10 no idea that there's been any loss. All I know is that the
11 SDLN is not correct at that time and it's huge. That I know.

12 Q. Well, you know there's a loss today. Right?

13 A. Today I know there's a loss.

14 Q. When did that first dawn on you that there was a
15 loss?

16 A. One week before the whole thing collapsed, when
17 Scott, I called him up, I had -- my check bounced, and I said,
18 What is going on? It turned out to be my error for 25,000 I
19 dispersed.

20 Q. Try to stick to the question.

21 But at this point you know that a lot of people
22 sent money in --

23 A. Mm-hmm.

1 Q. -- and they never got any loans, they never got any
2 mortgages, and there's no money to pay them. You know that
3 now. Right?

4 A. Yes. Yes. It's terrible.

5 Q. You know that today?

6 A. Yes.

7 Q. And so, obviously, there was a large loss or a
8 large deficit?

9 A. Yes.

10 Q. When did you first realize that that kind of
11 deficit existed?

12 A. My worry started when the subprime market collapsed
13 sometime in January, February of 2009. It was in and about
14 that time I told Scott I needed to talk with him. And I was
15 sick. I couldn't sleep all night. And I said I'm sick. I
16 feel sick. This line of credit thing is ridiculous. You keep
17 telling me next week, next month there's going to be. This has
18 to get paid down.

19 Q. You keep telling me next week, next month what?

20 A. I got this coming in, I got that coming in, it's
21 going to generate a huge amount of income, a huge amount of
22 commission. I'm going to start paying this down and it will be
23 cleared off, I assure you, Mr. Dodge, it will be paid off in

1 six months. Then it got to be a year.

2 Q. So what you're saying is you would ask Farah about
3 reducing this line of credit, paying it off?

4 A. Paying it down.

5 Q. And he would always put you off?

6 A. It's going to happen.

7 Q. But it never did?

8 A. And he said, I'm concerned about it as well, and it
9 will be taken care of, but it's under control, Mr. Dodge.

10 Q. When do you think you first asked Farah about the
11 need to reduce the line of credit?

12 A. Forever.

13 Q. Well, give me a year.

14 A. Since 2005. Since it began.

15 Q. And how many times do you think you spoke to him
16 about it?

17 A. Probably every other month I would make a comment
18 about it. I would just say this is a concern I have and, you
19 know, when I would have these meetings with him.

20 Q. So could you look now, again, at Exhibit 10? The
21 third page is something called a note in series?

22 A. Yes.

23 Q. That documents that the line of credit has grown to

1 \$20,348,000. Correct?

2 A. Yes.

3 Q. And it's dated November 5, 2009?

4 A. Yes. I asked him to sign it before he went out the
5 door.

6 Q. Is it true that a note in series like this one was
7 done every time an advance was made from CL and M to FRM?

8 A. No. The paper didn't get signed. But I got the
9 sheets and, periodically, I would take the sheets and put them
10 on one of those forms and he would sign a bunch of them. And
11 it's been way, way, way too long, probably a year or longer,
12 that since I -- I've still got the sheets, and he's agreed he
13 will sign them any time, and he even signed a whole slew of
14 blanks so I could fill them out.

15 Q. So what Farah did is that he signed a bunch of
16 notes in series that were not filled in with any figures?

17 A. He knew that I had to pay --

18 Q. Wait. So there were notes in series created, Farah
19 signed them before the figures were put in, and then you put in
20 the figures as you advanced funds to --

21 A. No.

22 Q. -- FRM?

23 A. No.

1 Q. Okay. Then what did happen?

2 A. It was because I had all these sheets.

3 Q. What sheets?

4 A. All these yellow sheets of paper. SDLN sheets. In
5 fact, I think you have the whole file in your office. You
6 don't even realize it. But I gave you this big thick package.

7 Q. SDLN sheets. What is that?

8 A. It's what I call them. It's Scott David loan.
9 It's just a term I came up with.

10 Q. Is this note in series one of those sheets?

11 A. That's what I call a SDLN.

12 Q. So you had a number of these notes in series?

13 A. Yes.

14 Q. And they're blank is what you're telling me.

15 Right?

16 A. The last time he was going on a vacation, I'm going
17 to say it was a year ago, --

18 MR. HOWARD: He asked you do you have a series of
19 them that were blank.

20 A. I asked him to sign a bunch of them, yes. I have a
21 bunch of them. I had a bunch. I don't know where they are.

22 Q. Signed and blank?

23 A. They were signed and blank because I already had

1 all these yellow sheets that hadn't been transposed.

2 Q. All right. So what you're saying is you had
3 already made a number of transfers that had not been documented
4 with note in series. Is that correct?

5 A. That's right. And I wanted his signature on it.

6 Q. So you asked him to sign a bunch of blanks so you
7 could document each of the transactions that had already been
8 accomplished. Is that correct?

9 A. Yes. I wanted to do it with him. And he was too
10 busy and he said, look, give me a bunch of them, I'll sign them
11 and then you fill them in, and then if you find you need some
12 more, I'll sign them.

13 Q. But the last of the transactions --

14 A. He got --

15 Q. No. Wait. The last of the transactions is
16 documented by the note in series that is the third page of this
17 exhibit. Correct?

18 A. Say that one more time.

19 Q. The final transaction, the last one, transfer from
20 CL and M to FRM, is documented by the note in series in front
21 of you. Is that correct?

22 A. No.

23 Q. Well, isn't this one for the total amount of the

1 line of credit?

2 A. I want to complete and create a new -- in fact, I
3 did create a \$20 million page but he never came back. But I
4 had asked him ahead of time, I said I want you to sign
5 something that documents that this thing is up to, I'm
6 guessing, 20 million because that's my Excel sheet. I realize
7 it's not that amount but I don't know what else to do. He's
8 getting ready to run away. I mean I wanted him to run away. I
9 feel somebody is going to kill him. And I said I would like to
10 have something documented. If you die tomorrow, I would like
11 some document that you owe up to that amount.

12 Q. And he signed it?

13 A. And he said, yes, I'll sign it, just fill it in.

14 Q. And he signed this on November 5?

15 A. November 5.

16 Q. Why did you think someone was going to kill Scott
17 Farah?

18 A. I still do.

19 Q. Because?

20 A. What he did to people. I mean I can't even believe
21 it. I was ready to shoot him.

22 Q. Was this before the business closed or after the
23 business closed?

1 A. The business was going to close -- the 9th of
2 November, I believe, was the day that we technically shut it.
3 The last day I was with him.

4 Q. So when you got this, you knew the business was
5 closing?

6 A. When I filled this out and in front of him and he
7 signed it.

8 Q. You knew the business was closing?

9 A. I had five days. I didn't know it was going to be
10 five days. I didn't know when it was going to happen.

11 Q. When are you saying that you became aware that the
12 mortgage business had generated a large loss or deficit?

13 A. Again, I don't even know -- the words do not apply
14 to me. They don't mean anything to me. I did not become aware
15 that the mortgage business had generated a large loss or
16 deficit. I don't even know that to this date. I'm assuming.

17 MR. HOWARD: For clarification, when you say the
18 mortgage business, do you mean FRM or do you mean the servicing
19 business of CL and M?

20 MR. DONCHESS: Whatever you guys were running.

21 MR. HOWARD: Well, no, it make a difference
22 because -- hold on.

23 MR. DONCHESS: I'll withdraw the question.

1 Q. Let me ask you about the structure of some of the
2 loan transactions.

3 In general terms, and there are many different
4 variations, but in general terms, there were loans set up where
5 the holder of the note and the mortgage is an individual?

6 A. That's right.

7 Q. And there are others set up where the lender and
8 the holder of the note and mortgage is a trust?

9 A. That's right.

10 Q. Usually with the trustee of Dodge Financial?

11 A. That's right.

12 Q. Why was the trust approach used?

13 A. Let me tell you the first one that I remember and,
14 I think it's the first one, then you'll see that's how they all
15 would happen, if you want to know.

16 Q. What was the first one?

17 A. All right. We had a family, more than three
18 people. Before when we had one or two or three people, we
19 would use Greatland to close and then Greatland would issue two
20 or three assignments so that all three persons were in first
21 position. That way one isn't in first position and another one
22 with a second mortgage and one with a third, they could all be
23 equal. That's why we closed in Greatland as a single entity.

1 Now you've got a single first mortgage and then you split it up
2 by assignment to those folks.

3 Well, then we have this family with six to nine
4 people come along, they all want to be in together with one
5 loan. They like the loan. They all want to be in on it.
6 One's only got 10,000. One's got 100,000. One's got 60,000 --
7 one might have 100,000, and there would be different amounts
8 that different people had to contribute.

9 Well, if I had to do -- if we were going to do
10 assignments, you would have to do 10 or 15 assignments to get
11 all these folks into a first position. Then you got a
12 nightmare. When it comes time to pay off, you got to get 10 or
13 15 discharges and that's very cumbersome. The attorneys didn't
14 like it. They said this is silly. We need to find a different
15 mechanism. So there was a meeting. The attorneys suggested
16 LLC, I think, or Scott did. When it got done, after I listened
17 to it all, I suggested that they use real estate trusts.
18 They're easy, you got a whole family in them, they can pick
19 their own trustee, and now you have one person that can sign
20 the discharge on behalf of the trust at the end. In the
21 meantime, every person is in first position because they each
22 have a piece of a first mortgage. So everybody thought it was
23 a good idea and they said they would think about it. And when

1 they came back, they had one waiting to be closed, and they
2 said, well, somebody's got to be trustee. Scott calls the
3 family, they can't make a decision, but we want to close. I
4 said I'm willing to be -- or Dodge Financial could be trustee,
5 if you want to use it temporarily, and I'll sign it, I'll
6 relinquish my trusteeship. I even helped design the document
7 so they could vote me out any time they want. I wasn't doing
8 it for any money. So I agreed to be the trustee on the first
9 one. It was a flood of families, groups, sometimes two
10 families that didn't even know each other all wanted to be on
11 the loan. I don't even know how many. Look at the sheets.
12 There's some large numbers on the loan.

13 Q. So you, ultimately you became the trustee of?

14 A. Hundreds. Hundreds of them. I didn't want to be
15 trustee of nothing.

16 Q. More than 50?

17 A. Oh, 100. There over 100. I did the taxes. I had
18 to pay the fees for the taxes. It's over 100 trusts.

19 Q. And who would decide whether a loan was going to be
20 organized in a trust fashion or, you know, an individual loan
21 fashion?

22 A. It was Scott, I'm sure, always calling the shot,
23 with the attorneys, deciding how is this going to be held.

1 Q. Did you have anything to do with that?

2 A. I don't recall ever. There was no reason for me to
3 be down there. I have never had nothing to do with the loans
4 being processed and who's going to be a loan, except if they
5 had a problem that they were worried about and the loan broker,
6 the loan officer is trying to push it, Scott doesn't know,
7 he'll call me in and say tell me what's wrong with this.

8 Q. Did you have any role in deciding which loans were
9 going to be made?

10 A. No.

11 Q. Did you have any role in raising money for the
12 loans?

13 A. No, other than taking calls from people. When
14 Scott was out of the office, the gal at the desk would
15 sometimes send the call up to me because I'm, now telling, I'm
16 the oldest guy in the building, I've known Scott since he was
17 12 years old, so I'm glad to talk with you, but I don't know
18 anything about loans if that's your question. Well, we talked
19 to Scott, we want to be in the loan, he said we're going to be
20 in the trust, can you explain how that is going to work,
21 because my husband doesn't know or my wife doesn't know. And I
22 would explain, in principle, how the thing was going to work,
23 but you should check with Scott to get the facts on their case.

1 And after I got done talking, some of them would say, well,
2 thank you, I understood what you said, that's all I wanted to
3 know, we'll talk to Scott, and then after I, I don't know what
4 they did. One occasion I did have dinner with a couple that
5 wanted to talk to me because I was going to be doing the
6 servicing.

7 MR. DONCHESS: All right. I think that we're not
8 really in a formal deposition, so I don't really need to
9 suspend, I don't think, but I don't have any more questions
10 right now, although we reserve the right to ask you to come
11 back or to subpoena you or something like that.

12 THE WITNESS: Sure. I understand.

13 MR. HOWARD: And if you do want to talk to him
14 again, just call me before you go issue the subpoena because
15 I'm sure that he would be more than happy to come back and
16 resume.

17 MR. DONCHESS: All right. So why don't we, we can
18 go off the record.

19 (Statement concluded at 3:35 p.m.)
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C E R T I F I C A T E

I, Grace E. Holden, a Licensed Court Reporter, and Notary Public of the State of New Hampshire, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes of the statement of DONALD E. DODGE, taken at the place and on the date hereinafter set forth.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this statement was taken, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.

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A	
ability 57:19 83:5	activity 77:19 83:21
able 18:4 27:10 28:2 53:11 54:2 58:1,23 59:12 63:8 72:11	actual 35:9 82:10
Absolutely 77:2	added 20:13 49:11
accept 22:19	addition 72:23
accomplished 91:8	address 5:5,7
account 3:9,10 15:4 15:4,5,8,9,11,12 15:14,23 16:1 18:5,6 20:8,11 33:13,14,23 34:5 36:19 37:7,13 43:19,20 46:17 47:19,22 48:6,13 48:21,22 49:1,2,2 49:6 50:4,4 51:19 58:5,6 59:16 60:11,12,20,21 62:20 63:15,22 64:6 65:3,11,18 65:23 66:10,10 67:21 68:2,13,15 69:14,15,19,22 70:5,6,16,16,17 70:22,23 71:3,5 74:6,7 84:8,9,10 84:11	advance 89:7
accounting 46:18 69:22	advanced 65:15 69:1,6,13,16 76:18,18 85:7 89:20
accounts 14:17,20 14:23 15:3,3,7,10 15:19,20,21 16:3 16:5,5 18:16 19:21 24:23 26:10 26:19 64:7 66:6,9 72:23 73:5 84:5,6 84:12,13,14,17	ago 27:8 49:19 72:11 83:6 90:17
accumulate 18:5	agree 23:23 26:4 57:1,20
accumulation 23:8	agreed 8:14 9:10 9:18 57:20 66:18 66:21 89:12 96:8
accurate 99:5	agreement 3:18 21:5 24:14 64:9 64:11,13 78:8 80:11
acquired 33:4	ahead 51:8 54:17 57:3 70:10 72:7 92:4
action 99:10,13	allowed 5:22 6:2 15:13 53:11 62:5 62:7,8
actions 70:17	American 43:7,9 43:14 72:10,13
	Amherst 1:13 4:4
	amount 23:7 27:12 31:2 33:9 36:2,3 36:15,16 38:1,7 40:20 41:10 46:14 46:19,20 49:21 53:3 55:17 58:16 59:20 63:13 64:2 66:22 67:6 70:3 70:12 79:11 81:4 82:2,10,18 87:21 87:21 91:23 92:7 92:11
	amounts 82:9 95:7
	AND/OR 99:16
	annual 25:3
	answer 38:9 61:9 62:2,5 80:8
	answered 5:2 61:5 70:9
	answering 62:6
	answers 2:3 80:7
	anybody 44:10 57:15,18
	anymore 5:19
	apart 82:13
	APPEARANCES 4:1
	appended 3:20
	applied 33:3 49:19
	apply 93:13 99:15
	apprentice 7:12,14 27:9
	approach 61:21 94:12
	approximately 8:23 10:8 12:15 18:9 31:2 32:9,16 35:18
	arrangement 22:14 58:6 67:21
	artwork 73:11
	ASC 43:14
	ashamed 6:7
	aside 80:16
	asked 7:17 9:20 14:5 15:18 22:15 23:14 25:17 30:9 37:10 39:23 42:2 47:14 52:9 55:12 85:10,12 88:10 89:4 90:18,20 91:6 92:4
	asking 6:17 37:11 65:10,10 72:2
	assessed 30:8 31:20 31:23
	assessment 29:6
	assets 10:1 52:11 52:14 72:20 74:7
	assign 80:23 81:1
	assignment 95:2
	assignments 94:20 95:10,10
	assigns 75:4
	Assistance 8:16
	assume 72:9 74:20
	assuming 93:16
	assumption 61:12 61:23 62:10
	assure 31:21 87:23
	attention 10:15
	attorney 99:8,11
	attorneys 95:13,15 96:23
	attorney/client 72:6
	audit 86:1
	audits 85:22
	authority 77:9
	available 22:22 64:10
	average 22:16
	avoided 77:7,7
	aware 84:20,23 93:11,14
	B
	back 7:12 17:9 22:18 25:17 28:19 32:16 39:22 43:7 48:15 50:5 54:18 57:16 58:8 60:1 60:14 64:3,10 66:4,9 70:19 76:16 79:22 81:3 82:7,22 83:6 92:3 96:1 98:11,15
	background 5:11 19:16 59:5
	balance 60:17 63:13 84:5,16
	balancer 15:16
	Baldi 28:18 30:6 35:8,10,14 36:18 37:1,6 43:22,23 46:12
	Baldi's 35:5
	ball 29:20 31:2
	bank 3:4,8,10 8:1,8 8:8 14:17 15:2
	18:5,6 19:21 20:3 24:22 26:10,19,19 26:20,20 27:1,2 33:13,23 47:15,15 47:16,17,18 48:6 48:20,21,22 49:6 50:4,4 51:19,20 56:9 58:4 60:10 63:18,19,20,21,22 64:4,5,6,14 65:18 72:23 73:5 74:6,7
	bankruptcy 1:1 33:5 50:13
	base 22:14 23:5
	based 21:7 62:11
	basically 21:20 61:20
	basis 21:21 58:7
	bathroom 57:6
	Beaver 74:11 75:12 75:22 76:3,17 77:17
	beg 5:17,21
	began 88:14
	beginning 9:22 77:6
	behalf 56:8 95:20
	belief 82:9
	believe 9:2 10:12 14:19 15:2 36:4 45:1 47:14 74:14 74:15 82:11 92:20 93:2
	believed 80:13
	Belmont 5:8
	belong 16:4
	belonged 69:23
	beneficiary 72:11
	best 38:9
	better 59:2,2
	beyond 21:9,12 85:1,3
	big 43:10 90:6
	bigger 29:2
	biggie 8:4
	bill 9:16,18 21:15 21:15,16,18,19

22:4 27:9	bring 13:10,11	56:13 58:5,8	church 38:12,13,15	96:1
billed 21:20	55:12	74:19 77:21 86:17	39:8 40:11 42:8	closer 52:20
bills 59:15	broker 8:10 11:4	88:21	42:14 43:23	closes 69:1
bit 20:13 22:2 31:5	12:20 97:5	calling 8:6 58:12	Citizens 3:8 15:1,2	closet 5:23
53:2 74:5	brought 16:8,16	60:14 63:6 96:22	18:15 27:2 33:13	closing 45:3,14
blah 84:3,3,3	77:4	calls 13:1 96:2	33:23 36:19 47:15	59:8 60:16,17
blank 90:14,19,22	bug 83:20	97:13	47:17,19 48:6,13	62:19,19 63:11,11
90:23	build 30:18 34:22	cards 50:11	51:20 58:4 63:20	68:9 69:6,14,16
blanks 89:14 91:6	41:20 47:3 63:14	care 10:10 88:9	63:21,22 64:4,5,6	74:19 75:1 78:22
bonds 73:8	building 8:11 40:23	carpenter 8:2	64:14	81:13 93:5,8
bonus 22:22 23:7,7	97:16	carryover 19:9	CL 2:14 7:11 12:7	closings 58:15
23:8	built 28:20 29:15	case 25:12 39:10	12:8,9 13:14,22	code 79:11
books 53:11	29:18 30:4,6 38:3	40:10 42:7 97:23	14:3,13,17 16:2,3	cold 39:15
borrow 41:4 42:18	38:16,17,17,19	99:12	16:4 17:22 18:23	collapsed 86:16
45:20	41:22 42:14,14	cash 33:8 34:21	19:14,15 21:3,4	87:12
borrowed 34:20	47:4	caused 11:18	21:21 22:11 27:18	collapsing 85:17
35:21 36:6,9,12	bunch 49:14 55:2	ceiling 59:22	27:19,20 28:4	college 7:13 9:23
41:15,21 42:11,13	89:10,15 90:20,21	Center 38:13,14	55:20 56:6,17,21	Colonial 3:6 30:18
42:19,20 44:17	90:21 91:6,10	39:8,17 40:11	56:23 57:21 59:6	30:21 35:1 37:20
46:15 52:23	business 7:5,10	42:7	59:18 60:3,6,8,18	38:10,16,23 39:7
borrower 11:9,9	11:1,3 12:13,22	certain 66:22	60:23 61:1 62:13	39:10 40:3,15,21
42:20 52:16 53:1	13:4 23:1 51:9	Certainly 17:6	62:15,18,20 63:7	41:4 44:2,7 48:8
53:8 60:19 62:21	59:5 64:7 84:20	certificate 6:6	63:9,14,16 64:14	48:10 72:22
62:22,22 66:18,22	85:7 92:22,23	CERTIFICATI...	64:16,17 66:4	come 12:17 13:8,8
67:1,7,14 78:9,19	93:1,4,8,12,15,18	99:14	67:2,14,17,21	22:20 30:12 38:7
78:20,23 80:21	93:19	certified 6:19	68:5 69:14 70:1,7	39:23 52:19,21
81:13 82:23	businesses 8:2	certify 99:4,8	70:8 75:22 76:22	63:23 81:7 95:4
borrowers 11:22	busy 7:15 91:10	CERTIFYING	77:9,11 78:10	98:10,15
12:1,14 52:19	buy 9:10 11:6 30:7	99:16	79:18 80:9,17	comes 11:9 28:15
53:14 76:1	30:10,13,14,16	changes 8:21 72:11	81:18 82:18,22	50:6 64:3 95:12
borrower's 67:3,17	33:20 46:11 52:23	charge 64:2	89:7 91:20 93:19	coming 21:23 22:1
69:15	buyer 38:19	charged 57:19	clarification 84:7	28:6 58:20 59:5
borrowing 55:6	buyers 33:19	charging 48:17	93:17	70:2 75:17 87:20
82:4	buying 9:12 27:11	chartered 6:20,22	class 5:16	87:20
bother 13:11 49:22	buy-out 10:16	check 10:10 15:16	clean 15:14	commencing 1:14
51:14	buy/sell 24:14	22:5,7,8 35:4	clear 34:9 82:3	comment 88:17
bought 28:20 32:17		46:19,20 56:12,13	cleared 84:2 87:23	commercial 12:18
33:2 34:18 35:7	C	58:9 60:11 63:2,3	clearing 84:1	commission 87:22
35:13 36:5 38:1	C 99:1,1	77:9 86:17 97:23	client 56:10 60:15	99:22
39:8,9 40:12,15	call 12:3,5,19 13:7	checked 30:15	clients 12:22 13:1	communications
40:18 42:9	34:4 43:21 50:2	checks 47:20 49:14	25:9	72:6
bounced 49:14	62:21 63:5 64:2	70:18,18 76:23	close 38:7 59:4,23	comp 17:4,14
86:17	78:23 79:4,8 81:5	77:3,5,5	80:21 81:4 82:4	companies 7:11
branch 64:5	84:11 90:8,11	children 52:6	93:1 94:19 96:3	57:17
break 57:6	97:7,15 98:14	chintzy 29:19	closed 15:17 21:8	company 7:17 8:15
brevity 10:22	called 8:4 9:19 13:2	Christian 38:13,15	38:20 81:1,14	8:20,23 9:3 11:12
brilliant 59:4	15:8 26:20 50:11	39:8 40:11 42:8	92:22,23 94:23	12:9 13:15,18,19

13:21 14:4 21:14 22:22 23:14,15 27:3,8,10,18 29:23 43:14 47:11 57:20 63:10 85:22 complete 92:2 completed 30:8 complicated 14:9 64:11 concern 57:23 88:18 concerned 21:13 85:3,5,15 88:8 concerns 13:10 concluded 98:19 condo 76:9 confused 61:7 confusing 13:5 consider 5:14 25:10 25:11 considered 47:22 considering 39:3 constructed 29:17 30:6,8 construction 41:1 41:23 59:6 60:18 62:23 65:2 68:10 68:18,22,23 69:6 70:5 76:22 consultant 6:20,23 7:5 contacted 11:17 58:4 contacting 11:12 contacts 11:10 contains 23:23 contemplated 79:18 contract 42:17,19 58:12 contracted 27:19 77:12 contractual 80:15 contribute 95:8 control 50:13 88:9 99:16 Conway 51:12	Cook 3:5,7 28:15 29:4,5,8,13 30:18 31:14 32:10 33:16 34:12,13,23,23 35:6,8,13 39:9 40:18 44:15,16,17 48:8,9 72:22 copies 16:16 copy 12:1 19:6 corporate 19:6 24:15 corporation 2:18 8:17 13:22 25:12 36:11 correct 18:16 21:13 31:15 35:22 36:13 40:3,4 48:9 55:3 56:3,21,22 61:1 63:7,17 64:17,19 66:16,20 67:11,15 67:18 68:3,6 69:1 69:3,3,3,4,7 71:2 78:10,13 79:20 82:5,20 86:11 89:1 91:4,8,17,21 corrected 86:2 correcting 62:10 cosign 7:18 cost 42:4 costs 62:19 counsel 99:9,11 couple 12:21 23:12 33:19 50:6 58:13 70:9 72:22 73:16 74:12 98:4 course 7:5 14:8 61:18 courses 6:18 Court 1:1 4:14 50:13 51:13 99:3 cover 21:19 22:3 33:10 59:13 covered 59:15 covering 82:3 co-mingled 69:18 69:20 71:1 crap 85:19	create 11:13 25:19 30:17 69:14 85:21 85:21 92:2,3 created 24:14 31:18 34:19 38:20 52:5 78:4,14 79:21 89:18 creating 58:2 credit 3:15,17 30:14,15 50:11 55:11,13,19 58:14 59:2,3,8 68:20 71:9,11 77:22 78:8,17,20 79:4 79:20,23 80:11 81:9 83:7 86:4 87:16 88:3,11,23 92:1 credited 82:9 cumbersome 95:13 current 26:21 cut 56:13 76:23	decide 96:19 deciding 96:23 97:8 decision 96:3 deed 35:9,9,12 45:11 deficit 84:21 85:8 87:8,11 93:12,16 department 79:11 depending 60:19 66:20 deposit 34:6 deposition 61:19,23 62:4 98:8 deposits 14:21 22:6 describe 16:4 84:14 described 12:14 37:16 66:7 84:5 Description 2:11 3:2 deserved 6:8 design 96:6 desk 97:14 determine 25:21 develop 11:11 developing 85:7 development 2:17 2:18 23:15 24:1 24:11 25:7,8 75:12,23 76:4 77:17 developments 25:10 Diane 53:10 68:14 77:4,10 die 85:5 92:10 died 24:14 27:10 28:1 51:10 difference 36:15 45:22 46:13 93:21 different 51:10 53:13 70:10 94:3 95:7,8,14 difficult 15:7 dinner 98:4 diploma 6:8 DIRECT 99:16 DIRECTION	99:16 directly 56:9 directors 14:15 disabled 6:1 discharge 95:20 discharges 95:13 discounted 6:7 39:21 discrete 53:22,23 discretionary 3:17 77:21 78:8,16 79:19 80:11 Discussion 71:14 disgruntled 56:10 disperse 66:19 dispersed 62:18 63:10 86:19 DISTRICT 1:1 document 78:4,14 78:17 91:7 92:11 96:6 documented 69:13 91:3,16,20 92:10 documents 2:18 8:1 16:9 17:22 18:14 23:23 24:12,13,15 54:10 72:10 74:17 88:23 92:5 Dodge 1:11 2:3,11 2:19 3:2,4,9,10,11 4:9 5:1,6,10 17:16 18:1,20 21:1 24:8 24:18 25:15,16 26:5,6,10,15,18 27:1,2,3,7,14,16 27:18,21,23 28:3 28:4,4,7,8 29:11 31:9 32:7 35:11 48:1 49:4 51:4,22 52:1 54:22 71:12 72:18 78:6 83:22 87:23 88:9 94:10 96:4 99:6 doing 12:22 59:8 61:18 62:9 96:7 98:5 dollars 8:6 35:21
D				
D 1:6 2:1 daily 58:7 data 13:5 date 14:2 21:10 32:22 33:2,4 45:5 46:8 55:17 69:1 78:12 79:10,22,23 93:16 99:7 dated 26:1 79:22 79:22 89:3 David 79:2 90:8 dawn 86:14 day 60:12 93:2,3 days 60:13 81:16 93:9,10 DBA 49:2 deal 8:10 12:18 13:2,13 23:19 39:22 47:1 Deb 28:11 debt 59:13 82:21 December 44:6 decent 49:21				

36:12	Earth 74:11 75:11	Excel 15:17 20:12	facilitate 74:19	financed 40:12
Don 70:13	75:23	83:4 92:6	78:22 81:13	financial 1:7 2:19
Donald 1:11 2:3	easy 95:18	excess 15:15,16	fact 31:18 38:14	3:4 6:20,22 7:10
3:8,10,11 4:9 5:1	education 5:14	30:17 33:8,12	68:4 84:20 85:1	8:16,18,19,21
5:6 28:8 35:11	6:12,14,17	34:21 35:5 36:15	86:7 90:5 92:2	10:21 21:5,5 22:9
99:6	educational 5:10	37:1 42:21 44:19	facts 97:23	25:15,17 26:5,6
Donchess 1:12 2:7	effect 34:18 42:4	exhibit 3:20 17:15	fair 30:2 62:13 65:5	26:10,18 27:1,2,3
3:20 4:3,3 5:3	86:7	17:16,23 18:1,19	75:13	27:7,16,18,21,23
17:10,15,23 18:19	eight 39:12	18:20 20:19,22	false 62:10	28:3,4,5,7 36:10
20:18,21 24:5,16	eighth 5:17,20	21:1 24:6,7,8,17	familiar 76:3,16	51:22 55:20 70:18
27:13 29:10 31:7	either 11:21 57:18	24:18 26:15 27:14	77:19	79:6,7 94:10 96:4
32:5 47:21,23	62:9 75:2 83:21	29:11 31:8,9 32:7	families 96:9,10	financially 99:12
49:3 50:18 51:2	84:6,17	32:16 35:12 47:21	family 75:7 94:17	financing 41:2 47:2
51:21,23 53:23	electrician 63:3,4	48:1,3,6 49:4 51:3	95:3,18 96:3	find 7:16,21 8:10
54:13,16,21 57:6	Elm 4:10	51:4 52:1,3 54:22	far 11:5	11:8 13:21 14:5
57:8 61:4,9,18	employed 99:9,12	55:2 71:12 72:18	Farah 1:6 3:16	19:1 26:23 27:20
62:4,7 71:11,15	employee 77:11	78:3,6 88:20	7:13 10:5 37:6	38:19 47:2 54:2,3
71:20 72:5,17	99:11	91:17	43:22,23 46:21	54:7 57:17,18
78:2,5 93:20,23	employment 7:3	Exhibits 2:10 3:1	72:14 78:9 85:12	91:11 95:14
98:7,17	ended 7:10 27:11	3:20	86:6 88:2,10	finding 11:3 12:14
Don's 28:12	ends 56:2	existed 12:21 77:18	89:15,18 92:17	13:17
door 89:5	entering 77:13	87:11	fashion 40:18	fine 61:17
doubt 74:16	entity 53:14,14	existence 14:13	96:20,21	finish 18:13 37:5
draft 25:20	94:23	existing 38:2 40:21	fast 59:4 60:19	56:18 65:4
draw 64:9	entries 56:5	75:14	82:13	finished 7:13 9:23
drawn 75:4	equal 94:23	exists 76:7	fault 62:1	10:16 30:12 38:19
Drive 3:6 5:8 30:18	equipment 16:1	expectation 34:7	February 1:14 45:6	39:14
30:21 35:1 37:21	error 86:18	59:19	45:10,12 46:9	firm 11:1
38:10,16,23 39:7	escrow 65:23 69:15	expected 59:21	87:13	first 11:9 15:4 17:1
39:10 40:3,15,21	Esq 4:3,10	expense 20:3,16	fee 8:5,9 13:8 19:9	17:8,11 19:14
41:5 44:3,7 48:8	essence 56:16	25:3	22:5,9 25:4	21:7 23:19 28:15
48:10 72:22	established 36:18	expenses 19:12,21	feel 5:12 87:16 92:9	28:16,17 33:11
due 21:10 22:1	estate 52:10 72:23	20:1,6 21:16,20	fees 58:18 64:2	34:5,16,17 36:10
30:12	95:17	25:2	96:18	37:16 38:19 41:11
dumbest 57:14	estimate 32:12	experiment 29:17	fellow 33:18	43:7 53:23 59:22
dummy 25:19	eventually 9:10	Expires 99:22	felt 9:22	60:8 75:5,6 86:1
	10:11 33:18 39:12	explain 70:10 97:20	figure 56:2	86:14 87:10 88:10
	39:22	97:22	figured 59:23 60:2	94:13,14,16,20,21
E	everybody 95:22	extended 21:9,12	figures 89:16,19,20	95:1,11,21,22
E 1:11 2:1,3 3:8,10	evidence 63:1,2	extension 25:22	file 17:3,5 90:5	96:8
3:11 4:9,10,14 5:1	evolved 8:18,20	extremely 23:2	filed 74:3	five 16:2 18:9,14
5:6 99:1,1,3,6,19	10:14	e-mail 11:21,22	filing 33:5	60:13 75:5 93:9
early 7:12 12:21	exact 32:22 55:21	71:23 72:2	fill 89:14 91:11	93:10
13:7 48:11 77:6	exactly 60:14 68:19	e-mails 72:4	92:13	flier 11:13
earmarked 68:10	example 67:13 69:5		filled 89:16 93:6	flood 96:9
earn 22:23 58:7	69:11 74:11		final 91:19	folder 2:13,14,15
earned 19:8	exceeds 31:17		finally 49:9 50:2	2:16,17,18,19 3:4
earning 59:10		F		
		F 99:1		

3:5,6,7,8,10,11,13 3:14,15,16 16:21 17:3,8,9,11,19 18:3,9,22 23:11 23:18,19,23 24:10 24:20 25:14,15 26:2,4,6,13,17,18 27:13 28:9,13 29:8 30:20 31:11 38:5,6,8 44:23 47:13,17,18 48:20 50:15,22 51:2,6 51:15,18,23 54:3 54:11,13,16 55:1 55:10 71:8,16,18 71:22 72:8,14 79:12 folders 47:15 folks 49:17 95:2,11 follow 61:11 following 61:20 follows 5:2 foolishness 85:19 foreclose 44:10 foregoing 99:5,14 forever 48:23 49:9 88:12 forgot 50:3 form 13:16 formal 6:17,18 98:8 formed 8:16 9:1 12:10 14:4 23:16 forms 89:10 forth 17:9 30:19 39:22 66:9 99:7 forward 48:23 found 8:6 15:6 23:21 25:18 33:18 45:17 81:15,21 82:13 founded 13:23 four 15:21 18:7 60:13 freeze 48:16 Friday 1:14 FRM 10:21 16:6	21:20 22:5 56:7,8 56:21 57:1,9,12 59:19,19 60:4,8 60:23 62:13 63:17 68:5 70:7,8 79:18 80:9,17 81:18,19 82:18,22 89:7,22 91:20 93:18 front 74:20 91:20 93:6 froze 49:9 frozen 48:16 49:8 49:12 Frucci 46:7,14 function 75:8 fund 34:22 35:5 58:23 80:20 funding 12:1 78:20 funds 11:5 12:7 22:22 30:5,17,18 33:11,12 34:3,4 36:20 37:1,11 38:21 41:15,20,21 42:11,13,21 44:1 44:19 49:11 52:13 52:16 56:6 59:6 60:3,8,10,14,18 60:23 62:13,17,21 63:5,6,8,13,14,16 64:16,17,23 65:5 65:15,20,22,23 66:22 67:2,3,17 68:8,17,23 69:15 69:20,21 70:14,15 70:23 71:1,3 77:1 83:9,11,12,13 85:6 89:20 funny 36:10 further 99:8,10	87:21 generated 42:21 44:19 93:12,15 generating 84:21 getting 13:19 14:8 16:14 21:11 58:3 70:7 92:8 Gilford 8:12 give 5:5 6:8 21:14 21:15,16,23 22:5 26:22 32:13,16 33:9 36:23 79:6 81:10 88:13 91:10 given 9:21 55:1 giving 5:12 7:15 62:2 glad 97:17 glorified 29:16 GMAC 43:4 go 11:6,14 13:5 14:20 15:18 28:19 47:2 51:7 54:17 54:19 57:3,22 59:3 62:20 66:4 70:10 72:7 73:23 76:16 80:12,13 85:3 86:6 98:14 98:18 goal 27:20 going 12:11 16:18 20:9,9 21:15,15 21:19 22:3 23:2,6 24:16 25:17,21 27:21 28:15 32:15 32:15 35:2 38:8 38:18 41:2 50:12 52:10 53:3 54:5 57:16 58:1 59:6 59:14 60:10 63:14 64:2 67:2 70:5,6 79:18 80:17 81:21 83:23 84:1,1,3 85:18,19,20,21,23 86:7,18 87:17,21 87:22 88:6 90:16 90:16 92:9,16 93:1,9,10 95:9	96:19,23 97:4,9 97:19,20,22 98:5 good 22:7 50:18 58:9 74:11 75:11 75:23 77:13 78:20 81:13 95:23 government 19:4 Grace 4:14 99:3,19 grade 5:16,17,20 5:21,21 graduate 5:17,20 5:22 6:2 graduation 6:6,13 7:2 greater 38:1 53:4 Greatland 2:17,18 23:13,14,14,15 24:1,11,20,22,22 25:8 74:5,6,9,12 74:18 75:3,9,11 75:20,21 94:19,19 94:23 grew 82:2 gross 20:6 85:2 group 7:11 35:2 75:6 groups 96:9 grown 88:23 guarantee 59:14 guess 9:18 10:18 11:21 16:19 36:19 42:7 46:4 61:6 75:2 guessing 34:6 35:20 92:6 guesstimate 10:18 guy 6:1 8:12 13:13 33:19 50:2 97:16 guys 93:20	handshake 47:1 happen 19:2 85:18 88:6 90:1 93:10 94:15 happened 12:8 18:11 25:13 26:21 35:13 36:22 37:23 39:15 46:13,16 49:10 50:3 81:16 happening 68:19 happy 59:13 98:15 Harbor 38:13,14 39:8,17 40:11 42:7 heading 25:10 hear 28:18 61:10 heard 76:11 held 48:7 53:6,20 62:17 65:23 74:17 96:23 help 7:23 51:11 63:14 82:13 helped 11:11,13 51:12 96:6 helpful 61:15,17 62:3 helping 7:7 51:9 hereinafter 99:7 he'll 97:7 high 6:4,5 7:2 58:18 higher 41:3 highlights 5:14 hire 21:17 history 7:3 hold 37:7 66:19 67:3,5 69:15 74:9 93:22 Holden 4:14 99:3 99:19 holder 94:5,8 holding 67:1 holds 29:22 home 29:16 43:7,9 73:14 homes 29:18 honest 82:9
	G		H	
gal 51:10 97:14 gather 13:5 general 7:3 16:20 68:2 72:11,13 94:3,4 generate 64:1				

Honestly 52:12	78:7	instantly 81:14	James 4:3	75:16 76:1,2,6,7,7
honor 59:16	immediately 65:16	instructions 79:7	January 87:13	76:8,15,17,18,21
hoping 49:16	implement 80:19	insurance 2:13	Jim 17:7 28:10	77:16,18,18 79:3
hour 22:16	80:20	3:16 17:2,2,12	53:16	79:17 80:2,22
hours 22:16	inaccuracies 61:16	45:4,5 72:1,12,12	jim@dntpc.com	82:6,7,8,10,14
house 29:15,18,19	inaccuracy 62:2	72:14 85:4	4:6	83:3,16 84:19
30:7,13,14 33:11	inaccurate 61:14	intelligence 47:7	job 14:5 77:13	85:2,3,9,15,18,20
33:16 37:12 39:11	61:23	intend 25:6	John 49:20	86:4,9,10,11,12
39:19 41:20,22	include 66:22	intended 25:7	journal 68:18,19	86:13,21 87:2,5
42:15 73:3	included 81:9	57:12 67:22 71:17	July 14:1,1	88:19 90:21 92:7
houses 38:18	includes 19:9	intending 25:4	June 14:1 78:12	93:9,10,13,16
Howard 4:9,10	income 2:16 18:23	intent 66:5 81:17	justified 59:17	94:15 96:10,11,20
5:15,18 6:4,10 9:5	19:8,9,10,10,20	intention 65:1		97:6,17,21,21
15:18 16:12,18	19:22 20:3,4,6,14	intentions 57:10	K	98:3,3
17:7,20 19:3,13	20:15,20,21 21:3	interbank 56:13	Kayla 5:8	knowing 83:17
23:12,17 28:10,23	21:4,7 23:5 25:2	interest 19:8,8,10	keep 19:7 28:2	knowledge 74:17
31:23 34:9,12	25:16,18 26:5	19:20 20:3 30:11	37:13 48:18 67:21	known 97:16
36:22 38:4,8 39:2	27:17 49:22 64:1	30:16 33:6,22	68:15 87:16,19	K-A-Y-L-A 5:8
39:19 41:12 43:6	87:21	46:21 48:7,7 58:7	kept 7:15 14:10	K-1 55:4
43:11 44:23 45:3	incorporate 27:9	59:10,13,20 60:12	35:2 37:13 46:18	K-1's 53:10 54:19
45:7,9,11,14 46:9	incorporated 9:2	66:14,19 67:10,18	65:3,18 70:19	
47:14 50:19 51:7	23:15 25:15,17	67:20,22,23 68:4	83:4,15	L
51:16 53:9,16,22	57:22,23	69:2	kill 92:9,16	Laconia 3:10 6:5
54:5,17 55:11	incorporation	interested 11:10	kind 47:1 60:5	26:20 47:16,17
57:4 60:20 61:2,7	17:21 24:12	12:3,4,5,18 83:17	61:19 85:14 87:10	48:22 49:6 76:9
61:12,22 62:6,9	incorporator 27:11	83:18,19 99:12	knew 9:15 12:17	land 25:9
65:4 70:9,13	increasing 84:21	interesting 6:15	15:14 78:20 81:8	Lane 3:5,7 28:15
71:18,21,23 72:4	indicating 18:14	investing 65:1	81:8 85:6,9,10,10	29:4,5,8,13 30:18
72:7 82:1 84:7	individual 61:2	investor 64:23	89:17 93:4,8	31:14 32:10 33:17
90:18 93:17,21	77:17 94:5 96:20	65:12 68:21 69:12	know 6:20 9:15	34:12,23,23 35:6
98:13	individuals 12:17	81:20	12:19,21,23 14:7	35:8,13 39:9
huge 49:21 86:8,11	inflows 77:13	investors 60:23	15:22 16:5,17	40:18 44:15,16,17
87:21,21	info 20:20,21	61:2 62:13,15	17:8 18:18 19:10	48:8,9 72:22
Hundreds 96:14,14	information 2:16	63:6 64:16 65:5	20:5 21:18 25:11	large 74:12 85:8,8
husband 97:21	2:20 3:12,14 12:4	66:4 69:20,21	25:11,23 26:21	86:1 87:7,8 93:12
	14:8 18:5,23 20:1	71:1,2 75:6 83:11	28:15 30:14,19	93:15 96:12
I	25:16 26:22 33:14	invoice 21:6,23	31:2 32:18 33:12	larger 22:2
idea 14:8 16:7 44:1	50:19,20,23 51:19	23:9 59:16	38:14 39:15,18,21	largest 84:5,16
56:11 59:5 70:3	54:15 55:4,5,12	involved 7:9 38:22	40:6,8 43:23	Larry 28:18 29:17
86:10 95:23	61:14 73:15	39:1 58:3	46:13,16,16 47:6	30:6 35:4,8,14
identification 2:10	initial 62:18,19	IRS 26:1	47:6,10 49:10,10	36:18,21 37:1
3:1 17:17 18:2,21	78:18	issue 63:2,3 94:19	49:17 50:10 52:12	46:12,12,23 47:2
21:2 24:9,19	initially 9:7 22:15	98:14	52:12,12,23 53:10	47:5,6
26:16 27:15 29:12	52:10 63:8 80:10	issued 55:16 56:12	53:12 57:2,14	law 1:12
31:10 32:8 48:2	initiated 13:22	70:17	58:16 59:9 61:20	Lawrence 35:10
49:5 51:5 52:2	instance 46:23		61:23 64:5 70:11	lawyer 61:5
54:23 71:13 72:19	85:16	J	74:21 75:1,2,12	lawyers 74:21

LBSF 28:18 35:10 46:12	license 8:11 9:8 Licensed 99:3	loaning 63:16 64:4	16:4 17:22 18:23 19:14,15 21:3,21 22:11 27:18,19,20 28:4 55:20 56:6 56:17,21,23 57:21 59:6,18 60:3,6,8 60:18,23 61:1 62:13,15,18 63:7 63:9,15,16 64:14 64:16,17 66:4 67:2,14,17,21 68:5 69:14 70:1,7 70:8 75:22 76:22 77:9,11 78:10 79:18 80:9,17 81:18 82:18,22 89:7 91:20 93:19	15:2,3 85:17 87:12
LCR 4:14 99:19	licenses 9:23	loans 11:2,7 21:9 21:10 41:11 47:12 56:16,21 59:23 66:3,13,13 71:6 76:22 82:4 83:12 83:22 87:1 94:4 97:3,8,12,18	22:11 27:18,19,20 28:4 55:20 56:6 56:17,21,23 57:21 59:6,18 60:3,6,8 60:18,23 61:1 62:13,15,18 63:7 63:9,15,16 64:14 64:16,17 66:4 67:2,14,17,21 68:5 69:14 70:1,7 70:8 75:22 76:22 77:9,11 78:10 79:18 80:9,17 81:18 82:18,22 89:7 91:20 93:19	markets 15:20 marking 51:14 match 57:18 Matthew 52:6,7 max 60:2 maximum 60:1 mean 7:22 12:17 19:3,14 31:20 32:1 48:23 54:2 56:11 57:11 74:15 79:1 84:8,10 92:8 92:20 93:14,18,18 means 18:8 75:1,2 99:15 mechanism 95:15 meet 13:9 meeting 5:13,23 95:15 meetings 88:19 memos 17:9 mentally 6:1 mentioned 8:20 13:14 Meredith 19:19 howard@howa... 4:12
learned 6:15 9:14	life 3:16 72:1,12,12 72:14 85:4	looked 20:12 21:8 39:3 77:21	64:16,17 66:4 67:2,14,17,21 68:5 69:14 70:1,7 70:8 75:22 76:22 77:9,11 78:10 79:18 80:9,17 81:18 82:18,22 89:7 91:20 93:19	middle 15:6 million 8:6 9:13 56:20 57:1,9,12 59:19,21,22 60:2 60:4,5,6,7,9 70:8 70:11,21 72:12 79:19,21 80:1,2,4 80:10,13,14 82:2 82:8,11,12,19 84:18,18,19 85:2 85:5 92:3,6 mind 16:14 38:4 mine 9:20 minimal 14:21 minimum 21:8 minute 7:19 32:5 48:4 64:15 83:10 missed 45:15 missing 62:1
leave 24:22	line 3:15,17 55:11 55:13,19 58:14 59:8 71:9,11 77:22 78:8,16 79:3,19,23 80:11 86:4 87:16 88:3 88:11,23 92:1	looks 28:12 36:2 74:10	Magnus 36:10 mail 11:17,21,22 mailing 11:11,12 main 65:9 69:23 maintained 65:8 maintaining 77:13 major 8:4 making 12:4 33:20 49:21 52:20 66:22 68:22 management 27:19 Manchester 4:11 mark 4:10 17:15,23 18:19 20:18,21 24:5,6,16 26:2,8 26:12 27:13 29:10 31:7 32:5 47:21 47:23 49:3 50:12 51:2,21,23 52:6,7 54:13,16,21 71:10 71:11 72:17 78:2 78:5 marked 17:17 18:2 18:21 21:2 24:9 24:19 26:16 27:15 29:12 31:10 32:8 48:2 49:5 51:5 52:2 54:23 55:2 71:13 72:19 78:7 market 14:20,23	
left 15:15 19:2,3 33:11 68:9 69:22	list 11:11,18,20 53:5,15,18,22 54:1 55:8,15 70:19	losing 78:22		
lend 11:4,8 52:23 57:12 58:13 59:18 60:3 62:13	listed 19:11 54:7 listened 95:16	loss 20:16,17 39:18 85:8 86:8,9,9,10 86:12,13,15 87:7 93:12,15		
lender 3:14 8:8 30:2,3,5,6,11 34:22 36:3 41:23 42:1,1 43:5 47:2 52:20 53:9,17,20 54:14 55:5 60:15 60:16 62:21 64:23 65:5,12 66:18 67:1,4 68:16,21 69:12 75:3 78:10 80:22 81:1,7,14 81:20,21 94:7	lists 11:12 18:5 55:2	lost 40:2,6 50:16		
lender's 65:20,22 68:17	little 8:2 17:13 20:12 22:2 31:5 39:1 53:2 74:5	lot 25:9 29:13,13 76:12 85:11 86:21		
lending 12:23 62:16 63:21 66:5 68:11 80:9,17 83:1	live 50:11 73:13 living 33:16 LLC 95:16	lots 6:14,14 78:21		
lent 43:3,4 57:9 62:21 68:5 82:10	loan 8:1 11:4 12:4 12:20 21:8,11,12 30:5,12,12 33:3 36:1,4,4,16,16 40:21,23 41:1,10 41:23 42:3,3 43:10 45:22 57:1 58:16,19 59:1 60:8 65:2,2,13 66:1,20,21 67:9 67:20,23 68:22,23 69:1,2,6,12 70:4,7 70:8 75:4 78:19 78:21 79:2,18 80:20,23 81:4,18 81:19,22,23 83:1 83:1,3,13 84:20 90:8 94:2 95:5,5 96:11,12,19,20 97:4,5,6,19	lower 41:1		
letter 49:23	loaned 60:23			
let's 17:1 20:18,21 23:19 27:6,13 30:5 32:5 45:11 47:13,21,23 48:3 49:3 50:22 51:14 51:21,23 60:7,16 71:15 74:11 75:9 75:19 78:5 79:13		lots 6:14,14 78:21		
liability 17:13		low 35:3		
		lower 41:1		
		M		
		m 2:14 7:11 12:8,8 12:9 13:14,22 14:3,13,17 16:2,3		

mistake 25:23	31:3,17,20,21	47:6 57:12 59:21	occurred 63:12	outflows 77:14
Mm-hmm 24:2	32:21 33:1,5,6,22	60:5,6 74:17	70:17,17	outline 5:10
35:15 37:19 64:18	34:2,19,20 35:19	75:21 76:14 80:13	October 32:19,23	oversight 27:19
66:15 86:23	38:2 40:14 41:14	81:8,8,9,10 82:11	offered 58:4	owe 92:11
mobile 29:16,18	43:8,9,15 63:9,11	83:15 87:1,1 88:7	office 19:4 90:5	owed 22:10 55:7
73:14	63:12 65:1 85:7	92:3 97:3	97:14	owned 14:3 27:3
moment 85:23	93:12,15,18 94:5	new 1:1,13 4:5,11	officer 97:6	35:6 38:12,15
money 7:16,21,22	94:8,22 95:1,22	5:8 21:11,11 36:1	offices 1:12	44:2 46:22
8:7 11:2,9 14:20	mortgaged 33:2	36:4,16 41:10	official 14:2	owner 9:3 14:11
14:23 15:2,3,20	mortgages 11:6,7	81:1 84:3 92:2	Oh 15:22 23:18	38:10,14,22
25:22 34:13,14	11:13,16,17 28:23	99:4	25:3 40:6 41:8	ownership 9:7
35:2,3 36:9 37:3,6	29:2,2,6 33:10	NH 4:14 99:19	46:7 57:14 71:9	
37:9,12 38:3 40:2	35:4 47:11 52:13	night 87:15	82:17 96:17	P
40:6,7,7,8,12 41:4	52:15 53:5,20,21	nightmare 58:2,3,3	Okay 16:23 17:2,10	package 90:6
43:3 44:17 46:14	55:7,8 58:13 74:9	95:12	17:18,21 19:18	page 2:6,11 3:2
48:7,13 49:7,15	74:12 75:11,14,20	nine 39:13 95:3	23:4,21 25:14	20:14 36:2 43:7
49:21 50:11 51:11	77:16 87:2	ninth 5:21	43:11 44:10,22	48:15,15 55:23
52:19,23 55:7	Moultonborough	Notary 99:4	46:3 48:5 50:15	88:21 91:16 92:3
58:6,8 60:15,22	28:12	note 3:18 55:16	51:21 62:16 73:20	paid 8:9 10:5,12,15
62:13,16 63:21	move 54:6	77:22,22 78:9	73:22 75:3 76:11	15:23,23 16:1
64:4 66:4,6,23	moving 39:3	88:21 89:6 90:10	90:1	22:13 28:4,8 33:7
67:7 68:13,21	M's 21:4 62:20	91:4,16,20 94:5,8	old 51:9,12 97:17	33:8,22 34:21
69:18 70:7,8,12	N	noted 82:6	oldest 97:16	36:16 42:1,17,20
74:7 75:16,20,21	N 2:1	notes 5:12 64:8	once 9:9 11:20 14:9	45:22 56:8 58:1
75:22 76:18 80:17	name 5:5 8:21 25:8	89:16,18 90:12	77:6	68:8 70:1,19 71:4
81:18,19 82:22	28:12,18 36:10	99:6	ones 73:5	75:20 82:7 83:12
86:22 87:2 96:8	47:3 76:2,20	Notinger 1:13 4:3	One's 95:6,6,6	83:18 87:18,23
97:11	77:19 83:2	28:11	opened 15:5	paper 17:13 45:17
monies 70:2	Nashua 4:5	November 19:5	operating 14:18	56:15 68:14 74:10
month 21:6,16,22	near 53:3	33:6 44:11,12,12	15:23 16:1 20:8	89:8 90:4
22:20 33:8,10	necessarily 68:7	50:5 85:16,17	20:11 25:4 28:3	papers 23:16 31:6
42:2 46:18 49:20	necessary 63:10	89:3 92:14,15	84:4,8	32:11 39:23 40:1
52:16,22 59:15	need 5:4 22:3 35:3	93:2	operation 28:2	51:12 75:4
67:4 68:18 80:22	46:19 57:5 79:4	nuisance 7:14	operations 8:3,4	park 29:20 31:2
87:17,19 88:17	83:20,21 88:11	number 15:9,9	opportunities	73:14
monthly 21:21 43:1	91:11 95:14 98:8	18:9 30:9 74:8,8	58:19	part 7:4 48:11
59:15	needed 8:5 9:22	79:11 80:14,16	opposite 43:6	49:15 51:9 65:9
months 15:11,12	13:19 58:1,22	85:2 90:12 91:3	option 33:20	71:17,77:21
15:13 21:11 26:23	64:11 65:23 81:5	numbers 73:23	order 11:2 25:20	partial 50:6
26:23 39:13,13	87:14	96:12	35:21 41:15 42:12	particular 11:8
66:10,23 67:4,5	negotiated 39:21	O	45:16 78:22	58:17 65:1 67:23
84:3 88:1	neither 40:2 99:8	oath 61:20	organized 96:20	67:23 68:22
mortgage 1:7 7:10	net 20:7	object 62:8	original 15:8,11	parties 12:20 64:13
7:11,17 8:7,15,19	never 10:14 11:5	obligation 83:13	79:13,16,17,23	99:9
8:21 10:21 11:4	15:16 20:10 24:13	obviously 87:7	originally 8:23 30:4	partnership 47:1
11:15 13:4 29:20	25:2,2,4,13 33:21	occasion 22:6 98:4	80:10	pay 8:5 9:18 13:8
29:22 30:3,23			originals 16:16	22:11,22 23:10

28:5 35:4 40:20 42:16 46:2,3 48:7 53:2 59:9,19 60:12 67:17,22 87:2 89:17 95:12 96:18 payable 52:14 63:6 paying 30:10,11 41:23 43:15 46:21 60:1 67:3 87:22 88:3,4 payment 33:23 34:1,2 43:1,2 44:13 50:7 67:4 68:16,17 payments 33:20 34:11 37:4,7 43:15 44:11 48:11 50:5,8,9 52:17,20 66:23 67:2 68:10 70:1,2,4 payoff 41:19 46:3,4 46:6,14 81:9 payouts 19:12 payroll 16:1 Pearl 9:17 27:9 pending 57:8 pension 49:8,11,15 49:16,18,19,20 50:1,8,9 people 7:7,16,22 8:3 11:10,12,15 11:16,18,22,23 21:17 51:9 59:2,2 63:5 75:5,5 77:15 86:21 92:20 94:18 94:18 95:4,8 97:13 percent 14:11 30:11,17 42:2,3,3 43:1,2 59:9 67:10 perform 62:23 performs 62:22 period 10:9,14 27:16 60:1 66:19 67:5,18,23 68:5 80:17	periodically 79:12 89:9 person 5:22 6:1,8,9 9:17 11:8 13:9 19:14 28:3 30:7 70:3 79:10 95:19 95:21 personal 3:9,10,12 33:13 34:4 37:7 47:15 49:1,2 50:20,23 73:17,19 Personally 43:18 personnel 34:3 persons 94:20 person's 68:8 pick 95:18 piece 45:17 56:15 58:15 68:18 95:22 pieces 57:21 72:21 74:8 place 59:1 80:20 82:16 99:7 plan 60:6 79:5 planning 52:10 play 59:5 please 34:9 49:23 51:3 plumber 63:2 plumbing 63:1 plus 50:6,7 pocket 11:6 point 5:13 7:9 10:20 11:1 21:7 22:21,23 25:22 85:6 86:21 policy 3:16 17:12 72:13,15 Pond 74:11 75:12 75:22 76:3,17 77:17 pool 40:8,9 poor 30:7 poorly 29:16 portion 28:7 46:17 50:6 69:23,23 POSED 2:6 position 75:5 94:21	94:21 95:11,21 possession 53:19 possible 9:8 39:1 possibly 25:7 40:11 53:7 59:23 postcard 11:14 preferred 9:12 10:2 premium 70:6 prepaid 66:14 67:10,20,22 68:4 prepare 7:23 20:9 20:10 prepared 19:23 79:19 80:10 prepay 69:2 present 72:20 pressure 22:18 pretty 17:21 22:23 previous 5:13 previously 11:16 price 9:13 42:17,19 45:23 primarily 7:16 prime 78:20 principal 6:7 principle 97:22 private 12:16 30:5 30:6,11 34:19,20 34:22 36:3 38:3 41:23 42:1,1 47:2 privileged 17:9 probably 10:13,17 18:6 32:19 37:10 40:7 52:23 77:5 80:3 84:18 88:17 89:11 Probate 51:13 problem 51:11 82:12 97:5 problems 51:10 procedure 61:19 process 11:18 processed 97:4 produce 53:13 produced 35:2 production 71:17 profit 34:19 39:16	39:17 47:4 profitable 23:2 program 58:4 84:3 project 2:17,18 23:15 24:1,11 60:19 63:14 65:13 66:5 projects 61:3 74:8 76:9 promise 83:22 promised 33:9 promissory 3:18 64:8 77:22 78:9 properties 28:11,14 28:19 31:5 40:23 46:21 property 28:16,17 29:4 30:23 31:12 31:16 32:10,17,21 33:1,5 34:5,16,17 34:18 35:6,14 36:5 38:1 40:16 41:2,18 42:9,14 43:16 44:2,14 46:11 63:12,13 72:21,23 74:9,13 75:12 proposed 63:23 protecting 85:4 provide 27:19 Public 99:4 pull 46:19 71:20 pulled 26:22 pulling 72:5 purchase 35:22 36:1 41:4,16,17 42:13 44:17 45:23 purchased 15:23 32:9 43:16 45:18 52:13 purpose 11:19 64:7 67:3,16 68:13,22 75:7 78:16,18,18 80:8,20 purposes 32:1 52:10 push 97:6	put 5:16 11:18 12:19,19 19:17 22:18 33:13 45:16 51:12 54:17 58:8 64:10 75:19,22 79:9 80:14 88:5 89:9,19,19 putting 8:9 80:16 P.C 1:13 4:3 P.L.L.C 4:9 p.m 1:14 98:19
Q				
qualified 8:1 qualify 42:3 quality 81:14 question 12:13 18:13 37:5 38:9 53:16,18,23 56:18 57:8 60:7 61:4,12 62:10,11 70:13 79:14,16,17 80:7 82:15 84:7 86:20 93:23 97:18 questioned 5:2 questions 2:6 12:6 54:6 98:9 queue 11:23 quickly 32:14 78:22 79:3 quiet 61:16				
R				
R 99:1 raise 7:22 11:5 raising 11:2 97:11 ran 34:13 35:3 range 31:4 rankings 6:3 read 6:14,16 reading 64:12 ready 92:8,21 real 5:23 32:3 72:23,23 95:17 reality 32:2 realize 80:4 87:10 90:6 92:6				

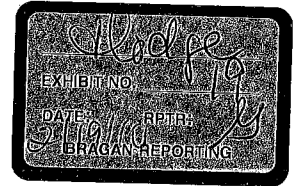
really 6:8 15:9,22 29:15 55:5 66:23 76:17 80:8 83:20 98:8,8	relinquish 96:6 remained 11:4 remember 94:13 rent 15:23 73:14 renting 33:19 73:13 replaced 70:19 83:7 replenished 43:22 Reporter 4:14 99:3 99:17 representing 56:23 represents 56:6,16 56:20	13:3 16:12,13 19:15 24:16 25:14 26:2,8,14 29:9 30:16,20 31:19 32:2,13,15,22 35:9 36:5 37:2 40:5,15 42:13 43:13 44:5 47:13 48:3,20 51:1,14 54:5,10,11 55:1 55:14 56:7 57:5 60:22 62:11 64:15 65:14,17 66:7,8 66:12 67:19 72:4 72:8 73:18 75:10 75:14 79:13,15 83:14,23 84:1 85:23 86:12 87:3 90:15 91:2,5 94:6 94:9,11,17 98:7 98:10,10,17	saw 16:8 21:23 76:13,14 84:6 saying 6:7 48:19 49:13,15,23 56:5 60:22 61:6 68:23 71:16 81:17 83:9 83:11 88:2 91:2 93:11 scenario 31:16 68:11,23 school 6:4,5 7:2 Scott 1:6 3:16 7:12 7:13 8:6,12 9:5,6 13:1,12 25:9 29:17 30:9 34:14 34:22 35:3 36:20 42:8 46:20 47:1,5 47:7,11 52:5 58:12,13,18,22 59:16 74:19 78:9 78:19 79:2 83:5 85:12 86:17 87:14 90:8 92:16 95:16 96:2,22 97:6,14 97:16,19,23 98:3 Scott's 72:1,12 82:13 scribble 56:14 scribbly 18:7 SDLN 78:23 79:4,9 81:5,10 83:6 84:2 86:4,11 90:4,7,11 seamless 28:2 second 15:5,6 37:15,20 41:11,13 44:23 75:3,9 94:22 seconds 74:18 securing 63:13 security 50:21 see 11:10 13:12,20 20:15,19 23:5 28:6,7 29:16 48:11 49:18 54:7 74:16 83:10 94:14 seeing 45:14 84:17 seen 11:5,7 54:8	76:2 77:22 segregate 68:15 segregated 65:3,22 69:15 seized 19:4 self-employed 7:4 sell 9:16,17,20 47:4 selling 32:3 send 10:10 11:20 12:1,5 22:7 25:21 49:22 81:2,22 97:15 sending 11:13 sense 59:11 sent 25:23 60:15 63:6,8 64:17,23 65:12 66:4 68:8 68:21 69:12 86:22 separate 65:18,22 67:21 69:14 September 32:19 series 55:16 88:21 89:6,16,18 90:10 90:12,18 91:4,16 91:20 service 13:18,19 15:8,9,12 57:20 servicing 13:21 15:4,4,5,20,21 43:14 47:11,12 57:17 58:2 60:20 60:21 63:9 69:19 70:15 71:3 84:9 84:10,13,14 85:22 93:18 98:6 set 11:7 14:6,6,7,9 21:14 25:12 47:10 57:21 58:5,14 59:8,22 63:22 66:3 78:18 94:4,7 99:7 settling 56:10 shack 51:12 share 47:4 shareholders 9:13 9:16 10:3 shares 9:10,16,17
record 19:7 48:6 65:8 68:14 71:14 71:15 74:15 83:3 98:18 recorded 22:6 70:2 83:2,5 recording 77:14,14 records 3:4 27:1 47:15 55:22 81:7 reduce 64:1 88:11 reduced 43:2 46:20 83:13 reducing 88:3 reduction 82:21 refer 10:20 referring 19:13 34:17 regulations 85:21 85:21,23 relate 24:20 28:10 related 24:1 72:9 72:14 99:9 relates 24:10 26:4,6 29:8 30:20 31:11 51:18 relative 99:11 released 49:18 relevant 51:7	REPRODUCTI... 99:15 requests 59:1,1 76:23 required 6:19 60:17 requisition 76:23 researching 13:20 reserve 67:17 98:10 reserved 67:22 Resources 1:7 7:10 8:16,19,21 10:21 21:5,6 22:9 55:20 70:19 79:6,7 response 80:6 responsive 16:19 71:18 rest 26:9 result 34:21 85:18 resume 98:16 retained 3:20 retard 5:16,23 6:1 6:2 return 19:7,17,23 20:2,2,8 73:16,17 73:19,21 74:1 returns 26:9 revenue 27:17 revised 79:22 Richard 46:7 rid 77:6 ridiculous 30:9 58:19 87:16 right 5:15 10:23	Road 76:10,11 role 97:8,11 Rollercoaster 76:9 76:11 roofer 8:3 rotating 84:4,12 rough 25:20 roughly 22:20 56:20 run 14:7 15:10,10 15:13 27:23 37:9 53:11 92:8,8 running 14:10,10 28:2 93:20 RUOFF 4:9	<hr/> S <hr/> sake 10:22 salary 22:11,13 28:5 sale 33:11 34:5 39:14,16 sat 14:21 savings 3:10 26:20 42:4 47:16 48:22 49:6	

9:18 10:6	29:18 59:6 63:15	stage 48:11	Suite 4:4	98:3,5,13
sheet 15:17 19:7,20	situation 69:11	stands 52:6	summarization	talked 72:21,22
20:5,12 25:19,20	six 14:19 67:4 82:2	start 7:17 17:1,1	19:16	73:1,6 74:5 79:10
56:16,20 79:9	84:2 88:1 95:3	37:11 57:10 87:22	summarized 20:4	97:18
83:4,7 92:6	skipped 17:8	started 12:22 13:17	Summarizes 56:1	talking 44:5,14
sheets 20:9,10	sleep 87:15	13:20,23 15:17	summary 12:2 20:5	58:12 71:9 76:6
81:22,22 89:9,9	slew 89:13	27:7,8 87:12	31:18	98:1
89:12 90:2,3,4,4,7	slip 68:13	starts 20:13 85:3	supplied 34:15	tax 2:16,20 3:12
90:10 91:1 96:11	small 8:2 12:18	State 99:4	35:2	18:23 19:6,17,23
shoot 92:21	23:7 57:20	statement 1:11,12	supply 34:14	20:2,2,8,20,21
short 39:12	smaller 35:23	45:3,14 98:19	support 58:1	25:16,18,21 26:5
short-term 58:15	smart 7:14	99:6,10	supposed 30:7	26:9 28:6 29:6
70:18 80:19,20	SMM 3:13 22:8,9	STATES 1:1	supposedly 67:16	32:1 50:19,20,23
82:4	51:16,18,19 52:3	stay 48:3	70:18	73:15,16,21
shot 96:22	52:6,11,14,15,18	stenographic 99:6	sure 9:20 10:13	taxes 19:1,11 20:9
shotgunning 58:23	52:19,20,22 53:1	stick 75:9 79:12,13	16:15 18:7 21:14	96:17,18
show 17:18 18:3	53:6,9,17,20 54:7	86:20	22:2 30:16 34:14	technical 38:13
23:11 28:9 31:6	55:7	stock 9:7	36:19 37:10 39:13	74:20
32:15 63:1,2	social 50:21	stocks 73:8	39:20 45:11 50:3	technically 15:3
77:20 83:20,22	software 53:12,13	stop 7:19 14:22	59:12,14 80:21	28:22 93:2
showing 18:22	53:15 55:9 65:8	50:22	84:18 96:22 98:12	tell 13:3 16:19,22
24:10 31:11 35:12	70:1	stopped 33:20	98:15	31:5 32:16 36:22
50:23 55:23 68:19	sold 11:12 33:12	story 22:8	Susan 52:6,6	41:8,10 45:18
82:8	34:16 35:1 37:12	stray 82:1	suspend 98:9	49:23 51:8 53:7
shut 93:2	39:11 40:13,13	strayed 80:7	swear 5:4	57:3,4 62:7 68:7
sick 82:10 87:15,15	48:12	stream 20:14	sweep 58:5,5 60:12	72:7 94:13 97:7
87:16	solve 51:11	Street 1:13 4:4,10	63:22 64:6 70:16	telling 38:7 59:18
sign 8:14 39:23	somebody 27:22	strictly 33:14	70:17	87:17,19 90:14
64:8 77:3 89:4,10	28:1 49:17 50:13	structure 94:1	switch 15:7,12	97:15
89:13 90:20 91:6	53:15 92:9	stuff 28:6 85:16	system 68:20 76:1	temporarily 96:5
91:10,12 92:4,13	somebody's 96:2	stupidest 57:14		ten 9:10 82:2
95:19 96:5	soon 9:8 26:12	subcontractors	T	term 5:18 30:12
signature 91:5	sorry 41:13	77:1	T 99:1,1	74:20 90:9
signed 26:1 40:1	sort 6:20 16:19	subject 28:23 29:2	table 16:11	terms 7:3 55:7
58:11 64:9 77:5,5	23:3 29:18	86:1	take 6:12,19 13:5	66:20 94:3,4
78:9,10 89:8,13	source 70:14	submit 21:6,18	13:13 22:19 23:7	terrible 87:4
89:15,19 90:22,23	sources 8:7,7 21:4	22:4 23:9	23:8 27:10,20	tests 6:19
92:12,14 93:7	so-called 66:14	subpoena 16:19	32:5 54:17 57:6	text 11:14
silly 30:9 95:14	speak 23:9	47:14 71:19 98:11	57:17 58:6 60:10	thank 98:2
similar 37:23 40:18	speaking 21:3	98:14	74:11 81:22 83:1	thick 90:6
simultaneous 74:19	specialty 7:8	subprime 85:17,19	89:9	thing 6:21 9:22
74:23 75:1	specific 66:5	87:12	taken 1:12 17:3	23:3 30:9 47:3
single 15:4 94:23	spend 50:11	substantial 42:4	50:7 57:7 66:21	57:2,14,23 58:11
95:1	split 95:1	substantially 41:1	88:9 99:6,10	79:22 81:7 83:21
single-man 8:3	spoke 88:15	subtracted 68:16	talk 13:6 18:12	85:1,14 86:2,3,16
sit 60:18 62:20	spoken 9:12 42:11	succession 28:1	47:5 49:17,18	87:16 92:5 97:22
sitting 16:12,13	staff 58:1	suggested 95:15,17	50:12 87:14 97:17	things 5:13 6:15,15

22:3 24:14 61:8 64:8 80:6 think 10:16 12:21 13:3 14:1 16:8,22 17:13 20:17 22:17 23:16,16 25:17 27:12 31:17,18 33:12 36:20 37:12 37:16,18,22 38:15 40:6 48:10,18 50:12 51:7 53:7 57:8 58:19 65:7 73:16 74:6 75:6,7 79:16 80:7,12,16 83:10 88:10,15 90:5 92:16 94:14 95:16,23 98:7,9 thinking 80:9 third 5:16,20 31:12 44:14 88:21 91:16 94:22 thought 13:11 22:3 23:1,2 24:13 81:10 95:22 thousand 29:21 35:21 36:12 three 8:3 11:23 15:10,12,13 18:7 21:17 26:23 28:14 39:21 48:8 60:13 66:10 72:21 75:5 83:6 94:17,18,20 94:20 throw 76:20 tied 83:6 tight 50:17 tightly 16:18 till 55:17 time 9:19 10:9,14 12:8 14:18 16:21 18:12 21:9 25:22 35:18 36:6 37:12 38:17,18 39:14,14 45:17 48:12 55:16 58:10 59:10 67:23 68:5 72:11,21 75:7 77:8 79:11	79:19 80:18 83:19 86:11 87:14 89:7 89:13 90:16 91:18 92:4 95:12 96:7 times 39:21 70:10 88:15 tiny 53:2 today 16:9 86:12 86:13 87:5 token 27:11 told 9:9 10:9,11 22:18 23:2 28:11 62:12 74:6 76:15 87:14 tomorrow 85:5 92:10 top 29:19 total 19:10,22 20:4 20:15,16 36:1,3 42:17,20 56:2 63:12 82:10 91:23 totally 65:7 totals 20:14 tough 6:1 town 32:1 track 37:14 46:18 68:15 83:4,15 traditional 30:2 transaction 20:11 22:6 37:16,20 38:1 40:3 42:22 44:20 55:16 56:6 77:15 91:19 transactions 15:11 15:13 48:8 55:21 55:21 81:8 91:7 91:13,15 94:2 transcript 99:5,14 transfer 18:17,17 35:10 56:12,14 82:22 83:13 91:19 transferred 56:6 transfers 2:15 18:15,15 82:15 91:3 transposed 91:1 trapped 61:13	tried 6:9 37:13 39:1 44:10 64:11 80:6 triggered 70:1 trouble 7:7 true 65:7 75:16,18 76:21 89:6 99:5 trust 3:14 22:8 35:10 46:7,12,14 51:18 52:4,5,8,11 53:17 54:14,14 55:4 75:8,8 94:8 94:12 95:20 96:20 97:20 trustee 4:2 35:10 51:22 52:8,9 54:20 94:10 95:19 96:2,4,8,13,15 trusteeship 96:6 trusts 54:14 55:3 95:17 96:18 Try 86:20 trying 49:9 53:7 57:17 61:15 62:2 81:11,18 97:6 turn 27:21 43:7 52:22 turned 86:18 turning 68:11 twice 21:22 39:3 49:23 two 8:3 12:20 14:20 14:22 15:2,4,9,10 15:19,20,21 18:7 21:22 22:1,19 23:6 26:23 28:3 29:18 38:18 39:21 41:11 47:15 49:19 50:5 58:16 60:13 66:6,19 76:1 80:22 81:22 84:4 84:12 94:18,19 96:9 two-page 12:2	12:22 understand 13:4 36:21 37:18 83:10 98:12 understanding 49:19 61:6 62:12 65:2 understands 36:21 understood 80:8 98:2 uneducated 7:5 unexpected 22:3 unfortunate 81:7 UNITED 1:1 units 77:17 unusual 61:19 use 5:18 25:5 34:22 94:19 95:17 96:5 useful 24:13 usually 7:23 21:22 22:2 53:2 94:10	16:17 21:14,18 22:15,18 25:9 43:1 54:6 58:2,13 59:7,12,14 61:7,9 61:10,13 62:1 65:13 76:20 77:20 83:20 86:4 92:2,4 94:15 95:4,5 96:3 96:5,7,14 97:19 98:13 wanted 7:17 9:16 9:21 11:22 22:14 22:15 23:1 28:1,1 58:17,17 78:20 91:5,9 92:8 96:10 98:2,5 wants 11:9 wasn't 22:7 43:6 58:23 59:17 60:7 62:6,9,18 65:10 66:23 71:4,16 86:9 96:7 water 57:5 way 12:9 27:23 29:16 30:13 38:15 39:9 40:23 47:5 55:17 58:18,18 63:23 68:11 75:8 75:19 89:11,11,11 94:21 wealthy 8:5 week 15:16 86:16 87:17,19 weeks 21:22 22:1 22:19 23:6 28:3 80:21 83:6 weight 50:16 went 11:20 16:21 23:1 36:17,18 37:13 39:22,23 40:23 46:17 55:15 55:17 56:11 62:19 66:6,9 68:2,16,17 69:22 71:3 80:4 82:11 83:3 85:1 89:4 weren't 39:2 65:15
			V	
			vacant 29:13 vacation 90:16 value 29:6 31:17,20 31:23 32:3 40:22 40:22 41:2,3 values 29:3 31:4 variations 94:4 various 18:15 vie 78:21 Village 26:20 voice 57:5 vote 96:7	
			W	
			W 4:3 wages 25:18 wait 18:12,13 37:5 37:5 47:23 56:18 61:4,4 83:10 89:18 91:15 waiting 96:1 walk 61:16 want 7:15 9:9 13:6 13:12,18 14:19	
			U	
		ultimately 96:13 unbeknownst		

83:17				
we'll 5:4 43:21				
83:22,23 98:3				
we're 12:11 17:11				
24:16 44:5,14				
61:18,20 84:1				
97:19 98:7				
we've 55:2 77:20				
wife 52:5 97:21				
willing 11:8 25:12				
96:4				
wire 2:15 12:7				
18:15 56:12 79:5				
79:10				
wires 18:6,7				
withdraw 93:23				
withheld 67:14				
withholding 67:16				
witness 6:5,11 9:6				
19:5,15 20:20				
32:2 34:11,13				
38:6 39:20 43:9				
45:2,5,8,10,13,16				
50:16 60:21 62:5				
72:2 78:4 98:12				
word 74:21,22 79:2				
84:8				
words 33:10 66:18				
76:11 78:23 93:13				
work 13:12 21:12				
21:17 27:22 63:3				
97:20,22				
worked 60:19				
workers 17:4,14				
working 77:15				
world 8:8				
worried 97:5				
worry 87:12				
wouldn't 47:10,10				
82:22				
write 22:8 60:11				
writing 77:9				
written 57:2				
wrong 61:13 62:2				
97:7				
wrote 47:19 58:9				
W-2's 28:5				
	X	\$205,438 46:5	48:6 66:23 67:4	19:17 25:19,20,23
	X 2:1 65:13	\$250 10:10	97:17	32:23 44:6 80:3
		\$3 9:13 84:18	12,500 22:4	2007 19:19,22,23
	Y	\$3,000 50:6	12-month 21:10	20:3 46:9 52:3
	Yeah 31:19	\$30,000 34:6 43:20	59:23	2008 20:3,13 73:19
	year 6:10 10:8 15:6	\$300,000 31:4	13 3:10 30:11 38:16	2009 20:7,13 27:16
	19:8,21 20:12,17	60:16 68:8,14	38:16,18,23 39:7	33:6 73:23 74:1
	32:12 37:11 39:13	69:5,11,13 81:4,6	39:10,20 40:2,19	87:13 89:3
	49:23 57:17 59:7	\$359,000 36:6	40:21 41:4,8	2010 1:14
	59:7 66:19 67:10	\$4 59:22 60:2,7,9	48:10 49:4	204 4:4
	67:18 88:1,13	79:21 80:1,10,13	13,000 22:4	21 2:16
	89:11 90:17	84:19	14 3:11 30:11 42:2	24 2:17,18
	years 9:19 13:1,7	\$4,000 8:12,13 28:4	43:1 51:4 59:10	240 36:3
	15:5 27:8 47:12	\$50,000 60:17 81:6	67:10	25 32:23 50:5
	49:19 50:5 59:4	\$500 8:9,13 21:8,11	15 3:13 52:1,3	25,000 86:18
	66:20 73:16 97:17	\$60,000 52:16	95:10,13	250,000 32:4
	yellow 90:4 91:1	\$70,000 52:21	150,000 68:9 69:6	256 41:12
	yesterday 23:21		16 3:14 54:22 55:2	256,000 41:13
	Yup 83:22	0	17 2:13 3:15 71:12	26 2:20 3:6 30:18
		03063 4:5	18 2:14,15 3:16	30:21 34:23 37:20
	Z	03104 4:11	72:18	38:10,15,17 40:15
	zero 48:19	03220 5:9	18th 44:6	41:9,10 44:2,4,6
		05 78:12	1850 4:10	48:8
	\$	06 32:20 33:5	19 1:14 3:17,20	27 3:4
	\$1,000 10:12 27:12	07 45:6,9,10,12	78:6	271,000 20:16
	\$10 72:12 79:18	08 45:7	1961 6:11	28 5:8
	80:2,14 82:11,12	09-14902-JMD 1:6	1987 9:2	287,322.91 42:20
	\$10,000 9:18 10:7		1995 10:13	29 3:5
	\$100 22:16 25:3	1		291 29:7
	\$100,000 67:9 79:4	1 2:13 14:1 17:15	2	
	79:6,9 81:2	17:16	2 2:14 9:13 17:23	3
	\$12,000 22:4	1-18 3:20	18:1	3 2:15 18:19,20
	\$125 48:17	1:20 1:14	2:00 79:5,5	3,000 23:8
	\$14,000 67:10,13	10 3:6,7 12:17	20 12:16,17 82:3,8	3:35 98:19
	\$147 49:20 50:5	30:18 31:9,14	92:6	30 59:4
	\$150,000 60:17	34:23 44:15,16,17	20,348,000 56:2	30,000 33:13 43:21
	68:9 69:13	48:9 59:9 85:2,4	200,000 22:17 32:3	300 29:21
	\$2 84:18	88:20 95:10,12	34:20	300,000 65:12 81:9
	\$2,758 48:17	10,000 95:6	2000 10:13	83:2,2
	\$20 56:20 57:1,9,12	10/17/2012 99:22	2003 9:14 13:20	309,000 20:16
	59:19,21 60:4,5,6	100 14:11 68:10	2004 9:14 13:20	31 3:6
	70:8,11,21 82:19	69:13 81:3 96:17	23:16	31,000 41:11 43:4
	92:3	96:17,18	2005 13:17,23 14:2	31,322.91 41:13
	\$20,000 79:8,10	100,000 22:20	25:18,18 26:19	32 3:7
	\$20,348,000 89:1	68:12 95:6,7	27:16 46:12 48:23	320,000 42:17
	\$200,000 30:5	11 3:7 32:7	77:6 88:14	325 42:19
	35:19	12 3:8 21:11 48:1,3	2006 19:6,6,11,12	340 35:21

345,000 34:20	6,000 49:11			
347,000 29:6	60 52:21			
348 31:21	60s 5:18			
348,000 31:20	60,000 95:6			
350 36:12	603-625-1254 4:11			
353 31:20	603-886-7266 4:5			
353,000 31:19	65 50:1			
355 45:22				
355,500 45:21	<hr/> 7 <hr/>			
357,000 36:1	72:19 3:5 26:15			
359,000 36:4	28:15 29:4,5,8,13			
37,000 20:16	32:10 33:16 34:12			
380,000 30:9	34:13 35:6,8,13			
390 45:23	39:9 40:18 42:3			
395,000 45:19	43:2 48:8			
	70,000 52:21			
<hr/> 4 <hr/>	72 3:16			
4 2:16 20:22 21:1	78 3:18			
80:4 82:2				
4,000 22:19 23:6	<hr/> 8 <hr/>			
28:6	8 3:4 27:14			
40 22:16	8,000 22:20 49:12			
41,552.04 46:1	80s 7:1,13			
45 4:14 99:19				
475,000 8:8	<hr/> 9 <hr/>			
48 3:9	9 3:5 29:11 32:16			
49 3:10	35:12			
	9th 93:1			
<hr/> 5 <hr/>	9,000 49:12			
5 2:17 24:8 45:12	90s 10:18,18			
46:9 89:3 92:14	95 10:19			
92:15	96 10:19			
5th 45:10				
5,000 23:8				
5-98 2:7				
50 35:21 68:9 96:16				
50,000 68:12 81:5				
83:6				
51 3:12				
52 3:14				
54 3:15				
547 1:13 4:4				
56,000 41:11				
<hr/> 6 <hr/>				
6 2:18 24:18 30:17				
42:3				



**DISCRETIONARY LINE OF CREDIT AGREEMENT
AND
PROMISSORY NOTE**

\$10,000,000

Date: 6/1/08

FOR VALUE RECEIVED, Scott D. Farah, with an address of [REDACTED], Meredith, New Hampshire 03253 (the "Borrower"), promises to pay to the order of CL and M, inc. of P.O. Box 7603, Gilford, New Hampshire 03247 (the "Lender"), the amount of money advanced by Lender to Borrower hereunder up to the maximum principal sum of TEN MILLION DOLLARS (\$10,000,000), together with interest thereupon at the fixed rate of TEN PERCENT (10 %) per annum, payable as follows:

1. Borrower shall pay interest to the lender or assigns (if loan funds source is third party loan to lender, i.e., bank loan) on the outstanding principal at the rate of Ten percent (10 %) per annum on the outstanding principal balance at least annually by December 31 of each year.

2. Borrower shall make principal payments ON DEMAND.

3. The full amount of principal and accrued interest, together with any late charges, costs, charges, attorney's fees and expenses, shall be due on DEMAND (the "Maturity Date"), TIME BEING OF THE ESSENCE.

NOTWITHSTANDING THE FOREGOING, ALL AMOUNTS OF PRINCIPAL, INTEREST, LATE CHARGES, COSTS, CHARGES, ATTORNEY'S FEES AND EXPENSES SHALL BE DUE AND PAYABLE ON DEMAND OF THE HOLDER OF THIS NOTE.

Borrower and Lender agree that the principal sum shown above is the maximum amount of principal that can be borrowed under this note. The principal amount may be advanced to Borrower by Lender in multiple advances up to the maximum principal sum more than one time. *All advances shall be memorialized by a Note or Notes in Series of the Borrower.*

Lender may make advances to Borrower from time to time until the Maturity Date. Lender may in his/her sole and unfettered discretion refuse to make an advance loan to Borrower under this Line of Credit Agreement at any time.

Advance payments of principal or interest may be made at any time without premium or penalty to the lender or assigns (if loan funds source is a third party loan to lender, i.e., bank loan).

This note is secured by all of Scott Farah's assets, including his interest in any corporations and/or the business life insurance proceeds, including life insurance (to be assigned to CL&M) payable to Jeff Long, VP, or other officer, to settle business debts of Financial Resources and other business activities of Scott Farah), inventory, receivables, tools, and equipment. etc.

All payments shall be made in lawful money of the United States of America.

No delay or omission on the part of the Lender or holder hereof in exercising any right hereunder against the Borrower shall operate as a waiver of such right or of any other right under this note. A waiver on any one occasion against the Borrower shall not be construed as a bar to or a waiver of such right and/or remedy on any future occasion.

The acceptance by the Lender or holder hereof of any payment after any default hereunder shall not operate to extend the time of payment of any amount then remaining unpaid hereunder or constitute a waiver of any rights of the payee or holder hereof under this note.

The Borrower agrees to pay on demand the reasonable fees of an attorney and all costs of collection in the event this note, while in default for any reason, is placed in the hands of an attorney for collection, whether or not foreclosure, setoff, or any other action was then, or is thereafter, instituted, at the discretion of the holder hereof. This right to costs and attorney's fees shall be reciprocal to the extent required by RSA Chapter 361-C.

This note constitutes a New Hampshire contract to be governed by the Laws of the State of New Hampshire. The undersigned hereby waives presentment for payment, demand and protest, notice of demand, protest, dishonor and of non-payment of this note; the liability of the Borrower hereunder shall remain unimpaired notwithstanding (1) any extension of the time of payment or other indulgence granted by the holder hereof, whether the same is granted to the Borrower or any guarantor or endorser of this note, or (2) the release of all or any part of the security of this note or the liability of any party who may be obligated hereon, either now or hereafter.

All notices to be given hereunder shall be given to the parties at the above addresses unless one party notifies the other of a change of address by certified mail, return receipt requested.

In the event any payment is not made when due, this note shall be considered to be in default, there expressly being NO GRACE PERIOD. Breach of any terms, conditions, or covenants contained in the Loan agreement and Security Instrument of even date which secure this note shall constitute a default of this note and give the Lender or holder hereof all rights and remedies created hereby, there expressly being NO GRACE PERIOD.

In the event any payment due hereunder is not paid within ten (10) days of the date it is due, the Lender may assess a late charge equal to FIVE PERCENT (5%) of the overdue payment amount, which late charge Borrower agrees to pay.

IN WITNESS WHEREOF, the Lender and Borrower has caused this Line of Credit Agreement to be executed on the day and year first above written.

BORROWER: Scott D. Farah



Borrower: Scott D. Farah

LENDER: CL and M, Inc.



Authorized: Donald E. Dodge president

NOTE IN SERIES

FOR VALUE RECEIVED, Scott D. Farah, of [REDACTED], Meredith, New Hampshire 03253, herein referred to as Maker or Borrower, promises to pay to the order of CL and M, Inc. of P.O. Box 7603, Gilford, New Hampshire 03247, herein referred to as Payee or Lender, on demand, the sum of \$20,348,321.43 Dollars (\$ _____), *TOTAL TO DATE* with interest thereon at the rate of ___ % payable no less than annually. Any interest balance due at the end of each calendar year shall compound at an additional 1% interest (annual rate) until the date paid.

TWENTY TWO
1. **Series of Notes.** This note is one of a series of notes, all of like tenor, except as to amount, issued and to be issued by Maker, amounting in the aggregate to not more than the principal sum of ~~TEN~~ MILLION DOLLARS (\$~~10,000,000~~), as authorized by the Discretionary Line of Credit Agreement and Promissory Note dated June 1, 2005. Said principal and interest are to be paid on demand, however, no later than 120 months commencing from the date of each credit distribution and/or note in series date, whichever is earlier.

2. **Prepayment.** Maker reserves the right at any time to prepay, in whole or in part, the principal or interest owing on any or all of the issued and outstanding notes of this series.

3. **Record of Payments.** Receipt of all payments on account, of principal and interest of this note, made by Maker prior to maturity may be documented by endorsement on the reverse side of this note.

Dated: 11, 5, 2009

[REDACTED]
Maker / Borrower: Scott D. Farah

PROMISSORY NOTES IN SERIES - Scott Farah to CL,Inc - 6/1/05

DATE	AMOUNT	DATE	AMOUNT	PD BACK
11/02/09	\$ 25,000.00			
10/29/09	\$ 40,000.00			
10/29/09	\$ 25,000.00			
10/26/09	\$ 20,000.00			
10/23/09	\$ 50,000.00			
10/19/09	\$ 20,000.00			
10/16/09	\$ 60,000.00			
10/02/09	\$ 10,000.00			
10/02/09	\$ 25,000.00			
10/01/09	\$ 60,000.00			
09/28/09	\$ 45,000.00			
09/24/09	\$ 25,000.00			
09/22/09	\$ 50,000.00			
09/18/09	\$ 25,000.00			
09/16/09	\$ 25,000.00			
09/09/09	\$ 52,800.00			
09/10/09	\$ 15,000.00			
09/10/09	\$ 20,000.00			
?	\$ 30,000.00			
09/02/09	\$ 63,000.00			
08/31/09	\$ 35,000.00			
08/27/09	\$ 20,000.00			
08/25/09	\$ 70,000.00			
08/21/09	\$ 20,000.00			
08/19/09	\$ 30,000.00			
08/14/09	\$ 50,000.00			
08/12/09	\$ 25,000.00			
08/10/09	\$ 25,000.00			
08/05/09	\$ 30,000.00			
07/31/09	\$ 25,000.00			
?	\$ 45,000.00			
07/27/09	\$ 20,215.00			
07/24/09	\$ 30,000.00			
07/23/09	\$ 55,000.00			
07/17/09	\$ 70,000.00			
07/15/09	\$ 50,000.00			
07/10/09	\$ 30,000.00			
07/09/09	\$ 20,000.00			
07/07/09	\$ 35,000.00			
07/02/09	\$ 40,000.00			
06/26/09	\$ 40,000.00			
06/23/09	\$ 110,657.43			
06/22/09	\$ 145,000.00			
06/19/09	\$ 95,000.00			
06/17/09	\$ 40,000.00			
06/15/09	\$ 30,000.00			
06/05/09	\$ 65,000.00			
05/27/09	\$ 70,000.00			
05/21/09	\$ 50,000.00			
05/19/09	\$ 20,000.00			
05/11/09	\$ 25,000.00			
05/04/09	\$ 68,500.00			
04/27/09	\$ 60,000.00			
04/24/09	\$ 81,200.00			
04/24/09	\$ 59,000.00			
04/23/09	\$ 60,000.00			
04/21/09	\$ 30,000.00			

PROMISSORY NOTES IN SERIES - Scott Farah to CL, Inc - 6/1/05

04/20/09	\$	40,000.00
04/15/09	\$	25,000.00
04/10/09	\$	40,000.00
04/06/09	\$	40,000.00
02/06/09	\$	25,000.00
02/03/09	\$	62,000.00
01/20/09	\$	30,000.00
01/16/09	\$	20,000.00
01/13/09	\$	45,000.00
01/07/09	\$	50,000.00
?	\$	72,000.00
12/19/08	\$	20,000.00
?	\$	75,000.00
?	\$	40,000.00
12/15/08	\$	60,000.00
12/05/08	\$	50,000.00
11/19/08	\$	95,000.00
11/18/08	\$	45,000.00
?	\$	100,000.00
10/27/08	\$	30,000.00
09/29/08	\$	30,000.00
09/24/08	\$	50,000.00
09/24/08	\$	50,000.00
09/15/08	\$	30,000.00
09/12/08	\$	35,000.00
09/12/08	\$	30,000.00
09/11/08	\$	50,000.00
08/27/08	\$	70,000.00
08/22/08	\$	30,000.00
08/20/08	\$	60,000.00
08/13/08	\$	25,000.00
08/12/08	\$	15,000.00
08/08/08	\$	60,000.00
08/01/08	\$	30,000.00
07/31/08	\$	51,000.00
07/29/08	\$	48,000.00
07/25/08	\$	40,000.00
07/22/08	\$	50,000.00
07/17/08	\$	50,000.00
07/08/08	\$	50,000.00
07/01/08	\$	50,000.00
06/12/08	\$	120,000.00
06/13/08	\$	29,000.00
06/13/08	\$	90,000.00
06/04/08	\$	180,000.00
05/20/08	\$	129,400.00
05/20/08	\$	25,000.00
05/13/08	\$	20,000.00
05/09/08	\$	30,000.00
05/06/08	\$	45,000.00
04/29/08	\$	55,000.00
04/24/08	\$	60,000.00
04/09/08	\$	50,000.00
03/28/08	\$	100,000.00
03/24/08	\$	50,000.00
03/20/08	\$	8,000.00

PROMISSORY NOTES IN SERIES - Scott Farah to CL,Inc - 6/1/05

03/20/08	\$	20,000.00
03/06/08	\$	80,000.00
03/03/08	\$	75,000.00
02/01/08	\$	42,500.00
02/15/08	\$	50,000.00
02/06/08	\$	125,000.00
01/31/08	\$	75,000.00
01/25/08	\$	40,000.00
12/31/07	\$	240,000.00
12/27/07	\$	50,000.00
12/21/07	\$	25,000.00
12/05/07	\$	150,000.00
12/04/07	\$	175,250.00
11/30/07	\$	20,000.00
11/16/07	\$	25,000.00
11/12/07	\$	16,000.00
11/12/07	\$	30,000.00
11/09/07	\$	100,000.00
11/01/07	\$	61,500.00
10/30/07	\$	60,000.00
10/25/07	\$	20,000.00
10/19/07	\$	100,000.00
10/11/07	\$	30,000.00
10/02/07	\$	50,000.00
10/01/07	\$	25,000.00
09/27/07	\$	25,000.00
09/19/09	\$	25,000.00
08/31/07	\$	100,000.00
08/23/07	\$	50,000.00
08/23/07	\$	25,000.00
08/20/07	\$	20,000.00
08/07/07	\$	40,000.00
08/03/07	\$	1,000,000.00
08/03/07	\$	82,000.00
07/30/07	\$	50,000.00
07/25/07	\$	45,000.00
07/19/07	\$	23,086.00
07/17/07	\$	22,000.00
07/17/07	\$	50,185.00
07/14/07	\$	50,000.00
07/06/07	\$	45,000.00
07/06/07	\$	300,000.00
06/27/07	\$	50,000.00
05/25/07	\$	25,000.00
05/23/07	\$	45,000.00
04/26/07	\$	75,000.00
03/21/07	\$	400,000.00
03/20/07	\$	50,000.00
03/16/07	\$	109,000.00
?	\$	56,000.00
?	\$	125,000.00
?	\$	155,000.00
?	\$	20,000.00
?	\$	105,000.00
?	\$	35,000.00
02/28/07	\$	70,000.00
?	\$	270,000.00
01/07/07	\$	50,000.00

PROMISSORY NOTES IN SERIES - Scott Farah to CL, Inc - 6/1/05

?	\$	55,000.00
01/07/07	\$	83,000.00
01/07/07	\$	50,000.00
12/22/06	\$	106,000.00
?	\$	10,000.00
?	\$	35,000.00
11/21/06	\$	75,000.00
10/11/06	\$	100,000.00
08/23/06	\$	47,000.00
08/22/06	\$	27,000.00
08/17/06	\$	24,000.00
08/17/06	\$	50,000.00
08/16/06	\$	15,000.00
08/15/06	\$	3,000.00
08/14/06	\$	23,000.00
08/14/06	\$	20,000.00
08/09/06	\$	50,000.00
08/02/07	\$	17,000.00
07/31/06	\$	36,866.00
07/17/06	\$	47,000.00
?	\$	40,000.00
06/28/06	\$	250,000.00
06/16/06	\$	100,000.00
06/09/06	\$	100,000.00
06/01/06	\$	200,000.00
05/22/06	\$	150,000.00
05/11/06	\$	300,000.00
05/11/06	\$	47,812.00
05/10/06	\$	100,000.00
05/09/06	\$	68,200.00
05/09/06	\$	36,650.00
05/09/06	\$	200,000.00
05/09/06	\$	180,000.00
05/09/06	\$	29,000.00
05/05/06	\$	250,000.00
05/03/06	\$	100,000.00
04/28/06	\$	50,000.00
04/25/06	\$	10,000.00
04/25/06	\$	155,000.00
04/18/06	\$	100,000.00
04/13/06	\$	50,000.00
04/07/06	\$	100,000.00
03/28/06	\$	27,000.00
03/28/06	\$	23,000.00
03/28/06	\$	93,000.00
03/21/06	\$	350,000.00
03/21/06	\$	225,000.00
03/17/06	\$	25,000.00
03/01/06	\$	4,500.00
01/13/06	\$	175,000.00
01/13/06	\$	290,000.00
01/13/06	\$	145,000.00
01/12/06	\$	430,000.00
01/12/06	\$	317,000.00
12/22/05	\$	50,000.00
12/14/05	\$	100,000.00
12/03/05	\$	100,000.00
11/29/05	\$	30,000.00
11/27/05	\$	40,000.00

PROMISSORY NOTES IN SERIES - Scott Farah to CL, Inc - 6/1/05

11/14/05	\$	40,000.00
11/04/05	\$	125,000.00
11/02/05	\$	100,000.00
10/25/05	\$	60,000.00
10/17/05	\$	125,000.00
10/12/05	\$	100,000.00
10/11/05	\$	50,000.00
10/06/05	\$	100,000.00
10/05/05	\$	70,000.00
10/03/05	\$	200,000.00
10/03/05	\$	816,000.00
09/30/05	\$	100,000.00
09/28/05	\$	100,000.00
09/22/05	\$	50,000.00
09/16/05	\$	50,000.00
09/13/05	\$	150,000.00
09/06/05	\$	160,000.00
09/01/05	\$	140,000.00
08/25/05	\$	100,000.00
08/25/05	\$	50,000.00
08/15/05	\$	50,000.00
08/04/05	\$	50,000.00
07/22/05	\$	150,000.00
07/15/05	\$	100,000.00
07/08/05	\$	330,000.00
07/05/05	\$	200,000.00
06/30/05	\$	200,000.00
06/27/05	\$	70,000.00

\$ 20,348,321.43

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In Re:

*

Chapter 7

*

**Financial Resources Mortgage,
Inc. , C L and M, Inc., and Other
Jointly Administered Cases**

*

**Case Nos. 09-14565-JMD and
09-14566-JMD
(Jointly Administered)**

*

*

*

Debtor(s)

*

**Steven M. Notinger, Chapter 7 Trustee
for Financial Resources Mortgage, Inc. ,
C L and M, Inc.**

*

*

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*

*

(Plaintiff)

*

*

v.

*

Adv. Pro. No. _____

*

Center Harbor Christian Church

*

*

*

(Defendant)

*

*

COMPLAINT

Steven M. Notinger, Chapter 7 Trustee (“the Trustee”) for the bankruptcy estates of Financial Resources Mortgage, Inc. and of C L and M, Inc. (collectively “the Debtors”), brings this Complaint to recover property of the Debtors and to recover for the benefit of the Debtors fraudulent transfers and preference payments. The Trustee states the following in support of this Complaint:

PARTIES

1. Steven M. Notinger is the Chapter 7 Trustee for the bankruptcy estates of Financial Resources Mortgage, Inc. (“FRM”) and C L and M, Inc. (“CLM”). Involuntary petitions in bankruptcy were filed against the FRM and CLM on November 23, 2009 (the “Petition Date”). Trustee Notinger was appointed Trustee by the U.S. Bankruptcy Trustee on November 26, 2009. This Court entered an Order of Relief on December 3, 2009. The Trustee was also appointed Trustee for FRM and CLM by the U.S. Trustee on December 3, 2009 and this Court confirmed Trustee Notinger’s appointment as Trustee for both FRM and CLM.

2. The Center Harbor Christian Church (“CHCC”) is a New Hampshire nonprofit corporation with an address at 80 Bean Road, Center Harbor, New Hampshire 03226. At all times relevant to this Complaint, Scott Farah was registered with the New Hampshire Secretary of State as the secretary treasurer of CHCC. Scott Farah’s father, Robert Farah, was registered with the New Hampshire Secretary of State as the president of CHCC. Both Scott Farah and Robert Farah were registered with the New Hampshire Secretary of State’s Office as directors of CHCC. Robert Farah was pastor of CHCC.

JURISDICTIONAL STATEMENT

3. Jurisdiction of this Court is premised upon 28 U.S.C. §1334(b) and 28 U.S.C. §157(b)(2)(O).

4. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (E), (F), (H), and (O).

FACTS

5. The Office of the Attorney General of the State of New Hampshire was one of the petitioners which put FRM and CLM into involuntary bankruptcy. The Office of the Attorney

General took these actions with the purpose of seeing that all investors in FRM/CLM and/or in the mortgages they created would be treated on a pro rata basis and that no one investor would receive the benefit of any mortgage to the exclusion of other investors. The filing was a reaction to a myriad of lawsuits, attachments and trustee removal actions filed against FRM, CLM and related parties.

FRM and CLM Began Running a Fraudulent Scheme No Later than June, 2005

6. Until November, 2009, CLM and FRM were in the business of raising funds and organizing and funding purported real estate transactions. The ultimate purpose of their operations was, however, a fraudulent scheme organized to defraud investors and the public. Scott Farah was the principal of FRM and controlled CLM.

7. During the course the operations of CLM and FRM, Scott Farah through both FRM and CLM, raised at least \$82 million from investors based upon false representations that invested funds would be invested in real estate loans that were identified by CLM and FRM.

8. Over the period of 2005 through 2009, Scott Farah improperly took and/or wasted funds of CLM and/or FRM. Attached as Exhibit A is a promissory note showing a debt in the amount of \$20,348,321.43 from Scott Farah to CLM (the "Stolen Funds Promissory Note") The original Stolen Funds Promissory Note was for the principal amount of \$10,000,000 and was dated June 1, 2005. Farah revised this Stolen Funds Promissory Note on November 5, 2009 to increase the amount due from \$10,000,000 to \$20,348,321.43. Attached to the Stolen Funds Promissory Note is a schedule showing the CLM funds Farah improperly took or transferred from CLM. The schedule shows that Farah improperly transferred \$20,348,321.43 from CLM between June, 2005 and the Petition Date. See Exhibit A.

9. The Trustee has engaged Verdolino and Lowey, P.C. and Craig Jalbert as forensic accountants in this case. According to the investigations of Mr. Jalbert, FRM and CLM's fraudulent scheme to defraud investors and the public began no later than June, 2005 – it was in June, 2005 that the Stolen Funds Promissory Note indicated that Farah began stealing money from the FRM and/or CLM. According to Mr. Jalbert, further investigation may reveal that the fraud run by FRM and CLM, and Farah's thefts, began earlier than June, 2005.

10. After June, 2005, CLM and FRM did not have sufficient funds to cover the obligations each was incurring or to return the funds collected from the in CLM and FRM. After June, 2005, if not before, CLM and FRM were insolvent.

11. There were numerous investors in CLM and/or FRM who invested funds through CLM and FRM who received no real estate investment, mortgage or other purported asset of value as a result of their investments.

12. By November, 2009, Farah had stolen and/or diverted so much from CLM and/or FRM and had so many obligations to pay interest to investors that CLM and FRM had no funds to meet their obligations. CLM and FRM abandoned the offices they occupied at 15 Northview Drive, Meredith, New Hampshire. Three creditors, including the New Hampshire Office of the Attorney General put CLM and FRM into involuntary bankruptcy.

13. As part of the scheme to defraud investors and the public, CLM and FRM organized numerous loans either by setting up a trust or by setting up an individual investor as a lender (the "Fraudulent Loans"). CLM and FRM raised money from investors and then created loan documents purporting to give a trust or an investor a mortgage in property of a borrower. All of the Fraudulent Loans were funded with commingled funds and/or the funds of later

investors. Some of the Fraudulent Loans were not funded at all or were not fully funded. FRM and CLM sold interests in the Fraudulent Loans to investors

14. CLM and FRM comingled all investor funds at all times. CLM and/or FRM funded each Fraudulent Loan out of commingled funds collected from investors.

15. At the time of all Fraudulent Loans set-up after June, 2005, CLM and FRM did not have sufficient money to fund their obligations. CLM and FRM used funds collected from later investors to fund the Fraudulent Loans.

16. In the majority of the Fraudulent Loans which CLM and/or FRM actually funded, CLM and/or FRM claimed to be reserving one to two years of “prepaid interest” out of the loan proceeds (“False Prepaid Interest”). CLM/FRM paid this False Interest out of the commingled funds of other investors.

17. Despite what the loan documentation said, CLM and/or FRM did not actually retain the False Prepaid Interest. Until November, 2009 CLM and/or FRM made payments of False Prepaid Interest to investors in CLM and/or FRM. However the funds necessary for such False Prepaid Interest payments came from the funds provided by later investors. The Trustee has discovered in the offices of FRM/CLM \$689,000 of checks designed to pay False Prepaid Interest for the month of November, 2009. However, CLM and/or FRM did not issue the checks of False Prepaid Interest for November, 2009. CLM and/or FRM did not issue the checks of False Prepaid Interest for November, 2009, because there were no funds in the bank accounts to cover such payments and insufficient funds from new investors to cover the November, 2009 payments of False Prepaid Interest. Prior to November, 2009, interest payments were made from whatever source Debtors could get money – these sources included double and triple selling loans, soliciting new investors and begging existing investors for more money.

18. As a result of CLM's commingling of funds of investors, CLM became a bank, not a mortgage servicer. The parties who sent funds to CLM, or whose funds were ultimately deposited into CLM, were investors in CLM, not mortgage holders.

FRM and CLM Make Transfers to CHCC

19. From October, 2005 through October, 2009 Scott Farah caused CLM and FRM to transfer to CHCC at least \$382,150.00 in funds. Attached as Exhibit B is a list of the transfers that FRM and CLM made to CHCC from Citizens Bank accounts and one \$10,000 from a Lowell Co-Operative Bank account. Upon information and belief, there may be other transfers which the Trustee has not yet located.

20. From June, 2005, CLM and FRM did not have sufficient funds to cover their obligations, and CLM and FRM were insolvent.

21. FRM and CLM used the commingled funds of investors to fund the transfers to CHCC.

22. FRM transferred approximately \$20,000 to CHCC within the 90 days before the Petition Date. FRM and CLM transferred approximately \$96,000 to CHCC in the year before the Petition Date.

23. Scott Farah, Robert Farah and CHCC are "insiders" of the Debtors pursuant to the definition set forth in 11 U.S.C. §101(31).

CLAIMS

**COUNT I – CLAIM TO AVOID FRAUDULENT TRANSFERS PURSUANT TO
11 U.S.C. §548**

24. The allegations of Paragraphs 1 through 23 are incorporated by reference.

25. Pursuant to 11 U.S.C. §548(a)(1):

The trustee may avoid any transfer... of an interest of the debtor in property...that was made...within 2 years before the date of the filing of the petition... if the debtor... (A) made such transfer...with the actual intent to hinder, delay or defraud any entity to which the debtor was... indebted; or (B)received less than reasonably equivalent value in exchange for such transfer...; and (ii)(I) was insolvent on the date that such transfer was made... or became insolvent as a result of such transfer... was engaged in business or a transaction, or was about to engage in business or a transaction for which any property remaining with the debtor was an unreasonably small capital intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or made such a transaction for the benefit of an insider...

26. Between October, 2005 and October, 2009, CLM and FRM transferred to CHCC at least \$372,150. CLM and FRM made the transfers with the actual intent to hinder, delay or defraud creditors of CLM and/or FRM, and CLM and/or FRM received no consideration for such transfers. In addition, at the time FRM and CLM made such transfers CLM and FRM were insolvent, were engaged in a business for which FRM and CLM had unreasonably small capital, and/or CLM and FRM intended to incur and believed they would incur debts beyond their ability to pay as such debts matured.

27. FRM and CLM's transfers of funds to CHCC were fraudulent transfers pursuant to 11 U.S.C. §548(a)(1), and the transfers must be avoided pursuant to 11 U.S.C. §548(a)(1) and §550.

COUNT II- CLAIM TO AVOID FRAUDULENT TRANSFERS PURSUANT
TO 11 U.S.C. §544(b)

28. The allegations of Paragraphs 1 through 27 are incorporated by reference.

29. Pursuant to 11 U.S.C. §544(b) the Trustee may bring a fraudulent transfer action in the Bankruptcy Court under applicable state law.

30. Pursuant to New Hampshire RSA 545-A:4 I(a), the Trustee may avoid a transfer of property within 4 years of the Petition Date if the transfer was fraudulent as to any creditor of CLM, whether or not the debt was incurred before or after the transfer, if CLM made the transfer “[w]ith the actual intent to hinder, delay or defraud any creditor of the debtor...”

31. Between October 2005, and October, 2008 FRM and CLM transferred at least \$372,150 to CHCC. FRM and CLM made the transfers with the actual intent to hinder, delay or defraud creditors of CLM and/or FRM, and CLM and/or FRM received no consideration for such transfers. Such transfers were fraudulent and avoidable transfers pursuant to 11 U.S.C §544(b) and New Hampshire RSA 545-A:4 I(a).

COUNT III- CLAIM TO AVOID PREFERENCE PAYMENTS
UNDER 11 U.S.C. §547(b)

32. The allegations of Paragraphs 1 through 31 are incorporated by reference.

33. Pursuant to 11 U.S.C. §547(b):

[T]he trustee may avoid any transfer of an interest of the debtor in property (1) to or for the benefit of a creditor;(2) for or on account of an antecedent debt owed by the debtor before the transfer was made;(3) made while the debtor was insolvent;(4) made (A) on or within 90 days before the date of the filing of the petition; or(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time was an insider; and (5) that enables such creditor to receive more than such creditor would receive if (A) the case were a case under chapter 7 of this title; (B) the transfer had not been made; and(C) such creditor received payment of such debt to the extent provided by the provisions of this title.

34. CLM and/or FRM transferred to CHCC approximately \$20,000 within 90 days before the Petition Date. The payments were made while the Debtors were insolvent. The payments enabled CHCC to receive more than it would have received if the Debtors were in chapter 7 and the transfers had not been made.

35. CLM and/or FRM transferred to CHCC approximately \$96,000 within 1 year before the Petition Date. The payments were made while the Debtors were insolvent. The payments enabled CHCC to receive more than it would have received if the Debtors were in chapter 7 and the transfers had not been made. CHCC was an insider, as defined in 11 U.S.C. §101(31), of FRM and CLM in that Scott Farah, the secretary treasurer of CHCC, was the sole owner of FRM and controlled CLM. In addition, Scott Farah was the secretary treasurer of CHCC and Robert Farah, Scott Farah's father, was the president of CHCC.

36. The transfers FRM and CLM made to CHCC within 1 year before the Petition Date or alternatively within 90 days before the Petition Date are avoidable preferences pursuant to 11 U.S.C. §547(b).

TURNOVER OF ESTATE PROPERTY PURSUANT TO 11 U.S.C. §542

37. The allegations of Paragraphs 1 through 36 are incorporated by reference.

38. To the extent that CHCC is in possession of any property of the Debtors which has or has not been discovered have not been discovered by the Trustee, the Trustee requests that the Court, pursuant of 11 U.S.C §542, impose a constructive trust on said property in favor the estates of the Debtors.

RELIEF REQUESTED

The Trustee requests that the Court order the following relief:

COUNT I

A. Declare that the transfer of funds and/or assets by CLM and/or FRM to CHCC in an amount of at least \$382,150.00 were fraudulent transfers pursuant to 11 U.S.C. §548 and that those transfers can be avoided by the Trustee.

B. Order that CHCC return to the estates of CLM and/or FRM all assets and/or funds transferred by CLM and/or FRM to them directly or indirectly.

C. Order such other and further relief as may be just.

COUNT II

A. Declare that the transfer of funds and/or assets by CLM and/or FRM to CHCC in an amount of at least \$382,150.00 were fraudulent transfers pursuant to New Hampshire RSA 545-A: 4I(a) and 11 U.S.C. §544(b) and that those transfers can be avoided by the Trustee.

B. Order that CHCC return to the estates of CLM and/or FRM all assets and/or funds transferred by CLM and/or FRM to CHCC, directly or indirectly.

C. Order such other and further relief as may be just.

COUNT III

A. Declare that all transfers of funds by FRM and CLM to CHCC made within 1 year before the Petition Date were preference payments avoidable by the Trustee pursuant to 11 U.S.C. §547(b) and §550.

B. Alternatively, declare that all transfers of funds by FRM and CLM to CHCC made within 90 days before the Petition Date were preference payments avoidable by the Trustee pursuant to 11 U.S.C. §547(b) and §550.

C. Order that CHCC return to the estates to CLM and/or FRM all such preference payments.

D. Order such other and further relief as may be just.

COUNT V

A. Order, pursuant to 11 U.S.C. §542, that CHCC return all property of CLM and/or FRM, discovered and undiscovered, to the estates of CLM and/or FRM.

B. Order such other and further relief as may be just.

Steven M. Notinger, Chapter 7 Trustee

For Financial Resources Mortgage Inc.
And C L and M, Inc.

By Their Attorneys

Donchess & Notinger, PC

Dated: 04/01/10

By: /s/ James W. Donchess
James W. Donchess
547 Amherst Street
Nashua, NH 03063
(603) 886-7266
trustee@dntpc.com

ORIGINAL

THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

* * * * *

IN THE MATTER OF:

SCOTT D. FARAH and
FINANCIAL RESOURCES
MORTGAGE, INC.

* * * * *

No: 09-14902-JMD

INTERVIEW OF SCOTT D. FARAH

Interview held at the law offices of Orr & Reno,
P.A., One Eagle Square, Concord, New Hampshire,
on Thursday, February 18, 2010, commencing at
10:00 a.m.

1087 Elm Street
P.O. Box 1387
Manchester, NH
03105-1387



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I N D E X

WITNESS: Scott D. Farah

EXAMINATION: Page
By Mr. Donchess 4

EXHIBITS FOR IDENTIFICATION:

<u>Farah</u>	<u>Description</u>	<u>Page</u>
1	Document Production in Response to Subpoena	11
2	Guaranty with Attachments	12

(Exhibits appended to original transcript.)

1 APPEARANCES:

2
3 For Scott D. Farah: ORR & RENO, P.A.
4 By: Michael D. Ramsdell, Esquire
5 One Eagle Square
6 P.O. Box 3550
7 Concord, NH 03302-3550

8 For the Trustee in Bankruptcy:

9 DONCHESS & NOTINGER, P.C.
10 By: James W. Donchess, Esquire
11 547 Amherst Street - Suite 204
12 Nashua, NH 03063

13 Court Reporter: Laurie A. Gelinas, CSCR, RPR

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(**NOTE:** There were no stipulations as this was deemed
an interview.)

1 EXAMINATION

2 BY MR. DONCHESS:

3 Q. I would normally have you sworn in, but we're
4 not going to do that today, so why don't I just ask
5 you, could you identify yourself by name and address?

6 A. Sure. Scott David Farah. My mailing address
7 is [REDACTED], Meredith, New Hampshire 03253.

8 Q. What is your date of birth?

9 A. [REDACTED].

10 Q. Can you outline your educational background?

11 A. Yeah. I graduated from Oral Roberts
12 University in 1985 with a history degree and a
13 business minor. Post that, I've got a degree from
14 American College out of Bryn Mawr, Pennsylvania and I
15 am a chartered financial consultant and a CLU which is
16 a certified life underwriter.

17 Q. And who issued the chartered financial
18 consultant?

19 A. American College out of Bryn Mawr,
20 Pennsylvania.

21 Q. And the next thing you mentioned was
22 certified life...

23 A. Underwriter. It was issued by the same

1 college.

2 Q. And what does it mean to be a certified
3 financial...

4 A. A chartered financial consultant?

5 Q. Yeah.

6 A. It's a degree for financial planning. You
7 cover things like trusts and taxes and that sort of
8 stuff.

9 Q. And a certified life underwriter is what?

10 A. For life insurance purposes, like how life
11 insurance trusts work and all that sort of thing.

12 Q. After college, after 1985, could you
13 summarize your employment history?

14 A. Mm-hmm. I worked for a year out in Tulsa
15 after I went to college being a life insurance agent
16 and worked at Galen, Myers & Associates and after
17 that, I moved back to New Hampshire and went to work
18 for Donald Dodge in his company, D.E. Dodge &
19 Associates, as a financial planner and life insurance
20 agent. I worked for Don until 1989 when I started
21 Financial Resources.

22 Q. And what did you do for D.E. Dodge &
23 Associates?

1 A. Business and personal financial planning and
2 sold life insurance.

3 Q. And I take it that you grew up in the Lakes
4 Region?

5 A. I did. My dad is the pastor up here in
6 Center Harbor, so we've lived here since I was twelve.

7 Q. And you went to what high school?

8 A. Laconia Christian School.

9 Q. Now, you said in 1989 you started...

10 A. Financial Resources.

11 Q. Financial Resources, Inc.

12 A. It's a little complex. Originally the legal
13 name was Financial Resources and Assistance of the
14 Lakes Region, Incorporated. I used that for many
15 years and then when I started doing offices all around
16 I went to -- it's all in the same corporation. We
17 went to Financial Resources National. Again, we kept
18 the same corporation. Just the name changed. Then
19 when we went to get our FMA license, we found out we
20 could not use the name "national" in our name, so we
21 changed it to Financial Resources Mortgage.

22 Q. And when did you make that change?

23 A. Approximately two years ago.

1 Q. So these different entities that you have
2 named are all the same corporation?

3 A. They were always the same corporation. All
4 it was was changing the name to make it more
5 appropriate.

6 Q. When you say you went for your FMA license,
7 what do you mean?

8 A. Financial Resources, in order to do FHA
9 mortgages, you have to get approved. It's called a
10 Mini-Eagle. And you have to go through an approval
11 process in order to broker mortgages.

12 Q. I don't know that much about the mortgage
13 market, but when you say FMA mortgages, do you mean
14 mortgages that you resell to FHA?

15 A. Yes and no. There are two different levels.
16 There's Eagle and there's Mini-Eagle. With Eagle, you
17 use your own lines of credit and then you resell the
18 mortgages. With Mini-Eagle, you don't use any of your
19 own money. You're just purely a broker and bigger
20 players use their money. Like IndyMac Bank or Sun
21 Trust or whatever would use their money and fund the
22 loans and then they would sell them to the FHA. My
23 applications was for Mini-Eagle. We never used any

1 lines of credit.

2 Q. Now, there's another corporate entity, CL&M,
3 Inc.

4 A. Yes.

5 Q. When did you form that?

6 A. I did not form that.

7 Q. How did that get form?

8 A. Donald Dodge formed it as a servicing
9 company.

10 Q. When was that formed?

11 A. I'm not sure of the exact year. 2004, I
12 think. And I never had any ownership or any
13 involvement in that corporation.

14 Q. Who was the legal owner of Financial
15 Resources & Associates of the Lakes Region, Inc.
16 which then assumed other names as you went along?

17 A. At what point in time?

18 Q. At any point in time.

19 A. Okay. At the initial application, there were
20 four people. There was Don Dodge, there was my dad,
21 Robert Farah, myself and [REDACTED] [REDACTED] who is one of Don
22 Dodge's partners. All of my records are at the
23 office, so I don't have the exact dates, but

1 approximately fifteen years ago, I bought out Don
2 Dodge, [REDACTED] [REDACTED] and my dad and then have owned a
3 hundred percent of the stock since.

4 Q. And I think you suggested that CL&M has
5 always been owned by Donald Dodge?

6 A. That is my understanding, yes.

7 Q. Did you ever serve as an officer in that
8 company?

9 A. No.

10 Q. There's another company by the name of Great
11 Land Project Development, Inc.?

12 A. Yes, sir.

13 Q. Do you know how that corporation was formed?

14 A. Again, that's Don Dodge's corporation and I
15 had no legal ownership, no officer status, nothing.

16 Q. Now, you had office space at a location in
17 Meredith, correct?

18 A. Okay. The Meredith office space was -- yes,
19 there's an office there, 15 Northview Drive.

20 Q. Yes.

21 A. Right.

22 Q. And that's where Financial Resources Mortgage
23 was located?

1 A. Correct.

2 Q. Can I just refer to that as FRM?

3 A. Absolutely.

4 Q. Didn't Dodge also have office space there?

5 A. Yes.

6 Q. Now, I wanted to show you a set of documents
7 which I think you produced in response to either a
8 subpoena or you voluntarily produced these, I'm not
9 sure which, but I'll ask you eventually. Are those
10 documents that you produced?

11 A. Yes. Well, let me look through them all.
12 (Reviewing referenced documents.) No, I didn't
13 produce this one.

14 MR. RAMSDELL: Yes, you did. That's my cover
15 letter. These are documents that are in response to
16 the subpoena that was served with the deposition.

17 THE WITNESS: Sorry.

18 MR. RAMSDELL: I think the reason he was
19 confused, he didn't possess a copy of this. I got
20 this from a different source, but because I had it, I
21 produced it to you as well.

22 MR. DONCHESS: That's fine.

23 MR. RAMSDELL: And by the way, I came across

1 this morning again -- I received these as part of a
2 lawsuit somebody filed and I didn't or we didn't
3 produce them in response to your subpoena. They're
4 already a matter of public record, but those are
5 guarantees from the civil suit that was filed and they
6 included the guarantees as part of the claim. Again,
7 Scott didn't have copies of those, but I received them
8 from the attorney who filed the suit and so because I
9 have them, I'm giving them to you as part of his
10 production response to your subpoena as if he
11 possessed them.

12 MR. DONCHESS: Let's start with the first
13 package. Why don't we mark those as the first
14 exhibit.

15 (Farah Exhibit 1 marked for Identification.)

16 Q. So Exhibit 1 is a group of documents you
17 produced or your attorney produced in response to the
18 subpoena issued by the trustee?

19 A. Correct.

20 Q. And I think Mr. Ramsdell, your lawyer, has
21 suggested that you're also producing this other group
22 of documents which I'm showing you now.

23 A. (Reviewing referenced documents.) That's

1 correct.

2 MR. DONCHESS: Could we mark that as
3 Exhibit 2?

4 (Farah Exhibit 2 marked for Identification.)

5 Q. Now, going back to the corporations, FRM --
6 let me refer to FRM. How many bank accounts did FRM
7 have to the best of your knowledge?

8 A. We had three bank accounts at Citizen's. One
9 of them did everything. One of them -- 95 percent of
10 the business went through one of them. We had one
11 bank account in Massachusetts and there was \$5,000 in
12 there and we hadn't used that particular account in a
13 number of years.

14 Q. Do you know what bank that's in?

15 A. (Addressing Attorney Ramsdell.) Do you
16 remember?

17 I brought in a check way back in...

18 MR. RAMSDELL: I turned the checkbook over to
19 the United State's attorney's office. I may or may
20 not be able to tell you. If I have the name of that
21 bank, I'll give it to you, but I turned the actual
22 checkbook itself over to the U.S. attorney's office
23 and I'm not sure that I do have the name, but if I do,

1 I'll produce it for you later today or tomorrow.

2 Q. Any other bank accounts?

3 A. Well, let me finish with that one. There was
4 approximately \$5,000 in that account and I hadn't used
5 it in a number of years. The one other account that
6 we had was Spirit Bank in Tulsa, Oklahoma and there
7 was only a hundred dollars in that account. I needed
8 to have an account opened in order to do business in
9 Oklahoma and all of those records are in the office.

10 Q. When you say there was \$5,000 in the bank
11 account in Massachusetts, what time period are you
12 referring to?

13 A. I used the money up right at the very end.
14 You know, the end of October, beginning of November.
15 I used every nickel I had. Prior to that, I would say
16 approximately two years, maybe longer, there was no
17 activity in that account.

18 Q. And who had check writing authority on those
19 different accounts?

20 A. I had check writing authority on everything.
21 I don't think anybody else had it. On the Citizens
22 Bank accounts, [REDACTED], [REDACTED], [REDACTED], could sign the
23 checks, but she would only do that if I was on

1 vacation or something like that and to the best of my
2 knowledge, those are the only people who had any
3 rights to sign anything.

4 Q. Do you know how many bank accounts CL&M had?

5 A. I don't. You would have to ask Don.

6 Q. Did you have any check writing authority with
7 respect to any CL&M account?

8 A. No.

9 Q. Do you know how many bank accounts Great Land
10 Project Development had?

11 A. No.

12 Q. And did you have any check writing authority
13 for those accounts?

14 A. No.

15 Q. Why were you only able to produce the
16 documents which were incorporated in Exhibits 1 and 2
17 in response to the subpoena?

18 A. A hundred percent of the balance of my
19 personal and business financial records were or are at
20 15 Northview Drive and in November when we closed
21 down, the government asked if they could change the
22 locks and I gave them permission to do so.

23 Q. Now, let me ask you about your personal

1 assets. What assets do you own at the present time?

2 A. Whatever share it is of my house because the
3 house my wife and I own together. I have a lot that
4 is adjacent to the house that I own free and clear. I
5 have a timeshare. I can't imagine that has any value,
6 but I have a week of timeshare that I own free and
7 clear.

8 Q. Where is that?

9 A. Village at Winnepesaukee. I just can't
10 imagine it's worth five cents. I have my retirement
11 fund, a 401K, which is approximately \$49,000, the car,
12 the truck, personals.

13 Q. How about more liquid or more non real estate
14 related assets?

15 A. No, I don't have any stocks and bonds. I
16 don't have a checking account or a savings account. I
17 have nothing.

18 Q. Do you have any art work or anything like
19 that?

20 A. No. Let me clarify that. We have a few
21 antique-type things that are worth a few thousand
22 dollars at the house and Susan and I have agreed to
23 give those to the bankruptcy, to you guys, at the same

1 time that we deed over the house, but there's nothing
2 of any significant value.

3 Q. And when did you acquire the house? Just a
4 ballpark.

5 A. Probably late '80's. I would say late '80's,
6 early '90's.

7 Q. How about the lot? When approximately did
8 you acquire the lot?

9 A. The same time, and it was 35 acres originally
10 and we subdivided off three acres a number of years
11 ago.

12 Q. And do you have any sense of what the lot
13 might be worth?

14 A. The tax assessment said sixty some odd
15 thousand. I believe I provided that.

16 Q. And is there a mortgage on the lot?

17 A. Yes and no. There's no debt owed on the lot,
18 but there were two mortgages that were put on there,
19 one by Don Dodge and one by [REDACTED], that I've paid
20 off and we never got around to issuing the discharges.
21 All of the records that prove that they've been paid
22 off is in the office or was in the office.

23 Q. And when do you think you paid off those

1 loans? Again, just ballpark.

2 A. Ten years ago or more.

3 Q. And how did you pay for the house and for the
4 lot?

5 A. The house and lot were one purchase.

6 Q. Okay.

7 A. We got financing from a bank.

8 Q. And are there mortgages on the house at this
9 point?

10 A. Yeah; approximately \$250,000.

11 Q. And what do you think the house is worth?

12 A. According to the town, it's worth three
13 something. I have it here. \$385,000 according to the
14 town records.

15 Q. And you're referring to a tax record that's
16 part of Exhibit 1?

17 A. Correct. I got those from the town.

18 Q. Do you have a personal bank account?

19 A. Citizens Bank.

20 Q. And is there any money in it?

21 A. No.

22 Q. Have you used a personal accountant over the
23 last five years?

1 A. An accountant?

2 Q. Yes.

3 A. Yes; [REDACTED] [REDACTED] at H&R Block.

4 Q. And where is her office?

5 A. Laconia.

6 Q. Has she done tax returns for you?

7 A. For many years.

8 Q. When you say many, ten or more?

9 A. More than ten.

10 Q. And I take it you don't have copies of your
11 tax returns at this time?

12 A. They're all at the office.

13 Q. Did you file jointly with your wife or
14 separately?

15 A. Jointly.

16 Q. And I think you told me this, but I'm going
17 to ask it again. So we're talking about your tax
18 returns for the last two years. You do not have
19 copies of those?

20 A. No, sir.

21 Q. Because they were in the office?

22 A. Correct.

23 Q. And you didn't remove anything before the

1 office was closed?

2 A. I did not.

3 Q. Do you know what assets or do you have any
4 knowledge regarding what assets your wife Susan owns?

5 A. Yes.

6 Q. To the best of your knowledge, what does
7 Susan own?

8 A. She owns, of course, half the house. There's
9 a property in Franklin, 61 South Main Street, that is
10 an eight-unit property that Susan has agreed to deed
11 over to the Bankruptcy Court. The office building, 15
12 Northview Drive. These are in trusts. These are in
13 separate trusts, but Susan is dealing with that and
14 she's agreed to deed that over to the Bankruptcy
15 Court.

16 Q. Anything else that you are aware of?

17 A. Yeah. She's the beneficiary on a number of
18 trusts. Excuse me. A 50 percent beneficiary on a
19 number of trusts and she's agreed to deed all of those
20 over to the Bankruptcy Court.

21 Q. What trusts is Susan 50 percent beneficiary
22 of?

23 A. I am, of course, doing this all off the top

1 of my head.

2 Q. I realize that.

3 A. There's a property in Ossipee. I don't know
4 the name of the trust.

5 Q. Let me just stop you there. What kind of
6 property is that?

7 A. It's a big piece of land with approvals to do
8 a subdivision and to do gravel and sand and she's
9 co-beneficiary on...

10 Q. Let me stop you on that one just for a
11 minute.

12 A. Sure.

13 Q. Who is the other 50 percent beneficiary on
14 that?

15 A. Gary Coyne. C-O-Y-N-E.

16 Q. Do you have an estimate of that property's
17 value?

18 A. I don't.

19 Q. Are there mortgages on that property?

20 A. Yes.

21 Q. Do you know how much?

22 A. I don't.

23 Q. Do you know who holds the mortgage or

1 mortgages?

2 A. I know one of the mortgages is held by the
3 [REDACTED] [REDACTED] Group. [REDACTED] [REDACTED] represents a whole
4 bunch of professional athletes and they had pooled
5 together some money to do a mortgage on it.

6 Q. But you're not aware of what the loan was or
7 how much it was?

8 A. Again, I don't have any of the records, but
9 it's not going to be listed like that. It's going to
10 be listed as a trust.

11 Q. I'm familiar with who [REDACTED] [REDACTED] is.

12 A. There were two additional mortgages on that
13 property. There was originally two pieces of property
14 and each piece had a first mortgage to the original
15 owners of the properties. I don't know the amounts.

16 Q. Do you remember who the original owners are?

17 A. I do not.

18 Q. How is it that your wife Susan and Gary Coyne
19 are 50 percent beneficiaries of the trust that owns
20 that particular parcel?

21 A. I did that with a number of properties where
22 I did a lot of the work, put stuff together and would
23 make a joint venture, and I'll get into some of the

1 other ones here in just a second, but the standard
2 operating procedure was I was doing tons of work.
3 Instead of taking compensation, i.e., dollars, I would
4 take a percentage ownership in a deal and instead of
5 taking it in my name, I put it in Susan and/or the
6 boys' names for liability purposes. Many years ago,
7 twenty plus years ago, I was working with an attorney
8 and he said you should always set up separate trusts
9 for each property that you own and as much as possible
10 you should put them in your spouse's name for
11 liability purposes. That way there, if there was a
12 lawsuit against one piece of property, it wouldn't
13 contaminate the other ones; if there was a lawsuit
14 against you as a business owner, it wouldn't
15 contaminate the ownership of the other properties. So
16 that was standard operating procedure.

17 Q. And speaking about the parcel in Ossipee that
18 we've been talking about, you've explained how you
19 came to be or your wife came to be a 50 percent
20 beneficiary.

21 A. Yep.

22 Q. What did Gary Coyne contribute to that
23 particular parcel to justify his 50 percent

1 participation?

2 A. Gary was kind of the spearhead as far as the
3 development. He found it, got it under agreement and
4 spearheaded the project.

5 Q. How was the property paid for?

6 A. It isn't. Well, it is and it isn't. It's
7 got mortgages on it, so that's how it was paid for.

8 Q. So it was completely seller financed or are
9 you suggesting it was completely seller financed in
10 the sense that you suggested...

11 A. I don't recall if it was completely seller
12 financed. I just don't recall.

13 MR. RAMSDELL: Scott, you've got to let him
14 finish the question. She can only take one of you at
15 a time.

16 Q. So what you're saying is the parcel was paid
17 for in part by the sellers giving a mortgage and
18 potentially in part by these other mortgage holders
19 who advanced funds to make the purchase, is that
20 correct?

21 A. I'm not trying to be -- I just plain don't
22 know without looking at the documents how that
23 particular one was structured.

1 Q. Do you know how much the trust that owns the
2 property paid for the purchase?

3 A. I don't.

4 Q. And do you know when that purchase took
5 place?

6 A. I don't.

7 Q. Do you know what decade?

8 A. Oh, I'm sorry. If you want to be broad,
9 within the last two years. Does that help?

10 Q. Yeah.

11 A. Okay.

12 Q. I'm just looking for whatever level of
13 information or memory you have.

14 A. Oh, sure. I understand.

15 Q. And I think we were on the subject of
16 property where Susan is a 50 percent beneficiary.
17 You've talked about the one in Ossipee.

18 A. There's a number of other ones.

19 Q. What's the next one that you remember?

20 A. It's on [REDACTED] [REDACTED] in Moultonboro.

21 Q. And do you know whether that one is held by a
22 trust?

23 A. Yes. Let me break it up. There was

1 originally five lots that I believe were all held by
2 the [REDACTED] Trust. LB is [REDACTED] [REDACTED]. SF is Susan
3 Farah. Three of them are just lots. Two of them have
4 houses on them. One of the houses for sure we
5 refinanced into Don Dodge's name to get low interest
6 rate financing on it, 30-year financing at, I don't
7 know, six, seven percent. The second house may have
8 been also refinanced into Don's name. I just don't
9 recall.

10 Q. And when you say refinanced into Don's name,
11 what do you mean by that?

12 A. It was actually sold to Don who got
13 conventional financing from -- I couldn't tell you
14 who, but conventional normal 30-year financing.

15 Q. And Dodge would then lease the property to
16 someone?

17 A. Have it up for sale and/or lease it, yes. So
18 that's Cook Lane.

19 Q. Let me stay there. So in that situation,
20 Susan is a 50 percent beneficiary and [REDACTED] [REDACTED] is
21 the other 50 percent beneficiary?

22 A. Correct.

23 Q. And do you know how that property was paid

1 for?

2 A. I know there was some owner financing
3 involved. I know there was some lender financing
4 involved. I do not recall whether or not there was
5 any issue involved.

6 Q. And do you recall approximately when the
7 trust bought that [REDACTED] [REDACTED] property?

8 A. Three to four years ago.

9 Q. Are there other properties where Susan is a
10 50 percent beneficiary?

11 A. Yeah. If you like, I'll walk you through all
12 of them that I can remember.

13 Q. Okay. What's the next one?

14 A. The next one would be the Good Earth
15 Revocable Trust. That's in Laconia. That's a condo
16 development. Some of the condos are complete. It's
17 on [REDACTED] [REDACTED] [REDACTED]. Susan and Gary are 50/50
18 beneficiaries. We did get financing from private
19 lenders. I do not recall whether or not we put any
20 cash out. The time horizon on that was three years
21 ago.

22 Q. Did you buy that property from Gary Coyne?

23 A. No.

1 Q. Or a Gary Coyne related corporation?

2 A. I don't recall. I know that Gary was
3 involved in the development, so I don't know if the
4 property went from the original owners to Gary and
5 then to the trust or just straight from the original
6 owners to the trust. I just plain don't know, but you
7 know, it would have been one or the other.

8 Q. And you're not sure of any -- you're not sure
9 whether you or Coyne put any cash into that?

10 A. I don't. I can't recall.

11 Q. On that property, I think the first mortgage
12 is held by a guy named [REDACTED] [REDACTED] or an entity
13 that he's a trustee of.

14 A. It certainly could be.

15 Q. Do you recall [REDACTED] [REDACTED]?

16 A. Oh, I know [REDACTED] [REDACTED] very well. You're
17 asking me if I know what mortgage he had. [REDACTED] had
18 many mortgages.

19 Q. If I suggested to you that [REDACTED] [REDACTED] had
20 contributed \$375,000 to that purchase, do you have a
21 memory of that or not?

22 A. I would not dispute the number. I just don't
23 know and I don't know whether it was towards the

1 purchase or towards the development of the property.

2 Q. And do you recall whether [REDACTED] [REDACTED] was
3 paid back any of his principal on that deal?

4 A. I do not.

5 Q. And there's another gentleman who I believe
6 has a second on that property by the name of [REDACTED].

7 A. Okay.

8 Q. Do you remember him?

9 A. Sure.

10 Q. What is his name?

11 A. [REDACTED].

12 Q. [REDACTED] [REDACTED]?

13 A. Yeah.

14 Q. Am I pronouncing it correctly?

15 A. You pronounced it [REDACTED], " but that's
16 okay.

17 Q. Do you know if he's been paid back any
18 principal?

19 A. I do not.

20 Q. On that property Great Land has a mortgage.
21 Do you recall that?

22 A. I agree with you. I just don't recall a
23 whole lot of details about it.

1 Q. But is it your memory that Great Land does
2 have a mortgage there?

3 A. I honestly don't remember. I won't deny it
4 if you say there's a mortgage with Great Land, but I
5 just don't recall.

6 Q. Let me ask the next question to see if you
7 have any memory. Do you know why Great Land would
8 have a mortgage on that property?

9 A. Yes.

10 Q. Why?

11 A. It would have been because we had put
12 together some funds for the construction and broken
13 those out and Gould and Burke would have created
14 assignments or partial assignments for the
15 individuals.

16 Is the Great Land mortgage a fairly good
17 sized one?

18 Q. Yes.

19 A. Okay. Then I'll say yes, there is a Great
20 Land mortgage on there, and what would have happened
21 is there would have been partial assignments to that
22 mortgage for the individual lenders that purchased up.

23 Q. And just so I'm accurate, I think there might

1 be two Great Land mortgages on there.

2 A. Okay.

3 Q. But they're sizable. They're in the range of
4 two to four million.

5 A. Then that's the structure.

6 Q. Do you recall how much money was advanced
7 towards -- this is called Beaver Pond, right?

8 A. Yes.

9 Q. Do you remember how much money was advanced
10 into the Beaver Pond project?

11 A. A lot. I just don't recall. In the
12 millions.

13 Q. And from what account or what entity were
14 those funds advanced into the Beaver Pond project?

15 A. I don't understand the question.

16 Q. Who wrote the checks?

17 A. CL&M.

18 Q. Let me go back. CL&M advanced the funds and
19 yet there's a Great Land mortgage on there. Why is
20 there not a CL&M mortgage if CL&M was advancing the
21 funds?

22 A. Because CL&M was the servicing agent. They
23 were not the -- it was a servicing agent.

1 Q. And what was Great Land?

2 A. Just a development company. Great Land
3 didn't do any servicing.

4 Q. Did Great Land contribute anything to the
5 project?

6 A. No.

7 Q. So I guess I'm asking why Great Land would
8 have a mortgage of a sizable amount if Great Land
9 didn't advance any funds.

10 A. It was an initial -- you create the mortgage
11 and then you do partial assignments at the same time,
12 so it gives you one mortgage and then the partial
13 assignments go off of that mortgage.

14 Q. Now, there are quite a few unit mortgages.

15 A. That's what I'm talking about.

16 Q. Were you aware that none of those unit
17 mortgages are recorded?

18 A. As separate, yes.

19 Q. You were aware that they were not recorded?

20 A. Correct.

21 Q. Was there a reason for that?

22 A. Waiting for Attorney General approval.

23 Q. Going back to the subject of the trust that

1 your wife is a 50 percent beneficiary of, you've
2 discussed a few. I think you've implied there are
3 others.

4 A. Yes.

5 Q. Why don't we move on to the next one.

6 A. The next one is [REDACTED] [REDACTED] That was a
7 mobile home park in Laconia 50/50 between Susan and
8 [REDACTED] [REDACTED]. Financing came from private individuals.
9 I do not recall whether or not any cash came from
10 anybody.

11 Q. Anybody meaning you or...

12 A. From [REDACTED] or Susan. Not Susan but from
13 [REDACTED] or me. I would say like it was three years we
14 got that. I'm not sure exactly when.

15 Q. And there's some kind of approval on that for
16 a single family development?

17 A. Mobile homes. I think it's 60.

18 Q. And are there some mobile homes or other
19 structures on any of those lots?

20 A. Yes.

21 Q. How many? Do you have a ballpark idea?

22 A. Three or four.

23 Q. And is Coyne involved in that one?

1 A. Yes and no. He was the original one. He put
2 it together originally, but then he's no longer
3 involved except for does he help on it? Absolutely.
4 And I believe that he took back a mortgage for his
5 portion on that one.

6 Q. What other trust is Susan a 50 percent
7 participant in?

8 A. I'm just trying to think. Well, she's a
9 hundred percent on Northview Drive, but I said that
10 already, didn't I?

11 Q. Well, we didn't really go through that one,
12 so let's go through that one.

13 A. All right. Northview Drive has always been
14 in her name or she's the trustee and beneficiary of
15 that one.

16 Q. And when approximately was that property
17 acquired?

18 A. More than ten years ago.

19 Q. And do you recall the name of the trust that
20 owns that?

21 A. Northview Drive Trust.

22 Q. And where did the funds come to purchase 15
23 Northview Drive?

1 A. The original funds, it was kind of an
2 interesting structure. Village Bank had foreclosed on
3 the property many years ago. We rented it for one
4 year, they credited a hundred percent of the rent
5 towards the down payment, and then they financed the
6 balance.

7 Q. When you say, we rented it for a year, who
8 are you talking about?

9 A. Financial Resources paid the rent, but it was
10 in the trust's name and everything and then the
11 property itself, there's an adjacent property...

12 Q. Well, let's stick with that for just a
13 minute, the office building.

14 A. Okay.

15 Q. So the bank gave credit for the first year's
16 rent towards the purchase price?

17 A. Correct.

18 Q. And the trust using that down payment
19 purchased the property?

20 A. Correct.

21 Q. Which was financed by the bank?

22 A. Village Bank, yep.

23 Q. Do you recall what the mortgage on the

1 property was at the time of the purchase?

2 A. In the 150 range.

3 Q. And do you think any further mortgages have
4 been placed on that property?

5 A. Yes.

6 Q. Do you know who holds those mortgages?

7 A. Mm-hmm. There was a mortgage we did -- we
8 put a six thousand square foot addition on the
9 property five, six, seven years ago. We got the
10 initial financing from a private lender and I'm
11 drawing a blank on who it was. Then when the
12 construction was complete, we refinanced with
13 conventional financing. I believe the lender was
14 Lehman Brothers and it has since been sold like 47
15 times. Then staying with the same property, we
16 purchased the adjacent property under the name of NDN
17 Realty Trust.

18 Q. NDN?

19 A. Yeah, I think it was NDN.

20 Q. And do you know what NDN stands for? Usually
21 it's somebody's name.

22 A. No. The attorney made it up and he did it as
23 a joke. I just don't remember.

1 Q. Which attorney was that?

2 A. Mike Burke. Mike Burke was the trustee.

3 Q. When you say the adjacent property, does it
4 have the cell tower on it?

5 A. No, this was a property that was originally
6 owned by [REDACTED] [REDACTED]. [REDACTED] [REDACTED]. The adjacent
7 property was purchased three or four years ago with
8 little or no down payment and [REDACTED] [REDACTED] held the
9 mortgage on it.

10 Q. And why were you buying that?

11 A. Expansion. We went through the process of
12 getting approval to put another ten thousand square
13 foot building up. [REDACTED] [REDACTED] was the surveyor and the
14 guy that got it approved. We had some additional
15 financing on that lot from [REDACTED]. I do not recall
16 the amount. When we went to -- then the two lots were
17 combined into one. Last summer would be my best
18 guess. I don't have any records, but I believe at
19 that point Burke resigned as trustee because the trust
20 didn't have any assets anymore.

21 Q. Why not?

22 A. Because now the NDN Trust -- because it had
23 deeded the property to the Northview Drive Trust, it

1 didn't have any assets.

2 Q. Okay.

3 A. And we took a mortgage out with the [REDACTED] to
4 do the construction of the new building.

5 Q. Which never took place?

6 A. Which never took place.

7 Q. So the [REDACTED] mortgage is on the Northview
8 Drive property?

9 A. Mm-hmm.

10 Q. And that's yes?

11 A. Yes. I'm sorry.

12 Q. And is the cell tower on that same property?

13 A. The cell tower is not. The cell tower, we
14 sold the cell tower maybe six years ago.

15 Q. So no trust that Susan is a beneficiary of
16 owns the cell tower?

17 A. No, the cell tower was sold to -- I don't
18 remember the name of the company. It would be -- I
19 would think you would be able to look it up in the
20 registry.

21 Q. What other trusts, if any, is Susan a
22 50 percent beneficiary of?

23 A. Did we go over the Franklin property? We

1 touched on it.

2 Q. You touched on the fact that there's an
3 eight-unit building or something. Is that held by a
4 trust?

5 A. Yes. 61 South Main Street Trust. It's an
6 eight-unit building. Susan and I bought the property
7 fifteen years ago.

8 Q. Did you buy it with a mortgage?

9 A. Yes.

10 Q. Did you put any cash into it?

11 A. Very little. My recollection is that we
12 bought it for \$90,000 and put down \$9,000. Since then
13 we've done some major renovations. We have a mortgage
14 on there that's approximately \$300,000. It's all
15 condo-ized. That's the only mortgage on that one.
16 And again, Susan has agreed to deed that over to the
17 Bankruptcy Court.

18 Q. And on that one, is she a hundred percent
19 beneficiary of the trust?

20 A. Yes.

21 Q. Any other trusts where Susan is a beneficiary
22 of a property?

23 A. Did I say [REDACTED] [REDACTED] already?

1 Q. Yes. I think the ones we've talked about, if
2 my notes are accurate, just to give you a rough
3 idea...

4 A. No problem.

5 Q. The property in Ossipee.

6 A. Mm-hmm.

7 Q. Cook Lane in Moultonboro.

8 A. Mm-hmm.

9 Q. The Beaver Pond development.

10 A. Mm-hmm.

11 Q. Good Earth is the trust.

12 A. Yeah.

13 Q. [REDACTED] [REDACTED]

14 A. Yep.

15 Q. Northview Drive and Franklin. I think those
16 are the ones, according to my notes, that you have
17 been through.

18 A. Okay. There's the SMM Realty Trust which Don
19 and I created and that has a number of mortgages. I
20 do not believe it owns any real estate.

21 Q. And is Susan a beneficiary of that trust?

22 A. Yeah, a hundred percent, and she's also
23 agreed to turn that over.

1 Q. What mortgages does SMM Realty hold?

2 A. Somewhere between eight and fifteen
3 mortgages.

4 Q. And do you recall on what property?

5 A. A number of properties.

6 Q. Can you name...

7 A. The only one I can recall, it has a big
8 mortgage on it, the [REDACTED] [REDACTED] property down here in
9 Concord. All the other ones I just don't recall. The
10 information is at the office.

11 Q. Do you recall whether the SMM Realty Trust
12 mortgages are in property in New Hampshire or outside
13 New Hampshire?

14 A. For sure in New Hampshire. There is a -- I
15 just don't recall. I mean, all the records are at the
16 office. I could tell if I could look at them. I just
17 don't recall if there are some that are outside the
18 state.

19 Q. And the mortgages that are held by SMM, were
20 they funded at the time that they were acquired? In
21 other words, did SMM actually lend money to support
22 the mortgages?

23 A. No, SMM got the money from CL&M.

1 Q. So CL&M funded mortgages which went to SMM?

2 A. Correct.

3 Q. And the only one that you can recall right
4 now is on the [REDACTED] [REDACTED] property in Concord?

5 A. That's the only one I can recall.

6 Q. Any other trusts where Susan is a
7 beneficiary?

8 A. Maybe. I don't mean to be vague here. I
9 just am unsure how I structured this. We were in the
10 process of closing on a group of properties -- excuse
11 me, a development -- down in -- I don't remember the
12 town -- down in southern New Hampshire and the person
13 that was involved was [REDACTED] [REDACTED] and his
14 daughter [REDACTED]. The deal that I structured with
15 them was that I was going to have a partial beneficial
16 interest. I do not recall whether that was Susan,
17 whether it was SMM, whether it was me as an
18 individual. I just plain don't recall.

19 Q. And when you say a partial beneficial
20 interest, a partial beneficial interest in what?

21 A. In the development project, and it was, I
22 think, 20 percent, 25 percent, but again, I just plain
23 don't recall whether that was an asset in Susan's or

1 me or what.

2 Q. In that situation, is it fair to say that
3 some funds were advanced to [REDACTED] [REDACTED] or to that
4 project but not nearly the amount that is suggested by
5 the loan amounts?

6 A. That would be accurate. That particular one
7 I can recall because it was recent. There was no
8 money advanced from any assets. It was just, you
9 know, [REDACTED] had owned the property, had had an
10 ownership interest in the property. There was no
11 money from that, and the value of the asset should
12 there be -- should I have given that piece to Susan,
13 which again I don't recall, the value of that would be
14 essentially zero.

15 Q. If I suggested to you that \$125,000 might
16 have been advanced to [REDACTED] [REDACTED] or to that
17 project, does that sound right or do you disagree with
18 that?

19 A. No, I would agree with that. There was a
20 small amount advanced on the project as a whole and
21 that sounds about right.

22 Q. Any other trusts where Susan owns a
23 beneficial interest?

1 A. I cannot recall any other ones.

2 Q. Other than the ones you mentioned, [REDACTED]
3 where maybe you were set up to hold a beneficial
4 interest, anything elsewhere you hold a beneficial
5 interest personally?

6 A. Maybe. There is a lot in Sugar Hill that has
7 a small mortgage on it. Attorney Burke was the
8 trustee.

9 Q. Do you remember the name of the trust on that
10 one?

11 A. I don't.

12 Q. Do you remember the borrower?

13 A. The trust was the borrower. It was
14 originally two lots. One was sold and I just don't
15 know who the beneficiary is on that one.

16 (Discussion held off the record.)

17 (Attorney Ramsdell and the witness conferred.)

18 A. There is one other property. Sorry.

19 Q. Just for terminology sake, [REDACTED] [REDACTED] refers
20 to one of these that we referred to?

21 A. [REDACTED] [REDACTED] does not.

22 Q. And what does [REDACTED] refer to?

23 A. [REDACTED]? [REDACTED] [REDACTED] is one other project.

1 [REDACTED] [REDACTED] is in Laconia. It's a one hundred and
2 some odd unit approved apartment complex. I don't
3 know when we got that. Maybe eight years ago. Susan
4 is a hundred percent beneficiary on that one.

5 Q. Was there an assisted living plan for that?

6 A. No. There is a property with an assisted
7 living facility plan, but we never took ownership of
8 that property. That was in Northfield. So that was
9 never transferred. There's no ownership -- there
10 never was any ownership on that one.

11 Q. On [REDACTED] [REDACTED], why were no apartments built
12 there over the period of the eight years that you've
13 had the approvals?

14 A. We haven't had the approvals that long. I
15 just didn't get the financing in place for that one.

16 Q. Do you know how long you've had the approvals
17 for that?

18 A. Maybe two years. I just don't know.

19 Q. Do you know the legal owner of that property?

20 A. I believe it's Provençal Park Realty Trust
21 and [REDACTED] [REDACTED] is the trustee and he was the
22 original owner.

23 Q. So [REDACTED] sold the property to the entity

1 that owns it now?

2 A. No, [REDACTED] sold his ownership in the
3 entity. Provencal Park Realty Trust has always owned
4 the property and continues to own the property.

5 [REDACTED] sold his interest in the property.

6 Q. And what interest did he have?

7 A. A hundred percent.

8 Q. And when did that take place? When did that
9 purchase take place? Was that eight years ago?

10 A. Seven, eight years ago. I just don't know
11 the exact date.

12 Q. So [REDACTED] continued to be the trustee on
13 that trust?

14 A. Yes.

15 Q. Why did he remain on that?

16 A. He was an attorney that I used and I was
17 happy to have him there.

18 Q. And now have we reviewed all the trusts where
19 you think Susan may be a beneficiary?

20 A. All that I can remember. If you know of any,
21 please bring them up. Those are all the ones that I
22 can remember.

23 Q. I can't think of any others. You've thought

1 of more than I knew about.

2 A. Okay. The records would be in the office,
3 but those are all the ones that I can remember.

4 Q. Going back to [REDACTED] [REDACTED], why was A.G.
5 approval never obtained for that condo development?

6 A. It actually was within a few weeks of being
7 obtained.

8 MR. DONCHESS: Could we take a quick break?
9 Do you mind?

10 (There was a short recess.)

11 Q. I'm going to kind of state to you how I
12 understand some of these transactions were arranged
13 and I'm going to really just set the groundwork and
14 I'm going to ask you if you agree or disagree.

15 A. Okay.

16 Q. It seems that a number of loan transactions
17 were arranged from 2006 to 2009, to a closing in 2009
18 where a trust was created, a trust document was
19 drafted, and the structure of the transaction was that
20 the trust was the lender and the borrower would borrow
21 the money and the trust would hold the note and the
22 mortgage in the trust's name.

23 A. Yes.

1 Q. And then there were other transactions where
2 there was no trust and the structure of the
3 transaction was that the name on the note and mortgage
4 was an individual, not a trust, and there was a
5 borrower, but the note and mortgage were in an
6 individual's name.

7 A. Correct.

8 Q. Why were some of the -- well, do you know why
9 some of the loan transactions were set up using trusts
10 and others were set up just using individual names?

11 A. As a broad statement, yes. What would happen
12 is if there were going to be more than one individual
13 putting up the dollars, to keep it real simple, if it
14 was a \$300,000 loan and there were three people each
15 going to put up \$100,000, then there would be a trust
16 created where each of them was a 33 percent
17 beneficiary. If, on the other hand, someone had been
18 wanting to put up a hundred percent of the money, then
19 it would just close in their name as an individual.
20 That would not be true for every single situation, but
21 that would be true for the majority of the situations.

22 Q. What other circumstances, other than the one
23 you just described, would have led to the choice of

1 either a trust or not a trust?

2 A. The lender's preference. Some of them
3 preferred to be in trusts. Some preferred to be in
4 corporations.

5 Q. Now, most of the trusts, I think, but not all
6 had Dodge Financial as the trustee.

7 A. Okay.

8 Q. Do you recall it that way?

9 A. Yes.

10 Q. Why was Dodge Financial set up as the trustee
11 of the trusts?

12 A. I have no idea. Just as part of the
13 servicing, you know, the full service thing because
14 CL&M was servicing the loans. Then Don would need to
15 have to make decisions regarding the trusts and as
16 part of the servicing, that would have been -- that's
17 why he set it up as Dodge Financial.

18 Q. Now, there a few trusts, and tell me if you
19 disagree, but there are few trusts where one of the
20 trust beneficiaries was named as the trustee of the
21 trust as opposed to Dodge Financial.

22 A. I don't have any recollection of that, so I
23 don't know how to respond to it.

1 Q. Who would have made a decision regarding who
2 was the trustee of a particular trust?

3 A. I have no idea. I mean, the structure that I
4 talked about was the only one that we would use. We
5 would just automatically make it Dodge Financial.
6 That was the standard operating procedure. I don't
7 have any idea why we would have chosen somebody else
8 to be a trustee of any particular trust.

9 Q. Now, is it fair to say that when you raised
10 money from investors -- well, let's go back.

11 Did you personally raise money from
12 investors?

13 A. I personally raised, yes.

14 Q. And is it fair to say that when investors
15 would send in funds, they invariably sent them payable
16 to CL&M?

17 A. 99 percent of the time, yes.

18 Q. And was that at your request or their
19 request?

20 A. Mine.

21 Q. And then CL&M would use its checking accounts
22 to fund these various loans?

23 A. Correct.

1 Q. And many of the loans were construction
2 loans?

3 A. Yes.

4 Q. And once a loan was in place, a construction
5 loan, CL&M over time would advance funds to the
6 borrower as the construction progressed?

7 A. Yes, in a broad sense. CL&M generally did
8 not write any checks to the borrower. On a
9 construction loan, they would generally write checks
10 to the plumber, to the electrician, to the roofer. So
11 in a broad sense was it funds advanced to the
12 borrower? Yes, in a specific sense, so there was
13 funds advanced to the subcontractors.

14 Q. And I really meant it in a broad sense.

15 A. Then you're fine.

16 Q. I mean, occasionally money went directly to a
17 borrower.

18 A. Correct.

19 Q. But that was the exception rather than the
20 rule.

21 A. That is an accurate statement.

22 Q. And there must have been someone at CL&M who
23 was -- well, let me go back.

1 When CL&M funded or paid contractors or
2 suppliers on these construction loans, generally that
3 was done in response to a requisition of some kind?

4 A. If you like, I can just explain the process.
5 It might be faster.

6 Q. It probably would be.

7 A. Okay. On a construction loan, the guidelines
8 were there was an initial budget submitted by the
9 borrower, you know, or their general contractor. That
10 budget was reviewed by CL&M. We had [REDACTED] [REDACTED] as a
11 contractor who actually reviewed them, but sometimes
12 we would have other contractors review them to make
13 sure that the budget made sense, you know, that we
14 were not going to build the Taj Mahal for fifty cents.

15 Q. Did [REDACTED] work for CL&M?

16 A. No, just a straight...

17 Q. Consultant?

18 A. Consultant.

19 Q. Did you pay him for that?

20 A. The borrowers would, yes, and you'll see that
21 on some of the disbursements.

22 Q. Okay.

23 A. So as a general rule of thumb, [REDACTED] would

1 review the construction budget to say, yes, this makes
2 sense, or it didn't. Assuming we had a budget that
3 made sense, the loan was closed and every time the
4 general contractor wanted a disbursement or a sub or
5 whatever, there was a requisition that was sent in
6 that was also signed by the borrower. That
7 requisition would then be matched up to the budget.
8 CL&M would match it up to the budget. So if there was
9 ten thousand budgeted for the foundation and they got
10 a bill in for ten thousand for the foundation, it
11 would be matched up. Then funds would be disbursed to
12 the appropriate parties. Usually the way it was
13 broken out would be two checks, one to the foundation
14 guy for his actual cost and one to the general
15 contractor for his profit override, and those checks
16 would go directly to whoever it was and then a report
17 would be created that would be generated that would go
18 to the borrower, go to the general contractor and go
19 to the lender so that they could see that check number
20 123 for \$9,000 went to the foundation guy and check
21 number 124 for \$1,000 went to the general contractor.
22 And those reports are in every single file. There
23 will be a report and there will be a copy of every

1 single check and invoice associated with that
2 particular loan file.

3 Q. And when one of these payments was made to a
4 sub as you've described it, you notified the lender,
5 either the person whose individual name the loan was
6 in or the beneficiaries of the trust that made the
7 loan?

8 A. Correct. In other words, going back to our
9 original example, if there were three beneficiaries,
10 there would actually be three copies of the report
11 that would go out, one to each of the beneficiaries.

12 Q. And who at CL&M monitored these requests for
13 payment made by the subs or the others that were
14 involved in these construction loans?

15 A. Well, they had the three girls plus Don, so
16 if everything matched up correctly, then Don would not
17 as a general rule of thumb get involved. However, if
18 there was something that did not match up, then Don
19 would get involved.

20 Q. And the three women that you mentioned, were
21 they CL&M employees?

22 A. Yes.

23 Q. So is it fair to say that Donald Dodge had

1 the final decision making authority over whether a
2 request for payment should be honored?

3 A. Absolutely.

4 Q. Now, you said that when you raised funds for
5 these various loans, the money came to CL&M.

6 A. Yep.

7 Q. And I think you told me, but correct me if
8 I'm wrong, that CL&M -- or maybe you didn't tell me --
9 do you know how many bank accounts CL&M had?

10 A. No.

11 Q. Who would make the decision that we're going
12 to go forward with a specific loan?

13 A. Too broad a question. I'm not trying to be
14 vague. Just at what step?

15 Q. Well, how did the fundraising and loan
16 processing work?

17 A. Okay. What would happen is we would get in a
18 loan request from a borrower. Financial Resources
19 would do the initial underwriting to see if it made
20 some kind of sense. Appraisals would be ordered.
21 Title would be ordered. Once appraisals were in and
22 the loan was reviewed, if it made sense --
23 approximately nine out of ten loan requests were

1 denied at that level because they just didn't make
2 sense -- but if everything lined up at that point --
3 and then of course the system evolved, but I mean,
4 this is where we were at -- what would happen is we
5 would create -- Financial Resources would create a two
6 to five page summary of the borrower's request for
7 funding. That summary would be mailed out to all of
8 the people, the private lenders that were on my
9 mailing list, which was approximately two thousand.
10 Those summaries would go out. Every other week we
11 would send out a batch of summaries. When the private
12 individuals received their summaries, then if they had
13 interest in a particular transaction, they would give
14 a call and get the full underwriting file which would
15 include things like full appraisals, title work, tax
16 returns, credit reports, budgets if it was a
17 construction loan. At that point if a private
18 individual decided to go forward on a particular deal,
19 then the funds would be sent to CL&M for that
20 particular transaction.

21 Q. And who did the screening to determine
22 whether a loan, quote, "made sense," unquote?

23 A. Ultimately that was my decision. And I had a

1 number of people working for me, but I mean, the final
2 decision would have been ultimately mine.

3 Q. Now, when a check came to CL&M from an
4 investor, did it come to you or to Dodge or how did
5 that work?

6 A. It went to the CL&M post office box and/or
7 was wired to CL&M.

8 Q. Did you learn about it?

9 A. Oh, sure.

10 Q. And who would tell you or how would you find
11 out?

12 A. Well, CL&M was in the same office with us.
13 Literally Don and I would talk a dozen times a day.

14 Q. So Dodge might come to you and say, okay, we
15 got a hundred thousand from Mr. X?

16 A. Well, I would have known it was coming
17 because Mr. X would have talked to me and said, I'm
18 going to fund a hundred thousand on the Smith deal, so
19 I already knew that the check was coming.

20 Q. And do you know whether -- well, let me ask
21 it this way.

22 If I suggested to you that CL&M did not
23 create a separate bank account for each loan, would

1 you agree with that?

2 A. I would agree completely with that.

3 Q. Because all of the money coming into CL&M was
4 consolidated into a single fund, is that correct?

5 A. Yes.

6 Q. And how do you know that?

7 A. Because I saw the checkbooks and I mean, I
8 was there, so...

9 Q. Did you have access to the CL&M bank records?

10 A. Yes and no. I had a key to the office. I
11 could have gone in and looked at them at any time. I
12 don't recall that I ever did.

13 Q. Well, you said that you saw the CL&M
14 checkbook.

15 A. Oh, sorry. Don had a running checkbook on
16 his computer with all the transactions.

17 Q. And from reviewing that, you could tell that
18 all the money coming into CL&M was put into a single
19 account?

20 A. Yes. Let me go back a step. You asked me
21 how many accounts CL&M had. I said I don't know
22 exactly, but as a broad statement, there were two
23 accounts. One account would be used for about three

1 months and then Don would switch over and use the
2 other account for the next three months, and the
3 reason for that was for reconciliation purposes
4 because there were so many checks and so many
5 deposits, to reconcile the checkbook would have been
6 just an enormous project, so what would happen was Don
7 would let one account sit for three months and by that
8 time, you would figure the majority of the checks had
9 cleared and he could do the reconciliations on his
10 overall balance. I don't know how many other checking
11 accounts they had beyond that, but essentially it was
12 two if that helps.

13 Q. And how was it that you saw this? Did you go
14 in on the computer on your own and look at it or did
15 you go and ask Don, can you show me what's there, or
16 how did it come up?

17 A. Sure. I talked to Don, like I said, a dozen
18 times a day and he almost always had the checkbook up
19 on the thing and I certainly looked at it many times
20 and he had the printouts right there in the office. I
21 could look at them at any time I wanted. There wasn't
22 anything I wouldn't have looked at.

23 Q. And what was the largest balance you ever saw

1 in either of those two accounts, do you recall?

2 A. No, I really don't.

3 Q. Did you ever see more than half a million in
4 either of the accounts?

5 A. Oh, sure.

6 Q. Now, many of the loans were structured so
7 that there was prepaid interest.

8 A. Correct.

9 Q. And the idea was or the way the loan was
10 structured, I'll just use a general example. Let's
11 say the loan was for \$100,000. There might be so
12 called prepaid interest of \$30,000 for two years?

13 A. Sure.

14 Q. And the idea was that prepaid interest would
15 cover the borrower's interest payments for, in my
16 example, a two-year period.

17 A. Correct.

18 Q. So in my example, the borrower wouldn't
19 actually have to make a payment on the loan until the
20 loan had been outstanding for two years.

21 A. Correct.

22 Q. And my understanding, and you tell me if I'm
23 wrong, is there were no separate accounts to hold this

1 prepaid interest.

2 A. Correct.

3 Q. In fact, there was no reserve prepaid
4 interest at all.

5 A. There was no separate accounts for anything.
6 It was all essentially one account.

7 Q. Now, could you take a look at Exhibit 1...

8 A. Yeah.

9 Q. ...the documents that you have produced
10 pursuant to the subpoena.

11 A. Mm-hmm.

12 Q. In there, there is a document entitled
13 Discretionary Line of Credit Agreement and Promissory
14 Note in the amount of \$10 million dollars.

15 A. Yep.

16 Q. With your signature on it as borrower.

17 A. Yes.

18 Q. And after that, there's a document entitled
19 Note in Series.

20 A. Yes.

21 Q. And it is, in essence, a promissory note in
22 the amount of a little over \$20,348,000 approximately.

23 A. Yes.

1 Q. Signed by you as the borrower.

2 A. Yes.

3 MR. RAMSDELL: Can we just have one second?

4 (Discussion held off the record.)

5 Q. I'm going to ask you a broad question. Well,
6 go ahead and clarify.

7 A. One thing that it shows on here, it's dated
8 November 5th, 2009.

9 Q. And now you're referring to the...

10 A. Note in Series. I did not actually sign it
11 on November 5th, 2009.

12 Q. When did you sign it?

13 A. I honestly don't know. What happened is I
14 had signed a whole group of note in series blank and
15 Don had them in his office and would fill them out
16 from time to time. He would sit down and fill them
17 out. So is that my signature? The answer is yes.
18 Did I sign that on November 5, 2009? The answer is
19 no. I honestly don't know when I signed it. Maybe
20 three months before, maybe six months before.

21 Q. And who filled in the date?

22 A. Don.

23 Q. And you think there's more than one of these?

1 A. Yes.

2 Q. I forget exactly where you were, but you were
3 saying the notes in series were dated by Dodge.

4 A. Correct. You had asked me if there was any
5 other note in series. The answer is yes. To the best
6 of my knowledge, there is one note in series for every
7 one of these transactions.

8 Q. And you signed these in blank?

9 A. Correct.

10 Q. And then Dodge would, according to what
11 you're telling me, date the blank note in series?

12 A. Yes.

13 Q. Did he show those to you?

14 A. Sure. I saw them from time to time.

15 Q. Going back to the first of these things or at
16 least the first one we've seen here, the Discretionary
17 Line of Credit Agreement...

18 A. Mm-hmm.

19 Q. ...how did that come about? I'm just trying
20 to ask a general question as to why that's there or
21 why you signed that or what this is supposed to
22 represent. Why are you signing a ten million dollar
23 note? It's not something that people do every day.

1 It's a lot of money.

2 A. At the time, there was -- I needed some funds
3 to pay off some preferred shareholders. And I don't
4 remember the exact amount. Two to three million,
5 something in that range there.

6 Q. Preferred shareholders in what?

7 A. In Financial Resources.

8 Q. Okay.

9 A. And so we just picked a number out of the
10 sky. I mean, the ten million dollar number was just a
11 number that Don and I came up with in a conversation.

12 Q. But were funds advanced to pay two or three
13 million dollars to those preferred shareholders?

14 A. Yes.

15 Q. But are you saying that -- well, did you
16 borrow ten million dollars?

17 A. On whatever the heck date it was? No. Over
18 time? Yes.

19 Q. Well, the date of this is June of '05, right?

20 A. Yes.

21 Q. And there's attached a schedule that is
22 entitled at the top Promissory Notes in Series, Scott
23 Farah to CL, Inc. - 6-1-05, correct?

1 A. Correct.

2 Q. And that attachment, I believe, is five
3 pages.

4 A. Yes.

5 Q. And it's in reverse chronological order.

6 A. Correct.

7 Q. And the last of the dates is November 2nd,
8 '09.

9 A. Correct.

10 Q. And the first of the dates is 6-27-05.

11 A. Correct.

12 Q. When did you pay off the preferred
13 shareholders to the best of your recollection?

14 A. It would have been in '05. '05 and into '06.

15 Q. And the attachment, Promissory Notes in
16 Series, lists figures. For example, on 6-27-05,
17 \$70,000. On 6-30-05, \$200,000.

18 A. Mm-hmm.

19 Q. Did you receive those funds?

20 A. Did Financial Resources? Yes.

21 Q. And did Dodge or CL&M write Financial
22 Resources checks in these amounts?

23 A. Generally it was a wire. So were some of

1 those checks? Probably, but by and large, it was a
2 wire.

3 Q. And by and large, all of these checks were
4 transferred from FRM to CL&M?

5 A. Correct.

6 Q. But you signed this signed the Discretionary
7 Line of Credit Agreement -- you signed it personally.
8 I mean, it says "Borrower, Scott Farah," not borrower,
9 Financial Resources Mortgage.

10 A. Okay.

11 Q. So if the money was going to FRM, why did you
12 sign personally?

13 A. I honestly don't know.

14 Q. Who prepared the Discretionary Line of Credit
15 Agreement?

16 A. Don.

17 Q. And is it your testimony that each of the
18 entries on the attachment, the Promissory Notes in
19 Series list, the five pages, each of those transfers
20 was actually made from CL&M to FRM?

21 A. To the best of my knowledge, that would be
22 accurate. I would have to look and see if there were
23 any made directly to me, but I am as sure as I can be

1 that they were all made to Financial Resources.

2 Q. The date of the discretionary line of credit
3 which is in the amount of \$10 million dollars is
4 sometime in June of '05, correct?

5 A. Yes.

6 Q. And the five-page attachment with the various
7 entries in the Promissory Notes in Series attachment,
8 the first transfer suggested on that attachment is
9 6-27-05.

10 A. Okay.

11 Q. Correct?

12 A. Yes.

13 Q. Which is after the date of the Discretionary
14 Line of Credit Agreement.

15 A. Correct.

16 Q. So at the time of the Discretionary Line of
17 Credit Agreement, sometime in June of '05, had CL&M
18 advanced to FRM \$10 million dollars?

19 A. No.

20 Q. Why would you sign a note saying you owed
21 someone \$10 million dollars when in fact they had not
22 given you the money?

23 A. This is a line of credit, and so just like if

1 you have a -- keep it simple. If you get an equity
2 line on your home for a hundred thousand dollars, you
3 may only use a thousand dollars at the beginning, but
4 you still have a hundred thousand dollar line of
5 credit. It doesn't mean you owe a hundred thousand on
6 day one.

7 Q. So you were signing up here to borrow \$10
8 million dollars?

9 A. No, I was signing up here to borrow enough
10 for the preferred shareholders and we created a bigger
11 number that we never thought we would ever get to.

12 Q. And are the funds that went to the preferred
13 shareholders shown on the Promissory Notes in Series
14 list?

15 A. No. What would happen, the Promissory Notes
16 in Series are going to look just like the one that you
17 see here. They don't delineate where the funds were
18 allocated or where they went to. All it says is that
19 on such and such a date, you know, there was a
20 disbursement of X dollars. As far as knowing where
21 the monies went to after that, I just had the one -- I
22 had a couple checking accounts but one main checking
23 account for Financial Resources, so the money would go

1 into there along with commissions and every other
2 thing. All sources of money went into there.

3 Q. But my question is looking at this list of
4 disbursements or transfers, were any of these
5 transfers that are noted on the Promissory Notes in
6 Series list, were the funds from those transfers used
7 to pay these preferred shareholders or did the payment
8 of preferred shareholders occur before this list
9 began? I don't understand how this worked. Because
10 you're telling me that two to three million was paid
11 to preferred shareholders, correct?

12 A. Correct.

13 Q. And the funds that were used to pay the
14 preferred shareholders, are they in this list of
15 advances or not?

16 A. I'm not trying to be vague. I'm just trying
17 to -- let me back up one step and see if I can make it
18 a little clearer.

19 Financial Resources essentially has one
20 checking account. Into that checking account goes
21 commissions from IndyMac, goes funds that came in from
22 buying and selling mortgages, goes every other amount
23 of funds into it including these loans. They all went

1 into one checking account. Out of that one checking
2 account were preferred stockholders paid off? Yes.
3 Can I point to a particular transaction and say,
4 here's \$25,000 that came from CL&M on July 15th and
5 here's \$25,000 that went out to Bill Smith on July the
6 15th? Absolutely not. There is no direct correlation
7 between the two. Is that clearer?

8 Q. It's a little clearer, yes, but part of
9 what's confusing to me is there's no transfer in, you
10 know, of two or three million dollars at one time
11 which would suggest to me anyway maybe that the two or
12 three million dollars that was meant to pay the
13 preferred shareholders...

14 A. I was paying off the preferred shareholders
15 over a period of time and I was doing that with some
16 funds we were getting here but also other funds that I
17 was generating from income. So I was borrowing as
18 little as possible. Did some of these funds
19 ultimately go off to pay preferred shareholders? The
20 answer is yes. Is there a direct correlation? No.
21 And we paid off preferred shareholders -- I would
22 honestly have to look at the records, but I would say
23 somewhere between a six and twelve-month period. It

1 wasn't in a big clump.

2 Q. Was that sometime in '05?

3 A. I know it started in '05, but I'm also
4 reasonably certain that it went into '06, but again, I
5 don't have my records, so I just don't know.

6 Q. Do you know who the preferred shareholders
7 were?

8 A. No. I might be able to recall. I just
9 don't...

10 Q. You don't remember any of their names?

11 A. Well, yes and no. What happened is I had
12 private individuals that were lending, private
13 individuals that were preferred stockholders, and all
14 of them turned into regular private lenders, and I
15 cannot with certitude recall that this person was a
16 preferred stockholder and became a private lender or
17 this person was just a regular private lender that
18 continued to do private lending, and...

19 Q. What do you mean by a private lender?

20 A. You're using the term investor. It's the
21 same thing.

22 Q. In terms of the funds that went to the
23 preferred shareholders, are you saying that the

1 preferred shareholders who received such funds
2 typically rolled those funds over into a loan?

3 A. Absolutely. I would say that to the best of
4 my recollection, all of them did, and what would
5 happen is they would get a check back for their
6 preferred shares and then they would turn around and
7 those funds would go back to CL&M to fund a particular
8 loan.

9 Q. Now, you've suggested that two or three
10 million dollars went to preferred shareholders to
11 purchase back their preferred shares.

12 A. Mm-hmm.

13 Q. Correct?

14 A. Yes.

15 Q. But on this list of Promissory Notes in
16 Series, there are advances totalling over \$20 million.

17 A. Yes.

18 Q. So there's a gap of...

19 A. Whatever.

20 Q. ...seventeen, eighteen million dollars
21 between what was paid to the preferred shareholders
22 and the advances that are on the Promissory Notes in
23 Series lists.

1 A. Mm-hmm.

2 Q. You have to say yes or no.

3 A. Yes. I'm sorry.

4 Q. What did FRM use the other money for, the
5 seventeen or eighteen million in excess of the amount
6 that was required to pay off the preferred
7 shareholders?

8 A. Keep the business going and trying to do
9 different things to earn the funds to pay it back.
10 You know, approximately seven hundred thousand went
11 into a software company that went under and we were
12 trying to -- I was trying to get the money back, and
13 so I did some investments that crashed and burned.

14 Q. And the software company, you're saying the
15 money was invested in by FRM and its funds as opposed
16 to the investors from whom you raised money?

17 A. That's correct.

18 Q. But is it fair to say that from 2005 or from
19 June of 2005 on, FRM was running a mounting deficit?

20 A. Yes, that's an accurate statement.

21 Q. And the amount of the deficit is basically
22 reflected on this Promissory Notes in Series list?

23 A. That is correct.

1 Q. And all of this was funded by CL&M funds?

2 A. The promissory notes, yes.

3 Q. Did you ever discuss with Don Dodge as to
4 like how this deficit was ever going to be paid back
5 or made up for?

6 A. Often.

7 Q. And what was the substance of the discussions
8 that you had with Don Dodge on that subject?

9 A. Different ways of trying to get the business
10 to expand or trying to get the funds back by doing
11 something that would generate more income.

12 Q. Was CL&M generating sufficient profits to
13 fund these loans?

14 A. No.

15 Q. Well, how could CL&M afford to advance FRM
16 \$20 million dollars over four to five years?

17 A. It was funds that wasn't theirs.

18 Q. Whose funds were they?

19 A. They were the lenders' funds.

20 Q. So what was happening, in essence, was
21 lenders' funds would come in and be put into one or
22 two accounts at CL&M and then much of that money went
23 to FRM?

1 A. "Much" is not an accurate term, but yes,
2 because the amount of money raised was over a hundred
3 million dollars and...

4 Q. And the deficit is around twenty million?

5 A. Yes, sir.

6 Q. But CL&M was operating with a mounting
7 deficit because of all the funds that were being
8 advanced to FRM from about 2005 on.

9 A. Correct.

10 Q. Did these deficits begin before 2005?

11 A. With CL&M?

12 Q. Let's go one at a time. With FRM?

13 A. Yes.

14 Q. When did the FRM deficits begin?

15 A. A long time ago. I couldn't actually put a
16 date on it.

17 Q. A long time before 2005?

18 A. Yes.

19 Q. Years before 2005?

20 A. Yes.

21 Q. How did FRM fund those deficits or cover the
22 deficits prior to these CL&M advances that you see on
23 the Promissory Notes in Series list?

1 A. Financial Resources was servicing
2 construction loans prior to CL&M.

3 Q. But how did FRM fund or cover deficits before
4 the series of advances made by CL&M that we see on the
5 Promissory Notes in Series list?

6 A. If you take CL&M out of the picture, then
7 essentially we were doing the same thing on a much
8 smaller scale where somebody was borrowing -- doing a
9 hundred thousand dollar construction loan and
10 Financial Resources would use whatever was not being
11 used for the construction.

12 Q. What do you mean whatever was not being used
13 for the construction?

14 A. Whatever wasn't needing to be disbursed at
15 that particular time.

16 Q. So let me give you a concrete example of what
17 I think you're talking about, a hypothetical example,
18 and see if you agree with that idea. So we're talking
19 pre 2005. If FRM was making a \$100,000 loan, it would
20 have raised \$100,000 from investors?

21 A. Yes.

22 Q. And that was a construction loan?

23 A. Yes.

1 Q. And when the loan was documented, there were
2 fees?

3 A. Mm-hmm.

4 Q. Maybe \$5,000 or \$10,000?

5 A. Okay.

6 Q. Is that typical?

7 A. Sure. Yeah.

8 Q. There was prepaid interest of \$15,000 to
9 \$30,000 depending on the period of prepaid interest?

10 A. Sure.

11 Q. And the remainder of the funds in that
12 example, about \$70,000, didn't need to be advanced
13 right away on a construction loan?

14 A. Correct.

15 Q. So on a so-called hundred thousand dollar
16 loan, FRM might pay out in the short term, the first
17 six months, \$20,000 or \$30,000?

18 A. It would be a bigger number than that, but
19 conceptually, yes. Maybe \$50,000.

20 Q. And there's \$50,000 in excess funds that
21 haven't been advanced over the first six months or
22 year of the loan?

23 A. Accurate.

1 Q. And it was those funds that were being used
2 to cover the FRM deficits from a period well before
3 2005?

4 A. Correct.

5 Q. And that's how things continued even as CL&M
6 got involved and was funding the FRM deficits?

7 A. Correct.

8 Q. What was your salary during this whole period
9 of time?

10 A. Approximately \$100,000. I did W-2's.

11 Q. Did you take out money personally in excess
12 of your salary?

13 A. Yes. The company paid for my car. I charged
14 American Express. I used to charge all my company
15 bills, but I also charged my personal bills and would
16 just pay the American Express bill out of the thing.
17 If I had to throw a dart at it, I would say that the
18 total amount I was taking out was probably in the
19 \$125,000 to \$150,000 range including the salary.

20 Q. But nothing in excess of that?

21 A. I don't think there was ever a year it would
22 have broken \$200,000. Again, I would have to go back
23 and look through my records, but it wasn't like

1 millions of dollars or anything like that.

2 Q. What about Dodge? Do you know what Dodge's
3 salary was?

4 A. Approximately \$100,000.

5 Q. And did he do the same thing of charging or
6 paying some personal charges by the company or do you
7 know?

8 A. I have no knowledge of that. To the best of
9 my knowledge, no, but I don't know.

10 Q. Now, because of the prepaid interest, as time
11 went on, because of the prepaid interest on these
12 various loans, CL&M had a sizable monthly mortgage
13 obligation or -- excuse me. Let me start again.

14 Because of the prepaid interest on the loans
15 that were organized, CL&M had a sizable monthly
16 interest obligation to the various investors.

17 A. Correct.

18 Q. For example, isn't it fair to say that for
19 the interest payment for the month of November of
20 2009, checks had been written just before the company
21 closed sufficient to cover what that interest
22 obligation was supposed to be?

23 A. I believe that's correct.

1 Q. But there was no money to cover those
2 interest payments in November of 2009?

3 A. Correct.

4 Q. And wasn't the amount of the checks that were
5 written to go out to investors in the neighborhood of
6 \$680,000?

7 A. That sounds correct.

8 Q. And was that the approximate size of the
9 monthly interest obligation that CL&M had because of
10 the prepaid interest?

11 A. That is correct.

12 Q. And going back to 2005 -- well, let me ask it
13 differently.

14 If we establish that the approximate amount
15 of the monthly obligation for prepaid interest in
16 November '09 was \$680,000 ballpark, had that been a
17 similar monthly obligation for some period of time or
18 had that obligation been growing over time?

19 A. Oh, absolutely it had been growing over time.

20 Q. If you went a year before, say November of
21 2008, do you have an estimate as to what the monthly
22 interest obligation would have been at that point?

23 A. No, I don't. It would have been less.

1 Q. Do you know how much less?

2 A. No.

3 Q. Half?

4 A. I just don't know. I mean, I could tell you
5 at the beginning it was a very small number because it
6 was only a few dollars.

7 Q. At the beginning of what?

8 A. 2005.

9 Q. What do you think it was in 2005?

10 A. Probably \$10,000 or \$15,000. You're talking
11 June 2005. But for me to put a -- I can give you both
12 ends of it. I just couldn't possibly tell you where
13 it went, you know, a year before or two years before.

14 Q. And the two ends that you've given me are in
15 2005 your estimate of \$10,000 or \$15,000 and at the
16 other end, November of 2009, approximately \$680,000?

17 A. Correct. Now, let me clarify and maybe you
18 can tell me. When exactly did CL&M start? Was it
19 June 2005? Do you know?

20 Q. I don't know.

21 A. Okay. When I'm saying ten or fifteen
22 thousand, I'm saying when CL&M started, so if it was
23 earlier than 2005, I don't want to give you a number

1 that's inaccurate.

2 Q. And these obligations grew between the two
3 poles that you've given me?

4 A. Correct.

5 Q. But you're not sure exactly on what date the
6 monthly obligation was.

7 A. Correct.

8 Q. Now, you said you think that FRM raised a
9 hundred million dollars, correct?

10 A. I know that we had done a hundred million
11 dollars worth of loans. I am unsure if that included
12 loans that had been paid off. It's just a number that
13 sticks in my head. I would have to look at my
14 records.

15 Q. Okay, but is it fair to say that because of
16 the mounting deficit, because of the monthly interest
17 obligation, because of the request for payments which
18 were coming in on construction loans, that when you
19 raised money from an investor, that investor's money
20 was used to pay the monthly interest obligation, the
21 obligation on previous loans?

22 A. If you include within the term obligation
23 construction monies and stuff like that, yes. Because

1 it wasn't just for the interest. It would have been
2 for, you know, whatever, for the shingles on this one
3 or the plumbing on that one.

4 Q. So let's say in January -- well, let's say in
5 November of 2008, a year before the closing, CL&M had
6 a very large deficit.

7 A. Okay.

8 Q. Is that correct?

9 A. Yes. If you're saying that this is CL&M
10 deficit, yes, absolutely.

11 Q. You're pointing to the Promissory Notes in
12 Series?

13 A. Right. If you're saying that's the deficit
14 of CL&M, right, you're correct.

15 Q. Is that the deficit of CL&M in a ballpark
16 figure?

17 A. Yes.

18 Q. So in November of 2008, the deficit that CL&M
19 had was over \$18 million, fair to say?

20 A. I don't know. I would have to sit down and
21 do the math.

22 Q. Well, it's whatever is shown on the
23 Promissory Notes in Series list.

1 A. Correct.

2 Q. It's many millions of dollars in November of
3 2008.

4 A. Correct.

5 Q. And CL&M in November of '08 had a monthly
6 interest obligation.

7 A. Correct.

8 Q. It had an obligation to pay funding requests
9 made pursuant to various construction loans that had
10 been made.

11 A. Correct.

12 Q. But had no reserve funds to cover those
13 interest obligations.

14 A. I can't agree with that as a broad statement
15 because it just...

16 Q. Well, you were \$18 million in deficit.

17 A. The way you phrase it, it just didn't make
18 sense. Was CL&M in the hole? Absolutely. Did it
19 have no money? No, that isn't true. It had money.
20 Can we track that this dollar was here and this dollar
21 was here? No. It's one account. All the monies go
22 in and monies go out, so there isn't anything to tie
23 any specific dollars to any specific anything.

1 Q. Right, but if we look at this Promissory
2 Notes in Series list, we could determine what the
3 deficit was?

4 A. Yes.

5 Q. And by November of 2004, as an example, it
6 was many millions of dollars...

7 MR. RAMSDELL: You said '04.

8 Q. I'm sorry. By November of 2008.

9 A. I'm sorry. I thought I heard you say '08.

10 Q. In November of 2008, the deficit was many
11 millions of dollars.

12 A. Correct.

13 Q. So by November 2008, funds were coming in
14 from investors.

15 A. Yes.

16 Q. And those fund were used to pay the interest
17 obligation for previous loans, correct?

18 A. Some of them would have been. Some of them
19 would have been paying for the loan -- let me clarify.
20 There were purchase loans that had no construction
21 component to it and those monies would have passed
22 straight through.

23 Q. To who?

1 A. To the borrowers. There were loans that did
2 not have an interest reserve. There were loans where
3 the lender held back the interest and just did what
4 was called net funding. So not every loan had a
5 construction component to it. Not every loan had an
6 interest reserve component to it. There were many
7 loans that were fully funded. As an example, one of
8 the lenders is named [REDACTED] [REDACTED]. He did all of
9 his own funds. In other words, he would net fund and
10 it would be like to purchase a piece of land and if
11 the purchase on the land was \$100,000 and the interest
12 reserve was \$20,000, he would send \$80,000 to CL&M.
13 CL&M would disburse that \$80,000 at the closing table
14 and they would have no funds of [REDACTED] [REDACTED] on
15 that particular loan in their reserve account. So did
16 some of the loans have interest reserve that CL&M
17 used? Yes. Did some of the loans have construction
18 money that CL&M used? Yes. Did all of them? No?

19 Q. Well, in the example you just gave for [REDACTED]
20 [REDACTED], as I understand what you're telling me there,
21 [REDACTED] [REDACTED] is an investor or a lender.

22 A. A lender.

23 Q. And he was intending to fund a loan in the

1 amount of \$100,000.

2 A. For, let's say, the purchase of a gas
3 station.

4 Q. And there was going to be on this example
5 \$20,000 of prepaid interest?

6 A. Correct.

7 Q. So what [REDACTED] [REDACTED] did was send \$80,000?

8 A. Correct.

9 Q. And, in essence, himself reserved the prepaid
10 interest?

11 A. Correct, and in our example here, the \$80,000
12 would go to the closing table and pay the seller of
13 the gas station.

14 Q. Can you think of any investor other than
15 [REDACTED] [REDACTED] who did as you've suggested where the
16 investor himself or herself reserved the prepaid
17 interest?

18 A. There were a number of them that would do
19 that. In addition, there were a number of times where
20 there was no prepaid interest nor was there a
21 construction component. Off the top of my head, I
22 cannot remember any additional names, but I do know
23 that I was dealing with literally hundreds of people.

1 Q. Well, putting aside the issue of loans, I
2 mean, we can easily determine which loans were
3 construction loans by looking at the loan documents,
4 right?

5 A. Agreed.

6 Q. And we can easily determine what loans had
7 prepaid interest or not simply by looking at the loan
8 documents.

9 A. Correct.

10 Q. So let's focus on the [REDACTED] [REDACTED] example
11 where the lender or the investor reserves for himself
12 the prepaid interest.

13 A. Okay.

14 Q. Other than [REDACTED] [REDACTED], can you think of
15 any other individual who did that?

16 A. I cannot, but there were some. I know there
17 were others. I just can't think of any off the top of
18 my head. I'm sorry.

19 MR. DONCHESS: Can we just go off the record
20 for a minute?

21 (Discussion held off the record.)

22 Q. Okay. So looking at the Promissory Notes in
23 Series list, I was going to ask you to -- I could do

1 it and suggest the answer to you, but I think it's
2 more quicker and more efficient for you to do the
3 calculation. What were the advances in the last year
4 before the closing of the business? The business
5 closed in November 2009, correct?

6 A. Yes, that's correct.

7 Q. Do you remember the exact day?

8 A. The 6th? The 7th? It was in that range say.

9 Q. Let's say the 7th.

10 A. So you want just the last year?

11 Q. Yeah. How many advances were made in the
12 year before the closing which occurred on
13 approximately November 7th, 2009.

14 A. Okay. If you can accept my math. I may have
15 a typo or two here. I'll do a quick number. (Using
16 calculator.) Oh, I'm sorry. I wrote on your exhibit.

17 Q. That's all right.

18 A. When did you want me to go back to? A year?

19 Q. Let's go back to November 6th or 7th, 2008.

20 Let's go back a year to November 6th or 7th.

21 A. That's fine.

22 Q. So I guess my first question is based on your
23 -- well, let's go back further.

1 What you're doing is you're using the
2 calculator to make an approximate calculation of what
3 the Promissory Notes in Series list indicates the
4 amount of the advances for the last year of business
5 were.

6 A. Correct.

7 Q. And what do you come up with in terms of the
8 approximate amount of advances which were made from
9 CL&M to FRM?

10 A. \$3,400,000 approximately.

11 Q. And the Notes in Series list indicates that
12 the total deficit as of the close of business in
13 November of 2009 was about \$20,300,000, correct?

14 A. Yes.

15 Q. So the approximate deficit of CL&M in
16 November of 2008 a year before the business closed was
17 about \$17 million?

18 A. Correct.

19 Q. So in November of 2008, CL&M had outstanding
20 obligations in various forms including prepaid
21 interest obligations to fund construction loans of
22 about \$17 million that it did not have the funds to
23 meet?

1 A. Correct.

2 Q. And you can't tell me now the amount of the
3 CL&M monthly obligation, the amount that would have to
4 be paid out in any one month in November of 2008?

5 A. Not without the records.

6 Q. Because you're not exactly sure of the
7 interest obligation?

8 A. Correct.

9 Q. And you don't know the status of each
10 construction loan and the requests that were being
11 made, the amount of requests in any particular month?

12 A. Correct.

13 Q. And specifically you don't know those figures
14 for November of 2009?

15 A. No, sir.

16 Q. Excuse me. November of 2008.

17 A. Either one.

18 Q. Either one. But isn't it fair to say that as
19 investors' funds were raised in the period of November
20 2008, much of that money had to be used to meet the
21 unfunded obligations, the interest obligations that
22 had to be met on a monthly basis and the payments that
23 had to be made on the construction loans?

1 A. If you change the word from "much" to "some,"
2 I will agree with you.

3 Q. But you have no idea of what that proportion
4 is?

5 A. I don't, so I'm not going to say it was much
6 or some or little. I don't know what the proportion
7 was.

8 Q. Okay, and you don't know how much was raised,
9 as an example, in November of 2008 as you sit here
10 today?

11 A. No.

12 Q. Do you have any sense of how much was raised
13 in that last year of business?

14 A. I really don't.

15 Q. Any estimate at all?

16 A. No.

17 Q. More than \$5 million dollars?

18 A. I would certainly think more than \$5 million
19 dollars, yes.

20 Q. More than \$10 million dollars?

21 A. Probably. Let me just think for a second.

22 Q. But if you don't know, you don't know.

23 A. I just don't know. You're trying to pin me

1 down to something. I'm not trying to be vague. I
2 just don't know.

3 Q. Now, there were loans that over time were
4 either -- I don't know the time you want to use --
5 paid off or closed out?

6 A. Yes.

7 Q. And that would be paid off by a borrower?

8 A. Correct.

9 Q. When a borrower typically paid off a loan,
10 the funds would come to CL&M?

11 A. Correct.

12 Q. Generally speaking, if there is a general
13 rule, and tell me if there's not, did those funds get
14 returned to the lender or were they simply rolled over
15 into a new loan?

16 A. It all depended on the lender.

17 Q. Do you have any sense of how many loans were
18 paid off?

19 A. I don't have a sense. A number of loans were
20 paid off. A lot of loans were paid off.

21 Q. More than a hundred? And I have no idea, so
22 I just throw that out as a random number.

23 A. I'm not trying to be...

1 Q. I know.

2 A. I'm just trying to think it through. If you
3 look at the time from when CL&M started taking things
4 over in '05 until when we closed down in '09, I am
5 certain it would have been over a hundred. Would it
6 have been a thousand? No, that would have been too
7 big a number. So I'm trying to give you a low and a
8 high.

9 Q. Right.

10 A. Those loans, was there a general rule as far
11 as what happened to those funds? No, there really
12 wasn't. When a loan was paid off, I would make a call
13 to the lender and say, what do you want to do, do you
14 want to do another loan, you have the flyers in front
15 of you of what we've got available right now, or would
16 you like the money back. Sometimes people took the
17 money back. Sometimes they went to a different loan.
18 Sometimes they would add money. Sometimes they would
19 take a piece of the money back. So there was no rhyme
20 nor reason to it as far as what people did or didn't
21 do.

22 Q. So sometimes the lender asked for the money
23 back?

1 A. Sure.

2 Q. Sometimes they rolled it over?

3 A. Right.

4 Q. Sometimes they did some of each?

5 A. Right.

6 Q. Depending on the individual?

7 A. Correct.

8 Q. Let me ask you about these construction
9 loans, specifically the ones with prepaid interest.

10 A. Okay.

11 Q. Let's say the construction loan is \$100,000
12 and there's prepaid interest.

13 A. Okay. Just to back up to clarify something,
14 as a general rule, it was one year's worth of prepaid
15 interest and most of the stuff we wrote was around
16 14 percent, so you know, if you're trying to throw a
17 dart at it, you would have \$100,000 in prepaid
18 interest.

19 Q. Sometimes it was two years?

20 A. I said as a general rule.

21 Q. Sometimes it was 18 months, wasn't it?

22 A. Yeah.

23 Q. Do you think the most common one was one

1 year?

2 A. Absolutely.

3 Q. Well, let's say it was \$100,000. There's
4 prepaid interest for maybe a year, maybe more.

5 A. Yep.

6 Q. And as you've suggested, the borrower is not
7 getting, you know, the full amount of the loan because
8 it's a construction loan right up front.

9 A. Correct.

10 Q. It's being gradually funded over a period of
11 time.

12 A. Correct.

13 Q. Maybe a year, maybe longer.

14 A. Okay. Generally less than a year, but okay.

15 Q. But the borrower is paying interest on the
16 entire amount.

17 A. Correct.

18 Q. From the first day.

19 A. Absolutely.

20 Q. And so even though maybe six months into the
21 loan the borrower is only, on the \$100,000 example,
22 actually drawing down \$40,000 or \$50,000, they're
23 paying 14 percent interest on \$100,000.

1 A. Correct.

2 Q. Why do you think borrowers would sign up to
3 do that?

4 A. Because this is the type of lending
5 environment we're in. It's called a hard money loan.
6 You've always had hard money loans. I've been in the
7 business for twenty years and there are always a
8 certain group of borrowers that do not meet
9 conventional bank financing and have to pay a premium
10 for borrowing. With the collapse of the credit market
11 right now and in the last few years, the percentage of
12 bankable borrowers versus non bankable borrowers has
13 literally reversed. Throwing a dart at it, borrowers,
14 you know, back when the banks were lending normally,
15 maybe 70 percent of people were bankable and
16 30 percent were not. I would say if you looked at it
17 today, it would be the exact opposite. Thirty percent
18 might be bankable and 70 percent would not. The other
19 thing that you look at from a borrower's standpoint is
20 the time period. So for example, if you were bankable
21 and you could borrow at 7 percent on \$100,000, you're
22 going to pay \$7,000 for a year. If you're a
23 contractor trying to build a house and you say, okay,

1 I have to pay 14 percent, so that's \$14,000. In
2 absolute dollars, it's \$7,000 more. So a \$100,000
3 house, if I have to pay another \$7,000 as a contractor
4 in order to be able to have the work, in order to be
5 able to keep my guys going, in order to be able to put
6 groceries on the table, then I'll take a \$7,000
7 additional hit in order to keep the thing going. It
8 isn't like I'm signing up a 30-year note for
9 30 percent.

10 Q. Now, when an investor sent money in to CL&M,
11 sometimes there was a gap between the day when CL&M
12 got the money and when the loan was documented and
13 funded.

14 A. Correct.

15 Q. And that gap could be a few days or a month
16 or two months.

17 A. Correct.

18 Q. But the investor received the interest rate.

19 A. Correct.

20 Q. Maybe 14 percent.

21 A. Correct.

22 Q. From the day the money came in.

23 A. Correct.

1 Q. As opposed to that interest beginning on the
2 day when the loan was funded.

3 A. Correct.

4 Q. Who paid the interest to that investor during
5 the period of time between the date when the funds
6 came in and the date when the loan was documented and
7 at least initially funded?

8 A. CL&M, Financial Resources or some combination
9 thereof.

10 Q. And where did they get the money to pay that
11 interest?

12 A. From the other funds.

13 Q. From the other investors?

14 A. Yes.

15 Q. When a loan was closed out or paid off and
16 when an investor decided to roll over the funds into a
17 new loan, sometimes there was a gap between the date
18 when the loan was paid off and the date when the new
19 loan was documented and funded?

20 A. Correct.

21 Q. And that gap could be how long? Sometimes
22 months?

23 A. Sometimes months. Sometimes weeks.

1 Sometimes days.

2 Q. And in that situation, the rollover
3 situation, did CL&M pay interest to the investor while
4 the investor was waiting for the loan to be rolled
5 over?

6 A. As a general statement, yes.

7 Q. And at what rate would that interest be paid
8 during the waiting period after the payoff but before
9 the rollover?

10 A. Again, I'm being broad here because, you
11 know, you've got hundreds of loans.

12 Q. Yes. I'm asking for a broad general
13 statement.

14 A. A broad general statement, that person, the
15 lender would have already picked out the loan and so
16 it would again be CL&M, Financial Resources or some
17 combination thereof that would pay that interest carry
18 for those couple of months or several months. Once in
19 awhile we collected up front from the borrowers.

20 Q. But generally speaking, CL&M paid that
21 interest during the gap period?

22 A. Generally speaking, yes.

23 Q. And those funds came from the funds of other

1 investors?

2 A. Generally speaking, yes.

3 Q. Looking at some of the documents you
4 produced, there's a tax record for 34 Hatch Corner
5 Road. Is that your personal residence?

6 A. I think it's supposed to be 35, but yes.

7 Q. Or 35.

8 A. Yes, 35 is the personal residence.

9 Q. And the Schedule B that's right behind that
10 or Schedule A and then a Schedule B, what are those?

11 A. Oh, that's from the filings that I had to
12 complete for the bankruptcy. I had to get them in by
13 the 16th and also the completed ones.

14 Q. Looking at Exhibit 2 which is another group
15 of documents that you or your lawyer produced today,
16 there's a guarantee at the top where somebody
17 guaranties a loan to [REDACTED] [REDACTED] and [REDACTED] [REDACTED].

18 A. Yes.

19 Q. So you personally guaranteed that?

20 A. Correct.

21 Q. Did that loan ever get paid off?

22 A. I don't know because I had a -- over the
23 years, I did a number of loans with them and I'm

1 unsure whether this is one that was still outstanding
2 or has been paid off.

3 Q. Did you pay off loans to [REDACTED] [REDACTED] and
4 [REDACTED] [REDACTED]?

5 A. Yes.

6 Q. And they're from Greece?

7 A. Yes.

8 Q. Do they also live in the U.S.?

9 A. I don't know.

10 Q. Do you know them personally?

11 A. Maybe. I don't mean to be vague here. What
12 I have is I have a couple of clients that are Greek
13 and they have these big extended families and I've met
14 some of them and I haven't met some of them and some
15 of them had lent me money that was their cousin's over
16 in Greece. I just don't know.

17 Q. Further on in that same exhibit, there's a
18 guarantee where you guaranteed a loan to [REDACTED] and
19 [REDACTED] [REDACTED] with an address in Manchester, New
20 Hampshire.

21 A. Yes.

22 Q. Did you ever pay off any loans to those two
23 individuals?

1 A. Yes.

2 Q. How many loans do you think?

3 A. I don't know. I've been doing business with
4 them for maybe ten years.

5 Q. Within this same page of documents, there's
6 documents entitled Policy Schedule. Does that have to
7 do with a life insurance policy or what is that?

8 A. Yes, that was a life insurance policy that
9 was on me for, I believe, \$10 million dollars.

10 Q. Does that still exist?

11 A. I believe it's expired.

12 Q. And was that a term policy?

13 A. It was a term policy. Excuse me. It was
14 \$15 million.

15 Q. And as far as you know, did Great Land
16 Project Development ever have its own funds?

17 A. I honestly don't know.

18 Q. Are you aware of any project where Great Land
19 Project Development funded loans or funded
20 construction or anything like that?

21 A. I am not aware of any.

22 Q. Did Mr. [REDACTED] have loans that were paid
23 off?

1 A. Which Mr. [REDACTED]?

2 Q. [REDACTED].

3 A. We've done so many loans with him over the
4 years. Yes, in fact I'm positive there were some that
5 were paid off.

6 Q. Were those rolled over or did he receive
7 cash?

8 A. I honestly don't recall.

9 Q. And did Mr. [REDACTED]?

10 A. Yeah. [REDACTED]...

11 Q. I've forgotten the pronunciation. Is it
12 "[REDACTED]"?

13 A. [REDACTED]."

14 Q. Mr. [REDACTED], did you ever pay any of his loans
15 off?

16 A. Again, he did a whole bunch with us, so I
17 will say -- I don't know. I just don't recall. I'm
18 not going to guess.

19 MR. DONCHESS: That's fine. Okay. I don't
20 think I have any further questions right now. As we
21 discussed at the beginning of the deposition, there's
22 no point in concluding it. We reserve the right to
23 either subpoena Mr. Farah or request that he come

1 back. You know, there's a lot of records that we
2 haven't reviewed and maybe we'll want to ask him other
3 questions.

4 MR. RAMSDELL: That's fine.

5 MR. DONCHESS: So with those caveats, I'm
6 concluded for today.

7 (Interview suspended at 12:39 p.m.)

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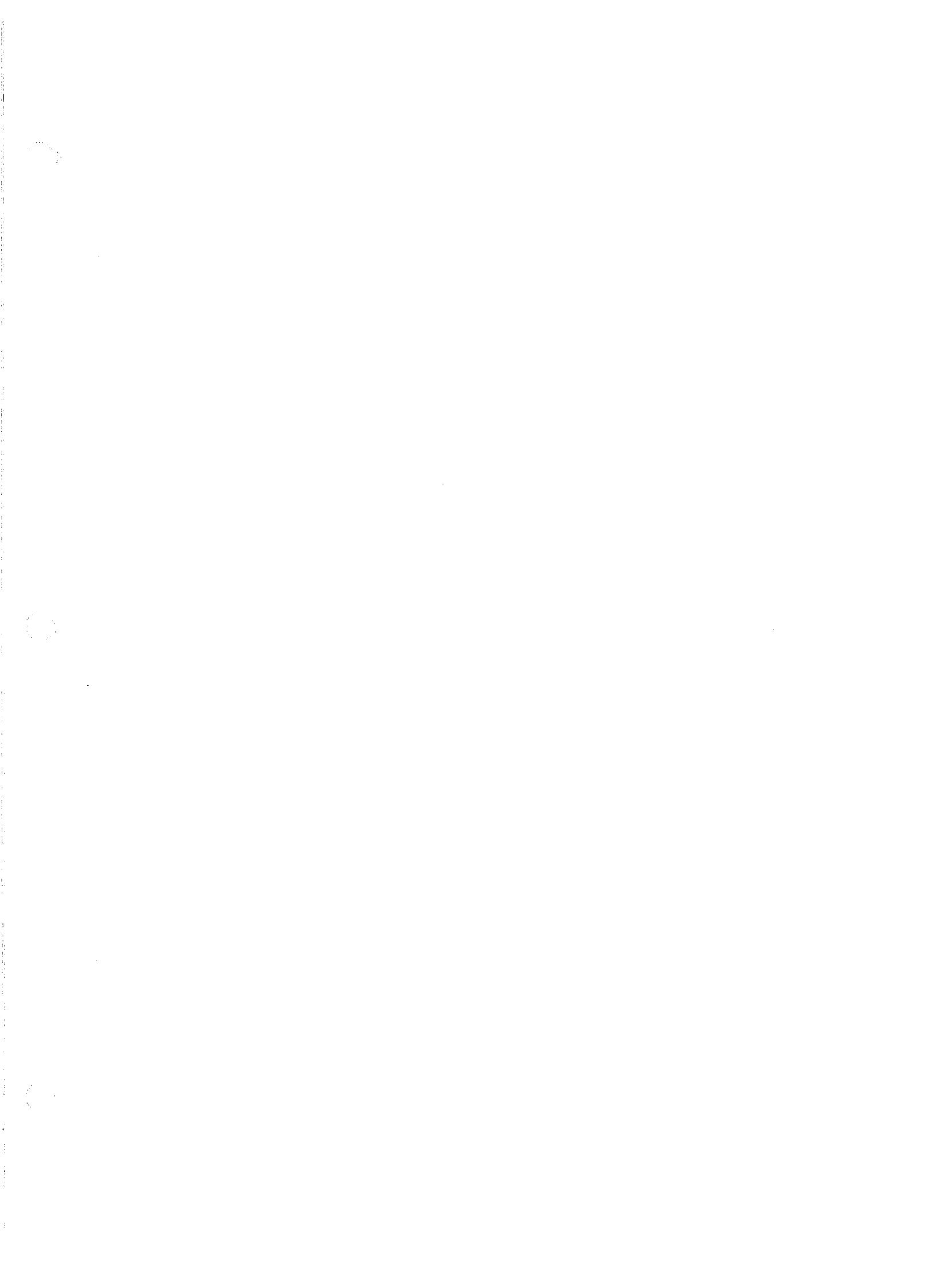
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C E R T I F I C A T E

I, Laurie A. Gelinas, RPR, a Certified Shorthand Reporter and Notary Public of the State of New Hampshire, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes of the interview of Scott D. Farah, who was first duly sworn, taken at the place and on the date hereinbefore set forth.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.

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\$	12:39 - 104:7 14 - 94:16, 95:23, 97:1, 97:20 1404 - 4:7 15 - 9:19, 14:20, 19:11, 33:22 150 - 35:2 15th - 69:4, 69:6 16th - 100:13 18 - 1:15, 94:21 1985 - 4:12, 5:12 1989 - 5:20, 6:9	7 - 96:21 70 - 96:15, 96:18 7th - 88:8, 88:9, 88:13, 88:19, 88:20	Ag - 46:4 agent - 5:15, 5:20, 30:22, 30:23 ago - 6:23, 9:1, 16:11, 17:2, 22:6, 22:7, 26:8, 26:21, 33:18, 34:3, 35:9, 36:7, 37:14, 38:7, 44:3, 45:9, 45:10, 74:15 agree - 28:22, 42:19, 46:14, 57:1, 57:2, 75:18, 83:14, 91:2 Agreed - 87:5 agreed - 15:22, 19:10, 19:14, 19:19, 38:16, 39:23 Agreement - 60:13, 62:17, 65:7, 65:15, 66:14, 66:17 agreement - 23:3 ahead - 61:6 allocated - 67:18 almost - 58:18 American - 4:14, 4:19, 77:14, 77:16 Amherst - 3:8 amount - 31:8, 36:16, 42:4, 42:20, 60:14, 60:22, 63:4, 66:3, 68:22, 72:5, 72:21, 74:2, 77:18, 79:4, 79:14, 86:1, 89:4, 89:8, 90:2, 90:3, 90:11, 95:7, 95:16 amounts - 21:15, 42:5, 64:22 answer - 61:17, 61:18, 62:5, 69:20, 88:1 antique - 15:21 antique-type - 15:21 anyway - 69:11 apartment - 44:2 apartments - 44:11 Appearances - 3:1 appended - 2:18 Apple - 43:19, 43:21, 43:23, 44:1, 44:11 application - 8:19 applications - 7:23 Apply - 105:18 Appraisals - 54:20 appraisals - 54:21, 55:15 appropriate - 7:5, 52:12 approval - 7:10, 31:22, 32:15, 36:12, 46:5 approvals - 20:7, 44:13, 44:14, 44:16 approved - 7:9, 36:14, 44:2 approximate - 79:8, 79:14, 89:2, 89:8, 89:15 arranged - 46:12, 46:17 art - 15:18 aside - 87:1 assessment - 16:14 asset - 41:23, 42:11 assets - 15:1, 15:14, 19:3, 19:4, 36:20, 37:1, 42:8 assignments - 29:14, 29:21, 31:11, 31:13 Assistance - 6:13 assisted - 44:5, 44:6 associated - 53:1 Associates - 5:16, 5:19, 5:23, 8:15 assumed - 8:16 Assuming - 52:2 Athena - 100:17, 101:4	athletes - 21:4 attached - 63:21 attachment - 64:2, 64:15, 65:18, 66:6, 66:7, 66:8 Attachments - 2:14 Attorney - 12:15, 31:22, 43:7, 43:17 attorney - 11:8, 11:17, 22:7, 35:22, 36:1, 45:16, 105:11, 105:14 attorney's - 12:19, 12:22 authority - 13:18, 13:20, 14:6, 14:12, 54:1 automatically - 49:5 available - 93:15 aware - 19:16, 21:6, 31:16, 31:19, 102:18, 102:21 awhile - 99:19			
\$1,000 - 52:21 \$10 - 60:14, 66:3, 66:18, 66:21, 67:7, 91:20, 102:9 \$10,000 - 76:4, 80:10, 80:15 \$100,000 - 47:15, 59:11, 75:19, 75:20, 77:10, 78:4, 85:11, 86:1, 94:11, 94:17, 95:3, 95:21, 95:23, 96:21, 97:2 \$125,000 - 42:15, 77:19 \$14,000 - 97:1 \$15 - 102:14 \$15,000 - 76:8, 80:10, 80:15 \$150,000 - 77:19 \$17 - 89:17, 89:22 \$18 - 82:19, 83:16 \$20 - 71:16, 73:16 \$20,000 - 76:17, 85:12, 86:5 \$20,300,000 - 89:13 \$20,348,000 - 60:22 \$200,000 - 64:17, 77:22 \$25,000 - 69:4, 69:5 \$250,000 - 17:10 \$3,400,000 - 89:10 \$30,000 - 59:12, 76:9, 76:17 \$300,000 - 38:14, 47:14 \$375,000 - 27:20 \$385,000 - 17:13 \$40,000 - 95:22 \$49,000 - 15:11 \$5,000 - 12:11, 13:4, 13:10, 76:4 \$50,000 - 76:19, 76:20, 95:22 \$680,000 - 79:6, 79:16, 80:16 \$7,000 - 96:22, 97:2, 97:3, 97:6 \$70,000 - 64:17, 76:12 \$80,000 - 85:12, 85:13, 86:7, 86:11 \$9,000 - 38:12, 52:20 \$90,000 - 38:12	2 2 - 2:14, 12:3, 12:4, 14:16, 100:14 20 - 41:22 2004 - 8:11, 84:5 2005 - 72:18, 72:19, 74:8, 74:10, 74:17, 74:19, 75:19, 77:3, 79:12, 80:8, 80:9, 80:11, 80:15, 80:19, 80:23 2006 - 46:17 2008 - 79:21, 82:5, 82:18, 83:3, 84:8, 84:10, 84:13, 88:19, 89:16, 89:19, 90:4, 90:16, 90:20, 91:9 2009 - 46:17, 61:8, 61:11, 61:18, 78:20, 79:2, 80:16, 88:5, 88:13, 89:13, 90:14 2010 - 1:15 204 - 3:8 25 - 41:22 2nd - 64:7	8 8-27-63 - 4:9 80's - 16:5	3 30 - 96:16, 97:9 30-year - 25:6, 25:14, 97:8 33 - 47:16 34 - 100:4 35 - 16:9, 100:6, 100:7, 100:8 3550 - 3:4	9 90's - 16:6 95 - 12:9 99 - 49:17	4 4 - 2:7 401k - 15:11 47 - 35:14	A able - 12:20, 14:15, 37:19, 70:8, 97:4, 97:5 absolute - 97:2 absolutely - 79:19, 82:10 Absolutely - 10:3, 33:3, 54:3, 69:6, 71:3, 83:18, 95:2, 95:19 accept - 88:14 access - 57:9 According - 17:12 according - 17:13, 39:16, 62:10 account - 12:11, 12:12, 13:4, 13:5, 13:7, 13:8, 13:11, 13:17, 14:7, 15:16, 17:18, 30:13, 56:23, 57:19, 57:23, 58:2, 58:7, 60:6, 67:23, 68:20, 69:1, 69:2, 83:21, 85:15 accountant - 17:22, 18:1 accounts - 12:6, 12:8, 13:2, 13:19, 13:22, 14:4, 14:9, 14:13, 49:21, 54:9, 57:21, 57:23, 58:11, 59:1, 59:4, 59:23, 60:5, 67:22, 73:22 accurate - 29:23, 39:2, 42:6, 50:21, 65:22, 72:20, 74:1, 105:6 Accurate - 76:23 acquire - 16:3, 16:8 acquired - 33:17, 40:20 acres - 16:9, 16:10 action - 105:12, 105:16 activity - 13:17 actual - 12:21, 52:14 add - 93:18 addition - 35:8, 86:19 additional - 21:12, 36:14, 86:22, 97:7 address - 4:5, 4:6, 101:19 Addressing - 12:15 adjacent - 15:4, 34:11, 35:16, 36:3, 36:6 advance - 31:9, 50:5, 73:15 advanced - 23:19, 30:6, 30:9, 30:14, 30:18, 42:3, 42:8, 42:16, 42:20, 50:11, 50:13, 63:12, 66:18, 74:8, 76:12, 76:21 advances - 68:15, 71:16, 71:22, 74:22, 75:4, 88:3, 88:11, 89:4, 89:8 advancing - 30:20 afford - 73:15	B background - 4:10 balance - 14:18, 34:6, 58:10, 58:23 Baldi - 25:2, 25:20, 32:8 ballpark - 16:4, 17:1, 32:21, 79:16, 82:15 Bank - 7:20, 13:6, 13:22, 17:19, 34:2, 34:22 bank - 12:6, 12:8, 12:11, 12:14, 12:21, 13:2, 13:10, 14:4, 14:9, 17:7, 17:18, 34:15, 34:21, 54:9, 56:23, 57:9, 96:9 bankable - 96:12, 96:15, 96:18, 96:20 Bankruptcy - 3:6, 19:11, 19:14, 19:20, 38:17 bankruptcy - 15:23, 100:12 Bankruptcy - 1:1 banks - 96:14 based - 88:22 basis - 90:22 batch - 55:11 Bean - 37:7 Bean's - 37:3 Beaver - 30:7, 30:10, 30:14, 39:9, 46:4 became - 70:16 began - 68:9 begin - 74:10, 74:14 beginning - 13:14, 67:3, 80:5, 80:7, 98:1, 103:21 behind - 100:9 beneficial - 41:15, 41:19, 41:20, 42:23, 43:3, 43:4 beneficiaries - 21:19, 26:18, 48:20, 53:6, 53:9, 53:11 beneficiary - 19:17, 19:18, 19:21, 20:9, 20:13, 22:20, 24:16, 25:20, 25:21, 26:10, 32:1, 33:14, 37:15, 37:22, 38:19, 38:21, 39:21, 41:7, 43:15, 44:4, 45:19, 47:17 best - 12:7, 14:1, 19:6, 36:17, 62:5, 64:13, 65:21, 71:3, 78:8 between - 32:7, 40:2,
0 03063 - 3:9 03253 - 4:7 03302-3550 - 3:5 09-14902-jmd - 1:7	5 5 - 61:18, 91:17, 91:18 50 - 19:18, 19:21, 20:13, 21:19, 22:19, 22:23, 24:16, 25:20, 25:21, 26:10, 32:1, 33:6, 37:22 50/50 - 26:17, 32:7 547 - 3:8 5th - 61:8, 61:11	7 6-1-05 - 63:23 6-27-05 - 64:10, 64:16, 66:9 6-30-05 - 64:17 60 - 32:17 61 - 19:9, 38:5 6th - 88:8, 88:19, 88:20	1 1 - 2:12, 11:15, 11:16, 14:16, 17:16, 60:7 10:00 - 1:16 11 - 2:13 12 - 2:14 123 - 52:20 124 - 52:21				

<p>69:7, 69:23, 71:21, 81:2, 97:11, 98:5, 98:17 beyond - 58:11 big - 20:7, 40:7, 70:1, 93:7, 101:13 bigger - 7:19, 67:10, 76:18 bill - 52:10, 77:16 Bill - 8:21, 9:2, 69:5 bills - 77:15 birth - 4:8 blank - 35:11, 61:14, 62:8, 62:11 Block - 18:3 bonds - 15:15 borrow - 46:20, 63:16, 67:7, 67:9, 96:21 Borrower - 65:8 borrower - 43:12, 43:13, 46:20, 47:5, 50:6, 50:8, 50:12, 50:17, 51:9, 52:6, 52:18, 54:18, 59:18, 60:16, 61:1, 65:8, 92:7, 92:9, 95:6, 95:15, 95:21 borrower's - 55:6, 59:15, 96:19 borrowers - 51:20, 85:1, 96:2, 96:8, 96:12, 96:13, 99:19 borrowing - 69:17, 75:8, 96:10 bought - 9:1, 26:7, 38:6, 38:12 Box - 3:4, 4:7 box - 56:6 boys' - 22:6 break - 24:23, 46:8 bring - 45:21 broad - 24:8, 47:11, 50:7, 50:11, 50:14, 54:13, 57:22, 61:5, 83:14, 99:10, 99:12, 99:14 broken - 29:12, 52:13, 77:22 broker - 7:11, 7:19 Brothers - 35:14 brought - 12:17 Brouillard - 44:21, 44:23, 45:2, 45:5, 45:12 Bryn - 4:14, 4:19 budget - 51:8, 51:10, 51:13, 52:1, 52:2, 52:7, 52:8 budgeted - 52:9 budgets - 55:16 build - 51:14, 96:23 building - 19:11, 34:13, 36:13, 37:4, 38:3, 38:6 built - 44:11 bunch - 21:4, 103:16 Burke - 29:13, 36:2, 36:19, 43:7 burned - 72:13 Business - 6:1 business - 4:13, 12:10, 13:8, 14:19, 22:14, 72:8, 73:9, 88:4, 89:4, 89:12, 89:16, 91:13, 96:7, 102:3 buy - 26:22, 38:8 buying - 36:10, 68:22</p>	<p>86:22, 87:16 car - 15:11, 77:13 carry - 99:17 case - 105:15 cash - 26:20, 27:9, 32:9, 38:10, 103:7 caveats - 104:5 cell - 36:4, 37:12, 37:13, 37:14, 37:16, 37:17 Center - 6:6 cents - 15:10, 51:14 certain - 70:4, 93:5, 96:8 certainly - 27:14, 58:19, 91:18 Certification - 105:17 certified - 4:16, 4:22, 5:2, 5:9 Certified - 105:3 certify - 105:5, 105:10 Certifying - 105:20 certitude - 70:15 change - 6:22, 14:21, 91:1 changed - 6:18, 6:21 changing - 7:4 charge - 77:14 charged - 77:13, 77:15 charges - 78:6 charging - 78:5 Charles - 100:17, 101:3 chartered - 4:15, 4:17, 5:4 check - 12:17, 13:18, 13:20, 14:6, 14:12, 52:19, 52:20, 53:1, 56:3, 56:19, 71:5 checkbook - 12:18, 12:22, 57:14, 57:15, 58:5, 58:18 checkbooks - 57:7 checking - 15:16, 49:21, 58:10, 67:22, 68:20, 69:1 checks - 13:23, 30:16, 50:8, 50:9, 52:13, 52:15, 58:4, 58:8, 64:22, 65:1, 65:3, 78:20, 79:4 choice - 47:23 chosen - 49:7 Christian - 6:8 chronological - 64:5 circumstances - 47:22 Citizens' - 12:8 Citizens - 13:21, 17:19 civil - 11:5 CI - 63:23 CI&M - 8:2, 9:4, 14:4, 14:7, 30:17, 30:18, 30:20, 30:22, 40:23, 41:1, 48:14, 49:16, 49:21, 50:5, 50:7, 50:22, 51:1, 51:10, 51:15, 52:8, 53:12, 53:21, 54:5, 54:8, 54:9, 55:19, 56:3, 56:6, 56:7, 56:12, 56:22, 57:3, 57:9, 57:13, 57:18, 57:21, 64:21, 65:4, 65:20, 66:17, 69:4, 71:7, 73:1, 73:12, 73:15, 73:22, 74:6, 74:11, 74:22, 75:2, 75:4, 75:6, 77:5, 78:12, 78:15, 79:9, 80:18, 80:22, 82:5, 82:9, 82:14, 82:15, 82:18, 83:5, 83:18, 85:12, 85:13, 85:16, 85:18, 89:9, 89:15, 89:19, 90:3, 92:10, 93:3, 97:10,</p>	<p>97:11, 98:8, 99:3, 99:16, 99:20 claim - 11:6 clarify - 15:20, 61:6, 80:17, 84:19, 94:13 clear - 15:4, 15:7 cleared - 58:9 clearer - 68:18, 69:7, 69:8 clients - 101:12 Clo - 103:13 Clo-per - 103:13 Clop - 28:15, 103:12 Clop-per - 28:15, 103:12 Cloper - 28:6, 28:12, 103:9, 103:14 close - 47:19, 89:12 closed - 14:20, 19:1, 52:3, 78:21, 88:5, 89:16, 92:5, 93:4, 98:15 closing - 41:10, 46:17, 82:5, 85:13, 86:12, 88:4, 88:12 Clu - 4:15 clump - 70:1 co - 20:9 co-beneficiary - 20:9 Coaster - 26:17 collapse - 96:10 collected - 99:19 College - 4:14, 4:19 college - 5:1, 5:12, 5:15 combination - 98:8, 99:17 combined - 36:17 coming - 56:16, 56:19, 57:3, 57:18, 81:18, 84:13 commencing - 1:15 commissions - 68:1, 68:21 common - 94:23 company - 5:18, 8:9, 9:8, 9:10, 31:2, 37:18, 72:11, 72:14, 77:13, 77:14, 78:6, 78:20 compensation - 22:3 complete - 26:16, 35:12, 100:12 completed - 100:13 completely - 23:8, 23:9, 23:11, 57:2 complex - 6:12, 44:2 component - 84:21, 85:5, 85:6, 86:21 computer - 57:16, 58:14 conceptually - 76:19 concluded - 104:6 concluding - 103:22 Concord - 1:14, 3:5, 40:9, 41:4 concrete - 75:16 condo - 26:15, 38:15, 46:5 condo-ized - 38:15 condos - 26:16 conferred - 43:17 confused - 10:19 confusing - 69:9 consolidated - 57:4 construction - 29:12, 35:12, 37:4, 50:1, 50:4, 50:6, 50:9, 51:2, 51:7, 52:1, 53:14, 55:17, 75:2, 75:9, 75:11, 75:13, 75:22, 76:13, 81:18, 81:23, 83:9, 84:20, 85:5, 85:17, 86:21, 87:3,</p>	<p>89:21, 90:10, 90:23, 94:8, 94:11, 95:8, 102:20 consultant - 4:15, 4:18, 5:4 Consultant - 51:17, 51:18 contaminate - 22:13, 22:15 continued - 45:12, 70:18, 77:5 continues - 45:4 contractor - 51:9, 51:11, 52:4, 52:15, 52:18, 52:21, 96:23, 97:3 contractors - 51:1, 51:12 contribute - 22:22, 31:4 contributed - 27:20 Control - 105:19 conventional - 25:13, 25:14, 35:13, 96:9 conversation - 63:11 Cook - 24:20, 25:18, 26:7, 39:7 copies - 11:7, 18:10, 18:19, 53:10 copy - 10:19, 52:23 Corner - 100:4 corporate - 8:2 corporation - 6:16, 6:18, 7:2, 7:3, 8:13, 9:13, 9:14, 27:1 corporations - 12:5, 48:4 correct - 9:17, 12:1, 23:20, 54:7, 57:4, 63:23, 66:4, 68:11, 72:17, 72:23, 78:23, 79:7, 79:11, 81:9, 82:8, 82:14, 84:17, 88:5, 88:6, 89:13 Correct - 10:1, 11:19, 17:17, 18:22, 25:22, 31:20, 34:17, 34:20, 41:2, 47:7, 49:23, 50:18, 53:8, 59:8, 59:17, 59:21, 60:2, 62:4, 62:9, 64:1, 64:6, 64:9, 64:11, 65:5, 66:11, 66:15, 68:12, 71:13, 74:9, 76:14, 77:4, 77:7, 78:17, 79:3, 80:17, 81:4, 81:7, 83:1, 83:4, 83:7, 83:11, 84:12, 86:6, 86:8, 86:11, 87:9, 89:6, 89:18, 90:1, 90:8, 90:12, 92:8, 92:11, 94:7, 95:9, 95:12, 95:17, 96:1, 97:14, 97:17, 97:19, 97:21, 97:23, 98:3, 98:20, 100:20 correctly - 28:14, 53:16 correlation - 69:6, 69:20 cost - 52:14 counsel - 105:11, 105:14 couple - 67:22, 99:18, 101:12 course - 19:8, 19:23, 55:3 Court - 1:1, 3:10, 19:11, 19:15, 19:20, 38:17 cousin's - 101:15 cover - 5:7, 10:14, 59:15, 74:21, 75:3, 77:2, 78:21, 79:1, 83:12 Coyne - 20:15, 21:18, 22:22, 26:22, 27:1, 27:9,</p>	<p>32:23 crashed - 72:13 create - 31:10, 55:5, 56:23 created - 29:13, 39:19, 46:18, 47:16, 52:17, 67:10 credit - 7:17, 8:1, 34:15, 55:16, 66:2, 66:23, 67:5, 96:10 Credit - 60:13, 62:17, 65:7, 65:14, 66:14, 66:17 credited - 34:4 Cscr - 3:10, 105:22</p>
<p>C calculation - 88:3, 89:2 calculator - 88:16, 89:2 cannot - 43:1, 70:15,</p>	<p>D</p>			<p>dad - 6:5, 8:20, 9:2 dart - 77:17, 94:17, 96:13 date - 4:8, 45:11, 61:21, 62:11, 63:17, 63:19, 66:2, 66:13, 67:19, 74:16, 81:5, 98:5, 98:6, 98:17, 98:18, 105:8 dated - 61:7, 62:3 dates - 8:23, 64:7, 64:10 daughter - 41:14 Dave - 36:13 David - 4:6 days - 97:15, 99:1 De - 5:18, 5:22 deal - 22:4, 28:3, 41:14, 55:18, 56:18 dealing - 19:13, 86:23 debt - 16:17 decade - 24:7 decided - 55:18, 98:16 decision - 49:1, 54:1, 54:11, 55:23, 56:2 decisions - 48:15 deduct - 16:1, 19:10, 19:14, 19:19, 38:16 deeded - 36:23 deemed - 3:12 deficit - 72:19, 72:21, 73:4, 74:4, 74:7, 81:16, 82:6, 82:10, 82:13, 82:15, 82:18, 83:16, 84:3, 84:10, 89:12, 89:15 deficits - 74:10, 74:14, 74:21, 74:22, 75:3, 77:2, 77:6 degree - 4:12, 4:13, 5:6 delineate - 67:17 denied - 55:1 deny - 29:3 depended - 92:16 deposition - 10:16, 103:21, 105:13 deposits - 58:5 described - 47:23, 53:4 Description - 2:11 details - 28:23 determine - 55:21, 84:2, 87:2, 87:6 development - 23:3, 26:16, 27:3, 28:1, 31:2, 32:16, 39:9, 41:11, 41:21, 46:5 Development - 9:11, 14:10, 102:16, 102:19 Dick - 36:6, 36:8 Different - 73:9 different - 7:1, 7:15, 10:20, 13:19, 72:9, 93:17 differently - 79:13 Direct - 105:19</p>

<p>direct - 69:6, 69:20 Direction - 105:20 directly - 50:16, 52:16, 65:23 disagree - 42:17, 46:14, 48:19 disburse - 85:13 disbursed - 52:11, 75:14 disbursement - 52:4, 67:20 disbursements - 51:21, 68:4 discharges - 16:20 discretionary - 66:2 Discretionary - 60:13, 62:16, 65:6, 65:14, 66:13, 66:16 discuss - 73:3 discussed - 32:2, 103:21 Discussion - 43:16, 61:4, 87:21 discussions - 73:7 dispute - 27:22 District - 1:2 document - 46:18, 60:12, 60:18 Document - 2:12 documented - 76:1, 97:12, 98:6, 98:19 documents - 10:6, 10:10, 10:12, 10:15, 11:16, 11:22, 11:23, 14:16, 23:22, 60:9, 87:3, 87:8, 100:3, 100:15, 102:5, 102:6 Dodge - 5:18, 5:22, 8:8, 8:20, 9:2, 9:5, 10:4, 16:19, 25:15, 48:6, 48:10, 48:17, 48:21, 49:5, 53:23, 56:4, 56:14, 62:3, 62:10, 64:21, 73:3, 73:8, 78:2 Dodge's - 8:22, 9:14, 25:5, 78:2 Dolan - 36:13 dollar - 62:22, 63:10, 67:4, 75:9, 76:15, 83:20 dollars - 13:7, 15:22, 22:3, 47:13, 60:14, 63:13, 63:16, 66:3, 66:18, 66:21, 67:2, 67:3, 67:8, 67:20, 69:10, 69:12, 71:10, 71:20, 73:16, 74:3, 78:1, 80:6, 81:9, 81:11, 83:2, 83:23, 84:6, 84:11, 91:17, 91:19, 91:20, 97:2, 102:9 Don - 5:20, 8:20, 8:21, 9:1, 9:14, 14:5, 16:19, 25:5, 25:12, 39:18, 48:14, 53:15, 53:16, 53:18, 56:13, 57:15, 58:1, 58:6, 58:15, 58:17, 61:15, 61:22, 63:11, 65:16, 73:3, 73:8 Don's - 25:8, 25:10 Donald - 5:18, 8:8, 9:5, 53:23 Donchess - 2:7, 3:7, 3:8, 4:2, 10:22, 11:12, 12:2, 46:8, 87:19, 103:19, 104:5 done - 18:6, 38:13, 51:3, 81:10, 103:3 down - 14:21, 34:5, 34:18, 36:8, 38:12, 40:8, 41:11, 41:12, 61:16, 82:20, 92:1, 93:4, 95:22</p>	<p>dozen - 56:13, 58:17 drafted - 46:19 drawing - 35:11, 95:22 Drive - 9:19, 14:20, 19:12, 33:9, 33:13, 33:21, 33:23, 36:23, 37:8, 39:15 duly - 105:8 during - 77:8, 98:4, 99:8, 99:21</p> <p style="text-align: center;">E</p> <p>eagle - 7:10, 7:16, 7:18, 7:23 Eagle - 1:14, 3:4, 7:16 early - 16:6 earn - 72:9 Earth - 26:14, 39:11 easily - 87:2, 87:6 Ed - 28:11, 28:12, 103:10 educational - 4:10 efficient - 88:2 eight - 19:10, 38:3, 38:6, 40:2, 44:3, 44:12, 45:9, 45:10 eight-unit - 19:10, 38:3, 38:6 eighteen - 71:20, 72:5 either - 10:7, 48:1, 53:5, 59:1, 59:4, 92:4, 103:23 Either - 90:17, 90:18 electrician - 50:10 elsewhere - 43:4 employed - 105:11, 105:15 employee - 105:14 employees - 53:21 employment - 5:13 end - 13:13, 13:14, 80:16 ends - 80:12, 80:14 enormous - 58:6 entire - 95:16 entities - 7:1 entitled - 60:12, 60:18, 63:22, 102:6 entity - 8:2, 27:12, 30:13, 44:23, 45:3 entries - 65:18, 66:7 environment - 96:5 equity - 67:1 Esquire - 3:3, 3:8 essence - 60:21, 73:20, 86:9 essentially - 42:14, 58:11, 60:6, 68:19, 75:7 establish - 79:14 estate - 15:13, 39:20 estimate - 20:16, 79:21, 80:15, 91:15 eventually - 10:9 evolved - 55:3 exact - 8:11, 8:23, 45:11, 63:4, 88:7, 96:17 exactly - 32:14, 57:22, 62:2, 80:18, 81:5, 90:6 Examination - 2:6, 4:1 example - 53:9, 59:10, 59:16, 59:18, 64:16, 75:16, 75:17, 76:12, 78:18, 84:5, 85:7, 85:19, 86:4, 86:11, 87:10, 91:9, 95:21, 96:20 except - 33:3 exception - 50:19 excess - 72:5, 76:20, 77:11, 77:20</p>	<p>excuse - 41:10, 78:13 Excuse - 19:18, 90:16, 102:13 Exhibit - 11:15, 11:16, 12:3, 12:4, 17:16, 60:7, 100:14 exhibit - 11:14, 88:16, 101:17 Exhibits - 2:10, 2:18, 14:16 exist - 102:10 expand - 73:10 Expansion - 36:11 expired - 102:11 explain - 51:4 explained - 22:18 Express - 77:14, 77:16 extended - 101:13</p> <p style="text-align: center;">F</p> <p>facility - 44:7 fact - 38:2, 60:3, 66:21, 103:4 fair - 42:2, 49:9, 49:14, 53:23, 72:18, 78:18, 81:15, 82:19, 90:18 fairly - 29:16 familiar - 21:11 families - 101:13 family - 32:16 far - 23:2, 67:20, 93:10, 93:20, 102:15 Farah - 1:7, 1:11, 2:3, 2:11, 3:3, 4:6, 8:21, 11:15, 12:4, 25:3, 63:23, 65:8, 103:23, 105:7 faster - 51:5 February - 1:15 fees - 76:2 few - 15:20, 15:21, 31:14, 32:2, 46:6, 48:18, 48:19, 80:6, 96:11, 97:15 Fha - 7:8, 7:14, 7:22 fifteen - 9:1, 38:7, 40:2, 80:21 fifty - 51:14 figure - 58:8, 82:16 figures - 64:16, 90:13 file - 18:13, 52:22, 53:2, 55:14 filed - 11:2, 11:5, 11:8 filings - 100:11 fill - 61:15, 61:16 filled - 61:21 final - 54:1, 56:1 financed - 23:8, 23:9, 23:12, 34:5, 34:21 Financial - 1:8, 5:21, 6:10, 6:11, 6:13, 6:17, 6:21, 7:8, 8:14, 9:22, 34:9, 48:6, 48:10, 48:17, 48:21, 49:5, 54:18, 55:5, 63:7, 64:20, 64:21, 65:9, 66:1, 67:23, 68:19, 75:1, 75:10, 98:8, 99:16 financial - 4:15, 4:17, 5:3, 5:4, 5:6, 5:19, 6:1, 14:19 financially - 105:15 financing - 17:7, 25:6, 25:13, 25:14, 26:2, 26:3, 26:18, 35:10, 35:13, 36:15, 44:15, 96:9 Financing - 32:8 fine - 10:22, 50:15, 88:21, 103:19, 104:4 finish - 13:3, 23:14 first - 11:12, 11:13, 21:14, 27:11, 34:15,</p>	<p>62:15, 62:16, 64:10, 66:8, 76:16, 76:21, 88:22, 95:18, 105:8 five - 15:10, 17:23, 25:1, 35:9, 55:6, 64:2, 65:19, 66:6, 73:16 five-page - 66:6 flyers - 93:14 Fma - 6:19, 7:6, 7:13 focus - 87:10 foot - 35:8, 36:13 foreclosed - 34:2 foregoing - 105:5 Foregoing - 105:17 forget - 62:2 forgotten - 103:11 form - 8:5, 8:6, 8:7 formed - 8:8, 8:10, 9:13 forms - 89:20 forth - 105:9 forward - 54:12, 55:18 foundation - 52:9, 52:10, 52:13, 52:20 four - 8:20, 26:8, 30:4, 32:22, 36:7, 73:16 Franklin - 19:9, 37:23, 39:15 free - 15:4, 15:6 Frm - 10:2, 12:5, 12:6, 65:4, 65:11, 65:20, 66:18, 72:4, 72:15, 72:19, 73:15, 73:23, 74:8, 74:12, 74:14, 74:21, 75:3, 75:19, 76:16, 77:2, 77:6, 81:8, 89:9 front - 93:14, 95:8, 99:19 Fruchie - 27:12, 27:15, 27:16, 27:19, 28:2, 102:22, 103:1 full - 48:13, 55:14, 55:15, 95:7 fully - 85:7 fund - 7:21, 15:11, 49:22, 56:18, 57:4, 71:7, 73:13, 74:21, 75:3, 84:16, 85:9, 85:23, 89:21 funded - 40:20, 41:1, 51:1, 73:1, 85:7, 95:10, 97:13, 98:2, 98:7, 98:19, 102:19 funding - 55:7, 77:6, 83:8, 85:4 fundraising - 54:15 funds - 23:19, 29:12, 30:14, 30:18, 30:21, 31:9, 33:22, 34:1, 42:3, 49:15, 50:5, 50:11, 50:13, 52:11, 54:4, 55:19, 63:2, 63:12, 64:19, 67:12, 67:17, 68:6, 68:13, 68:21, 68:23, 69:16, 69:18, 70:22, 71:1, 71:2, 71:7, 72:9, 72:15, 73:1, 73:10, 73:17, 73:18, 73:19, 73:21, 74:7, 76:11, 76:20, 77:1, 83:12, 84:13, 85:9, 85:14, 89:22, 90:19, 92:10, 92:13, 93:11, 98:5, 98:12, 98:16, 99:23, 102:16</p> <p style="text-align: center;">G</p> <p>Galen - 5:16 Gallos - 100:17, 101:4,</p>	<p>101:19 gap - 71:18, 97:11, 97:15, 98:17, 98:21, 99:21 Gary - 20:15, 21:18, 22:22, 23:2, 26:17, 26:22, 27:1, 27:2, 27:4 gas - 86:2, 86:13 Gelinas - 3:10, 105:3, 105:22 General - 31:22 general - 51:9, 51:23, 52:4, 52:14, 52:18, 52:21, 53:17, 59:10, 62:20, 92:12, 93:10, 94:14, 94:20, 99:6, 99:12, 99:14 Generally - 64:23, 92:12, 95:14, 99:22, 100:2 generally - 50:7, 50:9, 51:2, 99:20 generate - 73:11 generated - 52:17 generating - 69:17, 73:12 gentleman - 28:5 girls - 53:15 given - 42:12, 66:22, 80:14, 81:3 Gould - 29:13 government - 14:21 gradually - 95:10 graduated - 4:11 gravel - 20:8 Great - 9:10, 14:9, 28:20, 29:1, 29:4, 29:7, 29:16, 29:19, 30:1, 30:19, 31:1, 31:2, 31:4, 31:7, 31:8, 102:15, 102:18 Greece - 101:6, 101:16 Greek - 101:12 grew - 6:3, 81:2 groceries - 97:6 groundwork - 46:13 group - 11:16, 11:21, 41:10, 61:14, 96:8, 100:14 Group - 21:3 growing - 79:18, 79:19 guarantee - 100:16, 101:18 guaranteed - 100:19, 101:18 guarantees - 11:5, 11:6 guaranties - 100:17 Guaranty - 2:14 guess - 31:7, 36:18, 88:22, 103:18 guidelines - 51:7 guy - 27:12, 36:14, 52:14, 52:20 guys - 15:23, 97:5</p> <p style="text-align: center;">H</p> <p>H&r - 18:3 Half - 80:3 half - 19:8, 59:3 Hampshire - 1:2, 1:14, 4:7, 5:17, 40:12, 40:13, 40:14, 41:12, 101:20, 105:5 hand - 47:17 happy - 45:17 Harbor - 6:6 hard - 96:5, 96:6 Hatch - 100:4</p>
--	---	---	--	--

<p>head - 20:1, 81:13, 86:21, 87:18</p> <p>heard - 84:9</p> <p>Hebert - 36:6, 36:8, 36:15</p> <p>heck - 63:17</p> <p>held - 1:13, 21:2, 24:21, 25:1, 27:12, 36:8, 38:3, 40:19, 43:16, 61:4, 85:3, 87:21</p> <p>help - 24:9, 33:3</p> <p>helps - 58:12</p> <p>hereby - 105:5</p> <p>hereinbefore - 105:9</p> <p>herself - 86:16</p> <p>high - 6:7, 93:8</p> <p>Hill - 43:6</p> <p>himself - 86:9, 86:16, 87:11</p> <p>history - 4:12, 5:13</p> <p>hit - 97:7</p> <p>hmm - 5:14, 35:7, 37:9, 39:6, 39:8, 39:10, 60:11, 62:18, 64:18, 71:12, 72:1, 76:3</p> <p>hold - 40:1, 43:3, 43:4, 46:21, 59:23</p> <p>holders - 23:18</p> <p>holds - 20:23, 35:6</p> <p>hole - 83:18</p> <p>Holly - 51:10</p> <p>home - 32:7, 67:2</p> <p>homes - 32:17, 32:18</p> <p>honestly - 29:3, 61:13, 61:19, 65:13, 69:22, 102:17, 103:8</p> <p>honored - 54:2</p> <p>horizon - 26:20</p> <p>house - 15:2, 15:3, 15:4, 15:22, 16:1, 16:3, 17:3, 17:5, 17:8, 17:11, 19:8, 25:7, 96:23, 97:3</p> <p>houses - 25:4</p> <p>hundred - 9:3, 13:7, 14:18, 33:9, 34:4, 38:18, 39:22, 44:1, 44:4, 45:7, 47:18, 56:15, 56:18, 67:2, 67:4, 67:5, 72:10, 74:2, 75:9, 76:15, 81:9, 81:10, 92:21, 93:5</p> <p>hundreds - 86:23, 99:11</p> <p>hypothetical - 75:17</p>	<p>individuals - 29:15, 32:8, 55:12, 70:12, 70:13, 101:23</p> <p>Indymac - 7:20, 68:21</p> <p>information - 24:13, 40:10</p> <p>initial - 8:19, 31:10, 35:10, 51:8, 54:19</p> <p>Instead - 22:3</p> <p>instead - 22:4</p> <p>insurance - 5:10, 5:11, 5:15, 5:19, 6:2, 102:7, 102:8</p> <p>intending - 85:23</p> <p>interest - 25:5, 41:16, 41:20, 42:10, 42:23, 43:4, 43:5, 45:5, 45:6, 55:13, 59:7, 59:12, 59:14, 59:15, 60:1, 60:4, 76:8, 76:9, 78:10, 78:11, 78:14, 78:16, 78:19, 78:21, 79:2, 79:9, 79:10, 79:15, 79:22, 81:16, 81:20, 82:1, 83:6, 83:13, 84:16, 85:2, 85:3, 85:6, 85:11, 85:16, 86:5, 86:10, 86:17, 86:20, 87:7, 87:12, 89:21, 90:7, 90:21, 94:9, 94:12, 94:15, 94:18, 95:4, 95:15, 95:23, 97:18, 98:1, 98:4, 98:11, 99:3, 99:7, 99:17, 99:21</p> <p>interested - 105:15</p> <p>interesting - 34:2</p> <p>interview - 3:13, 105:7</p> <p>Interview - 1:11, 1:13, 104:7</p> <p>invariably - 49:15</p> <p>invested - 72:15</p> <p>investments - 72:13</p> <p>investor - 56:4, 70:20, 81:19, 85:21, 86:14, 86:16, 87:11, 97:10, 97:18, 98:4, 98:16, 99:3, 99:4</p> <p>investor's - 81:19</p> <p>investors - 49:10, 49:12, 49:14, 72:16, 75:20, 78:16, 79:5, 84:14, 98:13, 100:1</p> <p>investors' - 90:19</p> <p>invoice - 53:1</p> <p>involved - 26:3, 26:4, 26:5, 27:3, 32:23, 33:3, 41:13, 53:14, 53:17, 53:19, 77:6</p> <p>involvement - 8:13</p> <p>issue - 26:5, 87:1</p> <p>issued - 4:17, 4:23, 11:18</p> <p>issuing - 16:20</p> <p>itself - 12:22, 34:11</p> <p>ized - 38:15</p>	<p>justify - 22:23</p>	<p>life - 4:16, 4:22, 5:9, 5:10, 5:15, 5:19, 6:2, 102:7, 102:8</p> <p>Lilac - 32:6, 38:23, 39:13</p> <p>line - 66:2, 66:23, 67:2, 67:4</p> <p>Line - 60:13, 62:17, 65:7, 65:14, 66:14, 66:16</p> <p>lined - 55:2</p> <p>lines - 7:17, 8:1</p> <p>liquid - 15:13</p> <p>list - 55:9, 65:19, 67:14, 68:3, 68:6, 68:8, 68:14, 71:15, 72:22, 74:23, 75:5, 82:23, 84:2, 87:23, 89:3, 89:11</p> <p>listed - 21:9, 21:10</p> <p>lists - 64:16, 71:23</p> <p>literally - 86:23, 96:13</p> <p>Literally - 56:13</p> <p>live - 101:8</p> <p>lived - 6:6</p> <p>living - 44:5, 44:7</p> <p>loan - 21:6, 42:5, 46:16, 47:9, 47:14, 50:4, 50:5, 50:9, 51:7, 52:3, 53:2, 53:5, 53:7, 54:12, 54:15, 54:18, 54:22, 54:23, 55:17, 55:22, 56:23, 59:9, 59:11, 59:19, 59:20, 71:2, 71:8, 75:9, 75:19, 75:22, 76:1, 76:13, 76:16, 76:22, 84:19, 85:4, 85:5, 85:15, 85:23, 87:3, 87:7, 90:10, 92:9, 92:15, 93:12, 93:14, 93:17, 94:11, 95:7, 95:8, 95:21, 96:5, 97:12, 98:2, 98:6, 98:15, 98:17, 98:18, 98:19, 99:4, 99:15, 100:17, 100:21, 101:18</p> <p>loans - 7:22, 17:1, 48:14, 49:22, 50:1, 50:2, 51:2, 53:14, 54:5, 59:6, 68:23, 73:13, 75:2, 78:12, 78:14, 81:11, 81:12, 81:18, 81:21, 83:9, 84:17, 84:20, 85:1, 85:2, 85:7, 85:16, 85:17, 87:1, 87:2, 87:3, 87:6, 89:21, 90:23, 92:3, 92:17, 92:19, 92:20, 93:10, 94:9, 96:6, 99:11, 100:23, 101:3, 101:22, 102:2, 102:19, 102:22, 103:3, 103:14</p> <p>located - 9:23</p> <p>location - 9:16</p> <p>locks - 14:22</p> <p>look - 10:11, 37:19, 40:16, 58:14, 58:21, 60:7, 65:22, 67:16, 69:22, 77:23, 81:13, 84:1, 93:3, 96:19</p> <p>looked - 57:11, 58:19, 58:22, 96:16</p> <p>looking - 23:22, 24:12, 68:3, 87:3, 87:7, 87:22</p> <p>Looking - 100:3, 100:14</p> <p>low - 25:5, 93:7</p>	<p>major - 38:13</p> <p>majority - 47:21, 58:8</p> <p>Manchester - 101:19</p> <p>Manoukian - 41:13, 42:3, 42:16, 43:2</p> <p>mark - 11:13, 12:2</p> <p>marked - 11:15, 12:4</p> <p>market - 7:13, 96:10</p> <p>Massachusetts - 12:11, 13:11</p> <p>match - 52:8, 53:18</p> <p>matched - 52:7, 52:11, 53:16</p> <p>math - 82:21, 88:14</p> <p>matter - 11:4</p> <p>Matter - 1:6</p> <p>Mawr - 4:14, 4:19</p> <p>mean - 5:2, 7:7, 7:13, 25:11, 40:15, 41:8, 49:3, 50:16, 55:3, 56:1, 57:7, 63:10, 65:8, 67:5, 70:19, 75:12, 80:4, 87:2, 101:11</p> <p>meaning - 32:11</p> <p>Means - 105:19</p> <p>meant - 50:14, 69:12</p> <p>meet - 89:23, 90:20, 96:8</p> <p>memory - 24:13, 27:21, 29:1, 29:7</p> <p>mentioned - 4:21, 43:2, 53:20</p> <p>Meredith - 4:7, 9:17, 9:18</p> <p>met - 90:22, 101:13, 101:14</p> <p>Michael - 3:3</p> <p>might - 16:13, 29:23, 42:15, 51:5, 56:14, 59:11, 70:8, 76:16, 96:18</p> <p>Mike - 36:2</p> <p>million - 30:4, 59:3, 60:14, 62:22, 63:4, 63:10, 63:13, 63:16, 66:3, 66:18, 66:21, 67:8, 68:10, 69:10, 69:12, 71:10, 71:16, 71:20, 72:5, 73:16, 74:3, 74:4, 81:9, 81:10, 82:19, 83:16, 89:17, 89:22, 91:17, 91:18, 91:20, 102:9, 102:14</p> <p>millions - 30:12, 78:1, 83:2, 84:6, 84:11</p> <p>mind - 46:9</p> <p>mine - 56:2</p> <p>Mine - 49:20</p> <p>Mini - 7:10, 7:16, 7:18, 7:23</p> <p>Mini-eagle - 7:10, 7:16, 7:18, 7:23</p> <p>minor - 4:13</p> <p>minute - 20:11, 34:13, 87:20</p> <p>Mobile - 32:17</p> <p>mobile - 32:7, 32:18</p> <p>money - 7:19, 7:20, 7:21, 13:13, 17:20, 21:5, 30:6, 30:9, 40:21, 40:23, 42:8, 42:11, 46:21, 47:18, 49:10, 49:11, 50:16, 54:5, 57:3, 57:18, 63:1, 65:11, 66:22, 67:23, 68:2, 72:4, 72:12, 72:15, 72:16, 73:22, 74:2, 77:11, 79:1, 81:19, 83:19, 85:18, 90:20, 93:16, 93:17, 93:18, 93:19, 93:22, 96:5, 96:6, 97:10, 97:12, 97:22, 98:10, 101:15</p>
<p>idea - 32:21, 39:3, 48:12, 49:3, 49:7, 59:9, 59:14, 75:18, 91:3, 92:21</p> <p>Identification - 2:10, 11:15, 12:4</p> <p>identify - 4:5</p> <p>imagine - 15:5, 15:10</p> <p>implied - 32:2</p> <p>inaccurate - 81:1</p> <p>Inc - 1:8, 6:11, 8:3, 8:15, 9:11, 63:23</p> <p>include - 55:15, 81:22</p> <p>included - 11:6, 81:11</p> <p>including - 68:23, 77:19, 89:20</p> <p>income - 69:17, 73:11</p> <p>incorporated - 14:16</p> <p>Incorporated - 6:14</p> <p>indicates - 89:3, 89:11</p> <p>individual - 29:22, 41:18, 47:4, 47:10, 47:12, 47:19, 53:5, 55:18, 87:15, 94:6</p> <p>individual's - 47:6</p>	<p>James - 3:8</p> <p>Jamie - 21:3, 21:11</p> <p>January - 82:4</p> <p>Jessica - 41:14</p> <p>Johansen - 18:3</p> <p>joint - 21:23</p> <p>jointly - 18:13</p> <p>Jointly - 18:15</p> <p>joke - 35:23</p> <p>July - 69:4, 69:5</p> <p>June - 63:19, 66:4, 66:17, 72:19, 80:11, 80:19</p>	<p>K</p> <p>keep - 47:13, 67:1, 97:5, 97:7</p> <p>Keep - 72:8</p> <p>kept - 6:17</p> <p>key - 57:10</p> <p>kind - 20:5, 23:2, 32:15, 34:1, 46:11, 51:3, 54:20</p> <p>knowing - 67:20</p> <p>knowledge - 12:7, 14:2, 19:4, 19:6, 62:6, 65:21, 78:8, 78:9</p> <p>known - 56:16</p> <p>Kostas - 100:17, 101:3</p>	<p>L</p> <p>Laconia - 6:8, 18:5, 26:15, 32:7, 44:1</p> <p>Lakes - 6:3, 6:14, 8:15</p> <p>land - 20:7, 85:10, 85:11</p> <p>Land - 9:11, 14:9, 28:20, 29:1, 29:4, 29:7, 29:16, 29:20, 30:1, 30:19, 31:1, 31:2, 31:4, 31:7, 31:8, 102:15, 102:18</p> <p>Lane - 24:20, 25:18, 26:7, 39:7</p> <p>large - 65:1, 65:3, 82:6</p> <p>largest - 58:23</p> <p>Larry - 25:2, 25:20, 32:8, 32:12, 32:13</p> <p>Last - 36:17</p> <p>last - 17:23, 18:18, 24:9, 64:7, 88:3, 88:10, 89:4, 91:13, 96:11</p> <p>late - 16:5</p> <p>Laurie - 3:10, 105:3, 105:22</p> <p>law - 1:13</p> <p>lawsuit - 11:2, 22:12, 22:13</p> <p>lawyer - 11:20, 100:15</p> <p>Lb - 25:2</p> <p>Lbsf - 25:2</p> <p>learn - 56:8</p> <p>lease - 25:15, 25:17</p> <p>least - 62:16, 98:7</p> <p>led - 47:23</p> <p>legal - 6:12, 8:14, 9:15, 44:19</p> <p>Lehman - 35:14</p> <p>lend - 40:21</p> <p>lender - 26:3, 35:10, 35:13, 46:20, 52:19, 53:4, 70:16, 70:17, 70:19, 85:3, 85:21, 85:22, 87:11, 92:14, 92:16, 93:13, 93:22, 99:15</p> <p>lender's - 48:2</p> <p>lenders - 26:19, 29:22, 55:8, 70:14, 85:8</p> <p>lenders' - 73:19, 73:21</p> <p>lending - 70:12, 70:18, 96:4, 96:14</p> <p>lent - 101:15</p> <p>less - 79:23, 80:1, 95:14</p> <p>letter - 10:15</p> <p>level - 24:12, 55:1</p> <p>levels - 7:15</p> <p>liability - 22:6, 22:11</p> <p>license - 6:19, 7:6</p>	<p>M</p> <p>Mahal - 51:14</p> <p>mailed - 55:7</p> <p>mailing - 4:6, 55:9</p> <p>main - 67:22</p> <p>Main - 19:9, 38:5</p>

monies - 67:21, 81:23, 83:21, 83:22, 84:21 monitored - 53:12 month - 69:23, 78:19, 90:4, 90:11, 97:15 monthly - 78:12, 78:15, 79:9, 79:15, 79:17, 79:21, 81:6, 81:16, 81:20, 83:5, 90:3, 90:22 months - 58:1, 58:2, 58:7, 61:20, 76:17, 76:21, 94:21, 95:20, 97:16, 98:22, 98:23, 99:18 morning - 11:1 Mortgage - 1:8, 6:21, 9:22, 65:9 mortgage - 7:12, 16:16, 20:23, 21:5, 21:14, 23:17, 23:18, 27:11, 27:17, 28:20, 29:2, 29:4, 29:8, 29:16, 29:20, 29:22, 30:19, 30:20, 31:8, 31:10, 31:12, 31:13, 33:4, 34:23, 35:7, 36:9, 37:3, 37:7, 38:8, 38:13, 38:15, 40:8, 43:7, 46:22, 47:3, 47:5, 78:12 mortgages - 7:9, 7:11, 7:13, 7:14, 7:18, 16:18, 17:8, 20:19, 21:1, 21:2, 21:12, 23:7, 27:18, 30:1, 31:14, 31:17, 35:3, 35:6, 39:19, 40:1, 40:3, 40:12, 40:19, 40:22, 41:1, 68:22 most - 48:5, 94:15, 94:23 Moultonboro - 24:20, 39:7 mounting - 72:19, 74:6, 81:16 move - 32:5 moved - 5:17 must - 50:22 Myers - 5:16	new - 37:4, 92:15, 98:17, 98:18 next - 4:21, 24:19, 26:13, 26:14, 29:6, 32:5, 32:6, 58:2 Nh - 3:5, 3:9 nickel - 13:15 nine - 54:23 non - 15:13, 96:12 none - 31:16 normal - 25:14 normally - 4:3, 96:14 Northfield - 44:8 Northview - 9:19, 14:20, 19:12, 33:9, 33:13, 33:21, 33:23, 36:23, 37:7, 39:15 Notary - 105:4 Note - 3:12, 60:14, 60:19, 61:10 note - 46:21, 47:3, 47:5, 60:21, 61:14, 62:5, 62:6, 62:11, 62:23, 66:20, 97:8 noted - 68:5 notes - 39:2, 39:16, 62:3, 73:2, 105:7 Notes - 63:22, 64:15, 65:18, 66:7, 67:13, 67:15, 68:5, 71:15, 71:22, 72:22, 74:23, 75:5, 82:11, 82:23, 84:2, 87:22, 89:3, 89:11 nothing - 9:15, 15:17, 16:1, 77:20 notified - 53:4 Notinger - 3:7 November - 13:14, 14:20, 61:8, 61:11, 61:18, 64:7, 78:19, 79:2, 79:16, 79:20, 80:16, 82:5, 82:18, 83:2, 83:5, 84:5, 84:8, 84:10, 84:13, 88:5, 88:13, 88:19, 88:20, 89:13, 89:16, 89:19, 90:4, 90:14, 90:16, 90:19, 91:9 number - 12:13, 13:5, 16:10, 19:17, 19:19, 21:21, 24:18, 27:22, 39:19, 40:5, 46:16, 52:19, 52:21, 56:1, 63:9, 63:10, 63:11, 67:11, 76:18, 80:5, 80:23, 81:12, 86:18, 86:19, 88:15, 92:19, 92:22, 93:7, 100:23	19:11 , 34:13, 40:10, 40:16, 46:2, 56:6, 56:12, 57:10, 58:20, 61:15 officer - 9:7, 9:15 offices - 1:13, 6:15 Often - 73:6 Oklahoma - 13:6, 13:9 Once - 54:21, 99:18 once - 50:4 one - 8:21, 10:13, 12:10, 13:3, 13:5, 16:19, 17:5, 20:10, 21:2, 22:12, 23:14, 23:23, 24:17, 24:19, 24:21, 26:13, 26:14, 27:7, 29:17, 31:12, 32:5, 32:6, 32:23, 33:1, 33:5, 33:11, 33:12, 33:15, 34:3, 36:17, 38:15, 38:18, 40:7, 41:3, 41:5, 42:6, 43:10, 43:15, 43:18, 43:20, 43:23, 44:1, 44:4, 44:10, 44:15, 47:12, 47:22, 48:19, 49:4, 52:13, 52:14, 53:3, 53:11, 58:7, 60:6, 61:3, 61:23, 62:6, 62:7, 62:16, 67:6, 67:16, 67:21, 67:22, 68:17, 68:19, 69:1, 69:10, 73:21, 74:12, 82:2, 82:3, 83:21, 85:7, 90:4, 90:17, 90:18, 94:14, 94:23, 101:1 One - 1:14, 3:4, 12:8, 12:9, 25:4, 43:14, 57:23, 61:7 ones - 22:1, 22:13, 24:18, 39:1, 39:16, 40:9, 43:1, 43:2, 45:21, 46:3, 94:9, 100:13 opened - 13:8 operating - 22:2, 22:16, 49:6, 74:6 opposed - 48:21, 72:15, 98:1 opposite - 96:17 Oral - 4:11 order - 7:8, 7:11, 13:8, 64:5, 97:4, 97:5, 97:7 ordered - 54:20, 54:21 organized - 78:15 original - 21:14, 21:16, 27:4, 27:5, 33:1, 34:1, 44:22, 53:9 Originally - 6:12 originally - 16:9, 21:13, 25:1, 33:2, 36:5, 43:14 Orr - 1:13, 3:3 Ossipee - 20:3, 22:17, 24:17, 39:5 outline - 4:10 outside - 40:12, 40:17 outstanding - 59:20, 89:19, 101:1 overall - 58:10 override - 52:15 owe - 67:5 owed - 16:17, 66:20 own - 7:17, 7:19, 15:1, 15:3, 15:4, 15:6, 19:7, 22:9, 45:4, 58:14, 85:9, 102:16 owned - 9:2, 9:5, 36:6, 42:9, 45:3 owner - 8:14, 22:14, 26:2, 44:19, 44:22 owners - 21:15, 21:16, 27:4, 27:6 ownership - 8:12, 9:15, 22:4, 22:15, 42:10,	44:7 , 44:9, 44:10, 45:2 owns - 19:4, 19:8, 21:19, 24:1, 33:20, 37:16, 39:20, 42:22, 45:1 <h2 style="text-align: center;">P</h2> package - 11:13 Page - 2:6, 2:11 page - 55:6, 66:6, 102:5 pages - 64:3, 65:19 paid - 16:19, 16:21, 16:23, 23:5, 23:7, 23:16, 24:2, 25:23, 28:3, 28:17, 34:9, 51:1, 68:10, 69:2, 69:21, 71:21, 73:4, 77:13, 81:12, 90:4, 92:5, 92:7, 92:9, 92:18, 92:20, 93:12, 98:4, 98:15, 98:18, 99:7, 99:20, 100:21, 101:2, 102:22, 103:5 parcel - 21:20, 22:17, 22:23, 23:16 park - 32:7 Park - 44:20, 45:3 part - 11:1, 11:6, 11:9, 17:16, 23:17, 23:18, 48:12, 48:16, 69:8 partial - 29:14, 29:21, 31:11, 31:12, 41:15, 41:19, 41:20 participant - 33:7 participation - 23:1 particular - 12:12, 21:20, 22:23, 23:23, 42:6, 49:2, 49:8, 53:2, 55:13, 55:18, 55:20, 69:3, 71:7, 75:15, 85:15, 90:11 parties - 52:12, 105:12 partners - 8:22 passed - 84:21 pastor - 6:5 pay - 17:3, 51:19, 63:3, 63:12, 64:12, 68:7, 68:13, 69:12, 69:19, 72:6, 72:9, 76:16, 77:16, 81:20, 83:8, 84:16, 86:12, 96:9, 96:22, 97:1, 97:3, 98:10, 99:3, 99:17, 101:3, 101:22, 103:14 payable - 49:15 paying - 69:14, 78:6, 84:19, 95:15, 95:23 payment - 34:5, 34:18, 36:8, 53:13, 54:2, 59:19, 68:7, 78:19 payments - 53:3, 59:15, 79:2, 81:17, 90:22 payoff - 99:8 Pc - 3:7 Pearl - 8:21, 9:2, 16:19 Pennsylvania - 4:14, 4:20 people - 8:20, 14:2, 47:14, 55:8, 56:1, 62:23, 86:23, 93:16, 93:20, 96:15 per - 28:15, 103:12, 103:13 percent - 9:3, 12:9, 14:18, 19:18, 19:21, 20:13, 21:19, 22:19, 22:23, 24:16, 25:7, 25:20, 25:21, 26:10, 32:1, 33:6, 33:9, 34:4, 37:22, 38:18, 39:22, 41:22, 44:4, 45:7, 47:16,	47:18 , 49:17, 94:16, 95:23, 96:15, 96:16, 96:17, 96:18, 96:21, 97:1, 97:9, 97:20 percentage - 22:4, 96:11 period - 13:11, 44:12, 59:16, 69:15, 69:23, 76:9, 77:2, 77:8, 79:17, 90:19, 95:10, 96:20, 98:5, 99:8, 99:21 permission - 14:22 person - 41:12, 53:5, 70:15, 70:17, 99:14 personal - 6:1, 14:19, 14:23, 17:18, 17:22, 77:15, 78:6, 100:5, 100:8 personally - 43:5, 49:11, 49:13, 65:7, 65:12, 77:11, 100:19, 101:10 personals - 15:12 Phil - 44:21 phrase - 83:17 Phyllis - 18:3 picked - 63:9, 99:15 picture - 75:6 piece - 20:7, 21:14, 22:12, 42:12, 85:10, 93:19 pieces - 21:13 pin - 91:23 place - 24:5, 37:5, 37:6, 44:15, 45:8, 45:9, 50:4, 105:8 placed - 35:4 plain - 23:21, 27:6, 41:18, 41:22 plan - 44:5, 44:7 planner - 5:19 planning - 5:6, 6:1 players - 7:20 plumber - 50:10 plumbing - 82:3 plus - 22:7, 53:15 Pm - 104:7 Po - 3:4, 4:7 point - 8:17, 8:18, 17:9, 36:19, 55:2, 55:17, 69:3, 79:22, 103:22 pointing - 82:11 poles - 81:3 Policy - 102:6 policy - 102:7, 102:8, 102:12, 102:13 Pond - 30:7, 30:10, 30:14, 39:9, 46:4 pooled - 21:4 portion - 33:5 positive - 103:4 possession - 10:19 possessed - 11:11 possible - 22:9, 69:18 possibly - 80:12 post - 56:6 Post - 4:13 potentially - 23:18 pre - 75:19 preference - 48:2 Preferred - 63:6 preferred - 48:3, 63:3, 63:13, 64:12, 67:10, 67:12, 68:7, 68:8, 68:11, 68:14, 69:2, 69:13, 69:14, 69:19, 69:21, 70:6, 70:13, 70:16, 70:23, 71:1, 71:6, 71:10, 71:11, 71:21, 72:6 premium - 96:9 prepaid - 59:7, 59:12,
<h2 style="text-align: center;">N</h2> name - 4:5, 6:13, 6:18, 6:20, 7:4, 9:10, 12:20, 12:23, 20:4, 22:5, 22:10, 25:5, 25:8, 25:10, 28:6, 28:10, 33:14, 33:19, 34:10, 35:16, 35:21, 37:18, 40:6, 43:9, 46:22, 47:3, 47:6, 47:19, 53:5 named - 7:2, 27:12, 48:20, 85:8 names - 8:16, 22:6, 47:10, 70:10, 86:22 Nashua - 3:9 National - 6:17 national - 6:20 Ndn - 35:16, 35:18, 35:19, 35:20, 36:22 nearly - 42:4 need - 48:14, 76:12 needed - 13:7, 63:2 needing - 75:14 neighborhood - 79:5 net - 85:4, 85:9 never - 7:23, 8:12, 16:20, 37:5, 37:6, 44:7, 44:9, 44:10, 46:5, 67:11 New - 1:2, 1:14, 4:7, 5:17, 40:12, 40:13, 40:14, 41:12, 101:19, 105:5	<h2 style="text-align: center;">O</h2> obligation - 78:13, 78:16, 78:22, 79:9, 79:15, 79:17, 79:18, 79:22, 81:6, 81:17, 81:20, 81:21, 81:22, 83:6, 83:8, 84:17, 90:3, 90:7 obligations - 81:2, 83:13, 89:20, 89:21, 90:21 obtained - 46:5, 46:7 occasionally - 50:16 occur - 68:8 occurred - 88:12 October - 13:14 odd - 16:14, 44:2 office - 8:23, 9:16, 9:18, 9:19, 10:4, 12:19, 12:22, 13:9, 16:22, 18:4, 18:12, 18:21, 19:1,			

<p>59:14, 60:1, 60:3, 76:8, 76:9, 78:10, 78:11, 78:14, 79:10, 79:15, 86:5, 86:9, 86:16, 86:20, 87:7, 87:12, 89:20, 94:9, 94:12, 94:14, 94:17, 95:4 prepared - 65:14 present - 15:1 previous - 81:21, 84:17 price - 34:16 principal - 28:3, 28:18 printouts - 58:20 private - 26:18, 32:8, 35:10, 55:8, 55:11, 55:17, 70:12, 70:14, 70:16, 70:17, 70:18, 70:19 problem - 39:4 procedure - 22:2, 22:16, 49:6 process - 7:11, 36:11, 41:10, 51:4 processing - 54:16 produce - 10:13, 11:3, 13:1, 14:15 produced - 10:7, 10:8, 10:10, 10:21, 11:17, 60:9, 100:4, 100:15 producing - 11:21 Production - 2:12 production - 11:10 professional - 21:4 profit - 52:15 profits - 73:12 progressed - 50:6 Project - 9:11, 14:10, 102:16, 102:19 project - 23:4, 30:10, 30:14, 31:5, 41:21, 42:4, 42:17, 42:20, 43:23, 58:6, 102:18 Promissory - 60:13, 63:22, 64:15, 65:18, 66:7, 67:13, 67:15, 68:5, 71:15, 71:22, 72:22, 74:23, 75:5, 82:11, 82:23, 84:1, 87:22, 89:3 promissory - 60:21, 73:2 pronounced - 28:15 pronouncing - 28:14 pronunciation - 103:11 properties - 21:15, 21:21, 22:15, 26:9, 40:5, 41:10 property - 19:9, 19:10, 20:3, 20:6, 20:19, 21:13, 22:9, 22:12, 23:5, 24:2, 24:16, 25:15, 25:23, 26:7, 26:22, 27:4, 27:11, 28:1, 28:6, 28:20, 29:8, 33:16, 34:3, 34:11, 34:19, 35:1, 35:4, 35:9, 35:15, 35:16, 36:3, 36:5, 36:7, 36:23, 37:8, 37:12, 37:23, 38:6, 38:22, 39:5, 40:4, 40:8, 40:12, 41:4, 42:9, 42:10, 43:18, 44:6, 44:8, 44:19, 44:23, 45:4, 45:5 property's - 20:16 proportion - 91:3, 91:6 prove - 16:21 Provençal - 45:3 Provençal - 44:20 provided - 16:15 Public - 105:4 public - 11:4</p>	<p>purchase - 17:5, 23:19, 24:2, 24:4, 27:20, 28:1, 33:22, 34:16, 35:1, 45:9, 71:11, 84:20, 85:10, 85:11, 86:2 purchased - 29:22, 34:19, 35:16, 36:7 purely - 7:19 purposes - 5:10, 22:6, 22:11, 58:3 pursuant - 60:10, 83:9 put - 16:18, 21:22, 22:5, 22:10, 26:19, 27:9, 29:11, 33:1, 35:8, 36:12, 38:10, 38:12, 47:15, 47:18, 57:18, 73:21, 74:15, 80:11, 97:5 putting - 47:13, 87:1</p>	<p>17:15, 61:9 refers - 43:19 refinanced - 25:5, 25:8, 25:10, 35:12 reflected - 72:22 regarding - 19:4, 48:15, 49:1 Region - 6:4, 6:14, 8:15 registry - 37:20 regular - 70:14, 70:17 related - 15:14, 27:1, 105:11 relative - 105:14 remain - 45:15 remainder - 76:11 remember - 12:16, 21:16, 24:19, 26:12, 28:8, 29:3, 30:9, 35:23, 37:18, 41:11, 43:9, 43:12, 45:20, 45:22, 46:3, 63:4, 70:10, 86:22, 88:7 remove - 18:23 Reno - 1:13, 3:3 renovations - 38:13 rent - 34:4, 34:9, 34:16 rented - 34:3, 34:7 report - 52:16, 52:23, 53:10 Reporter - 3:10, 105:4, 105:20 reports - 52:22, 55:16 represent - 62:22 represents - 21:3 Reproduction - 105:18 request - 49:18, 49:19, 54:2, 54:18, 55:6, 81:17, 103:23 requests - 53:12, 54:23, 83:8, 90:10, 90:11 required - 72:6 requisition - 51:3, 52:5, 52:7 resell - 7:14, 7:17 reserve - 60:3, 83:12, 85:2, 85:6, 85:12, 85:15, 85:16, 103:22 reserved - 86:9, 86:16 reserves - 87:11 residence - 100:5, 100:8 resigned - 36:19 Resources - 1:8, 5:21, 6:10, 6:11, 6:13, 6:17, 6:21, 7:8, 8:15, 9:22, 34:9, 54:18, 55:5, 63:7, 64:20, 64:22, 65:9, 66:1, 67:23, 68:19, 75:1, 75:10, 98:8, 99:16 respect - 14:7 respond - 48:23 Response - 2:12 response - 10:7, 10:15, 11:3, 11:10, 11:17, 14:17, 51:3 retirement - 15:10 returned - 92:14 returns - 18:6, 18:11, 18:18, 55:16 reverse - 64:5 reversed - 96:13 review - 51:12, 52:1 reviewed - 45:18, 51:10, 51:11, 54:22, 104:2 reviewing - 57:17 Reviewing - 10:12, 11:23 Revocable - 26:15 Rhonda - 13:22</p>	<p>rhyme - 93:19 Richard - 27:12, 27:15, 27:16, 27:17, 36:6, 103:2 Ridge - 43:19, 43:21, 43:23, 44:1, 44:11 rights - 14:3 Road - 26:17, 100:5 Robert - 8:21 Roberts - 4:11 roll - 98:16 rolled - 71:2, 92:14, 94:2, 99:4, 103:6 Roller - 26:17 rollover - 99:2, 99:9 roofer - 50:10 rough - 39:2 Rpr - 3:10, 105:3, 105:22 rule - 50:20, 51:23, 53:17, 92:13, 93:10, 94:14, 94:20 running - 57:15, 72:19</p>	<p>30:23, 31:3, 48:13, 48:14, 48:16, 75:1 set - 10:6, 22:8, 43:3, 46:13, 47:9, 47:10, 48:10, 48:17, 105:9 Seven - 45:10 seven - 25:7, 35:9, 72:10 seventeen - 71:20, 72:5 several - 99:18 Sf - 25:2 share - 15:2 shareholders - 63:3, 63:6, 63:13, 64:13, 67:10, 67:13, 68:7, 68:8, 68:11, 68:14, 69:13, 69:14, 69:19, 69:21, 70:6, 70:23, 71:1, 71:10, 71:21, 72:7 shares - 71:6, 71:11 shingles - 82:2 short - 46:10, 76:16 Shorthand - 105:4 show - 10:6, 58:15, 62:13 showing - 11:22 shown - 67:13, 82:22 shows - 61:7 sign - 13:22, 14:3, 61:10, 61:12, 61:18, 65:12, 66:20, 96:2 signature - 60:16, 61:17 signed - 52:6, 61:14, 61:19, 62:8, 62:21, 65:6, 65:7 Signed - 61:1 significant - 16:2 signing - 62:22, 67:7, 67:9, 97:8 similar - 79:17 simple - 47:13, 67:1 simply - 87:7, 92:14 single - 32:16, 47:20, 52:22, 53:1, 57:4, 57:18 sit - 58:7, 61:16, 82:20, 91:9 situation - 25:19, 42:2, 47:20, 99:2, 99:3 situations - 47:21 six - 25:7, 35:8, 35:9, 37:14, 61:20, 69:23, 76:17, 76:21, 95:20 sixty - 16:14 sizable - 30:3, 31:8, 78:12, 78:15 size - 79:8 sized - 29:17 sky - 63:10 small - 42:20, 43:7, 80:5 smaller - 75:8 Smith - 56:18, 69:5 Smm - 39:18, 40:1, 40:11, 40:19, 40:21, 40:23, 41:1, 41:17 so-called - 76:15 software - 72:11, 72:14 sold - 6:2, 25:12, 35:14, 37:14, 37:17, 43:14, 44:23, 45:2, 45:5 someone - 25:16, 47:17, 50:22, 66:21 sometime - 66:4, 66:17, 70:2 sometimes - 51:11, 93:22, 97:11, 98:17 Sometimes - 93:16, 93:17, 93:18, 94:2, 94:4,</p>
Q		S		
<p>questions - 103:20, 104:3 quick - 46:8, 88:15 quicker - 88:2 quite - 31:14 quote - 55:22</p>	S		<p>sake - 43:19 salary - 77:8, 77:12, 77:19, 78:3 sale - 25:17 sand - 20:8 savings - 15:16 saw - 57:7, 57:13, 58:13, 58:23, 62:14 scale - 75:8 Schedule - 100:9, 100:10, 102:6 schedule - 63:21 school - 6:7 School - 6:8 Scott - 1:7, 1:11, 2:3, 3:3, 4:6, 11:7, 23:13, 63:22, 65:8, 105:7 screening - 55:21 second - 22:1, 25:7, 28:6, 61:3, 91:21 see - 29:6, 51:20, 52:19, 54:19, 59:3, 65:22, 67:17, 68:17, 74:22, 75:4, 75:18 sell - 7:22 seller - 23:8, 23:9, 23:11, 86:12 sellers - 23:17 selling - 68:22 send - 49:15, 55:11, 85:12, 86:7 sense - 16:12, 23:10, 50:7, 50:11, 50:12, 50:14, 51:13, 52:2, 52:3, 54:20, 54:22, 55:2, 55:22, 83:18, 91:12, 92:17, 92:19 sent - 49:15, 52:5, 55:19, 97:10 separate - 19:13, 22:8, 31:18, 56:23, 59:23, 60:5 separately - 18:14 Series - 60:19, 61:10, 63:22, 64:16, 65:19, 66:7, 67:13, 67:16, 68:6, 71:16, 71:23, 72:22, 74:23, 75:5, 82:12, 82:23, 84:2, 87:23, 89:3, 89:11 series - 61:14, 62:3, 62:5, 62:6, 62:11, 75:4 serve - 9:7 served - 10:16 service - 48:13 servicing - 8:8, 30:22,</p>	
R				
<p>raise - 49:11 raised - 49:9, 49:13, 54:4, 72:16, 74:2, 75:20, 81:8, 81:19, 90:19, 91:8, 91:12 Ramsdell - 3:3, 10:14, 10:18, 10:23, 11:20, 12:15, 12:18, 23:13, 43:17, 61:3, 84:7, 104:4 random - 92:22 range - 30:3, 35:2, 63:5, 77:19, 88:8 rate - 25:6, 97:18, 99:7 rather - 50:19 real - 15:13, 39:20, 47:13 realize - 20:2 really - 33:11, 46:13, 50:14, 59:2, 91:14, 93:11 Realty - 35:17, 39:18, 40:1, 40:11, 44:20, 45:3 reason - 10:18, 31:21, 58:3, 93:20 reasonably - 70:4 receive - 64:19, 103:6 received - 11:1, 11:7, 55:12, 71:1, 97:18 recent - 42:7 recess - 46:10 recollection - 38:11, 48:22, 64:13, 71:4 reconcile - 58:5 reconciliation - 58:3 reconciliations - 58:9 record - 11:4, 17:15, 43:16, 61:4, 87:19, 87:21, 100:4 recorded - 31:17, 31:19 records - 8:22, 13:9, 14:19, 16:21, 17:14, 21:8, 36:18, 40:15, 46:2, 57:9, 69:22, 70:5, 77:23, 81:14, 90:5, 104:1 refer - 10:2, 12:6, 43:22 referenced - 10:12, 11:23 referred - 43:20 referring - 13:12,</p>				

<p>94:19, 94:21, 98:21, 98:23, 99:1 Somewhere - 40:2 somewhere - 69:23 Sorry - 10:17, 43:18 sorry - 24:8, 37:11, 57:15, 72:3, 84:8, 84:9, 87:18, 88:16 sort - 5:7, 5:11 Sotiria - 101:19 Sotirios - 101:18 sound - 42:17 sounds - 42:21, 79:7 source - 10:20 sources - 68:2 South - 19:9, 38:5 southern - 41:12 space - 9:16, 9:18, 10:4 speaking - 22:17, 92:12, 99:20, 99:22, 100:2 spearhead - 23:2 spearheaded - 23:4 specific - 50:12, 54:12, 83:23 specifically - 90:13, 94:9 Spencer - 85:8, 85:20, 85:21, 86:7, 86:15, 87:10, 87:14 Spencer's - 85:14 Spirit - 13:6 spouse's - 22:10 Square - 1:14, 3:4 square - 35:8, 36:12 standard - 22:1, 22:16, 49:6 standpoint - 96:19 stands - 35:20 start - 11:12, 78:13, 80:18 started - 5:20, 6:9, 6:15, 70:3, 80:22, 93:3 state - 40:18, 46:11 State - 105:4 State's - 12:19 statement - 47:11, 50:21, 57:22, 72:20, 83:14, 99:6, 99:13, 99:14 States - 1:1 station - 86:3, 86:13 status - 9:15, 90:9 stay - 25:19 staying - 35:15 stenographic - 105:6 step - 54:14, 57:20, 68:17 stick - 34:12 sticks - 81:13 still - 67:4, 101:1, 102:10 stipulations - 3:12 stock - 9:3 stockholder - 70:16 stockholders - 69:2, 70:13 stocks - 15:15 stop - 20:5, 20:10 straight - 27:5, 51:16, 84:22 Street - 3:8, 19:9, 38:5 structure - 30:5, 34:2, 46:19, 47:2, 49:3 structured - 23:23, 41:9, 41:14, 59:6, 59:10 structures - 32:19 stuff - 5:8, 21:22, 81:23, 94:15 sub - 52:4, 53:4</p>	<p>subcontractors - 50:13 subdivided - 16:10 subdivision - 20:8 subject - 24:15, 31:23, 73:8 submitted - 51:8 Subpoena - 2:13 subpoena - 10:8, 10:16, 11:3, 11:10, 11:18, 14:17, 60:10, 103:23 subs - 53:13 substance - 73:7 sufficient - 73:12, 78:21 Sugar - 43:6 suggest - 69:11, 88:1 suggested - 9:4, 11:21, 23:10, 27:19, 42:4, 42:15, 56:22, 66:8, 71:9, 86:15, 95:6 suggesting - 23:9 suit - 11:5, 11:8 Suite - 3:8 summaries - 55:10, 55:11, 55:12 summarize - 5:13 summary - 55:6, 55:7 summer - 36:17 Sun - 7:20 suppliers - 51:2 support - 40:21 supposed - 62:21, 78:22, 100:6 surveyor - 36:13 Susan - 15:22, 19:4, 19:7, 19:10, 19:13, 19:21, 21:18, 22:5, 24:16, 25:2, 25:20, 26:9, 26:17, 32:7, 32:12, 33:6, 37:15, 37:21, 38:6, 38:16, 38:21, 39:21, 41:6, 41:16, 42:12, 42:22, 44:3, 45:19 Susan's - 41:23 suspended - 104:7 switch - 58:1 sworn - 4:3, 105:8 system - 55:3</p>	<p>52:10, 55:9, 56:15, 56:18, 67:2, 67:3, 67:4, 67:5, 72:10, 75:9, 76:15, 80:22, 93:6 Three - 25:3, 26:8, 32:22 three - 12:8, 16:10, 17:12, 26:20, 32:13, 36:7, 47:14, 53:9, 53:10, 53:15, 53:20, 57:23, 58:2, 58:7, 61:20, 63:4, 63:12, 68:10, 69:10, 69:12, 71:9 throw - 77:17, 92:22, 94:16 Throwing - 96:13 thumb - 51:23, 53:17 Thursday - 1:15 tie - 83:22 timeshare - 15:5, 15:6 Title - 54:21 title - 55:15 today - 4:4, 13:1, 91:10, 96:17, 100:15, 104:6 together - 15:3, 21:5, 21:22, 29:12, 33:2 Tom - 51:10, 51:15, 51:23 tomorrow - 13:1 tons - 22:2 took - 24:4, 33:4, 37:3, 37:5, 37:6, 44:7, 93:16 top - 19:23, 63:22, 86:21, 87:17, 100:16 total - 77:18, 89:12 totalling - 71:16 touched - 38:1, 38:2 towards - 27:23, 28:1, 30:7, 34:5, 34:16 tower - 36:4, 37:12, 37:13, 37:14, 37:16, 37:17 town - 17:12, 17:14, 17:17, 41:12 track - 83:20 transaction - 46:19, 47:3, 55:13, 55:20, 69:3 transactions - 46:12, 46:16, 47:1, 47:9, 57:16, 62:7 transcript - 2:18, 105:6 Transcript - 105:18 transfer - 66:8, 69:9 transferred - 44:9, 65:4 transfers - 65:19, 68:4, 68:5, 68:6 truck - 15:12 true - 47:20, 47:21, 83:19, 105:6 Trust - 7:21, 25:2, 26:15, 33:21, 35:17, 36:22, 36:23, 38:5, 39:18, 40:11, 44:20, 45:3 trust - 20:4, 21:10, 21:19, 24:1, 24:22, 26:7, 27:5, 27:6, 31:23, 33:6, 33:19, 34:18, 36:19, 37:15, 38:4, 38:19, 39:11, 39:21, 43:9, 43:13, 45:13, 46:18, 46:20, 46:21, 47:2, 47:4, 47:15, 48:1, 48:20, 48:21, 49:2, 49:8, 53:6 trust's - 34:10, 46:22 Trustee - 3:6 trustee - 11:18, 27:13, 33:14, 36:2, 36:19, 43:8, 44:21, 45:12, 48:6</p>	<p>48:10, 48:20, 49:2, 49:8 trusts - 5:7, 5:11, 19:12, 19:13, 19:18, 19:19, 19:21, 22:8, 37:21, 38:21, 41:6, 42:22, 45:18, 47:9, 48:3, 48:5, 48:11, 48:15, 48:18, 48:19 trying - 23:21, 33:8, 54:13, 62:19, 68:16, 72:8, 72:12, 73:9, 73:10, 91:23, 92:1, 92:23, 93:2, 93:7, 94:16, 96:23 Tulsa - 5:14, 13:6 turn - 39:23, 71:6 turned - 12:18, 12:21, 70:14 twelve - 6:6, 69:23 twelve-month - 69:23 twenty - 22:7, 74:4, 96:7 Two - 25:3, 63:4 two - 6:23, 7:15, 13:16, 16:18, 18:18, 21:12, 21:13, 24:9, 30:1, 30:4, 36:16, 43:14, 44:18, 52:13, 55:5, 55:9, 57:22, 58:12, 59:1, 59:12, 59:16, 59:20, 63:12, 68:10, 69:7, 69:10, 69:11, 71:9, 73:22, 80:13, 80:14, 81:2, 88:15, 94:19, 97:16, 101:22 two-year - 59:16 type - 15:21, 96:4 typical - 76:6 typically - 71:2, 92:9 typo - 88:15</p>	<p>20:17, 42:11, 42:13 Vappi - 13:22 various - 49:22, 54:5, 66:6, 78:12, 78:16, 83:9, 89:20 Vatche - 41:13, 42:9 Vaughn - 85:8, 85:14, 85:19, 85:21, 86:7, 86:15, 87:10, 87:14 venture - 21:23 versus - 96:12 Village - 15:9, 34:2, 34:22 voluntarily - 10:8</p>
		W		
		<p>W-2's - 77:10 waiting - 99:4, 99:8 Waiting - 31:22 walk - 26:11 ways - 73:9 week - 15:6, 55:10 weeks - 46:6, 98:23 whole - 21:3, 28:23, 42:20, 61:14, 77:8, 103:16 wife - 15:3, 18:13, 19:4, 21:18, 22:19, 32:1 Winnepesaukee - 15:9 wire - 64:23, 65:2 wired - 56:7 witness - 43:17 Witness - 2:3, 10:17 women - 53:20 word - 91:1 words - 40:21, 53:8, 85:9 worth - 15:10, 15:21, 16:13, 17:11, 17:12, 81:11, 94:14 write - 50:8, 50:9, 64:21 writing - 13:18, 13:20, 14:6, 14:12 written - 78:20, 79:5 wrote - 30:16, 88:16, 94:15</p>		
		Y		
		<p>year - 5:14, 8:11, 34:4, 34:7, 59:16, 76:22, 77:21, 79:20, 80:13, 82:5, 88:3, 88:10, 88:12, 88:18, 88:20, 89:4, 89:16, 91:13, 95:1, 95:4, 95:13, 95:14, 96:22 years - 34:15, 94:14 years - 6:15, 6:23, 9:1, 12:13, 13:5, 13:16, 16:10, 17:2, 17:23, 18:7, 18:18, 22:6, 22:7, 24:9, 26:8, 26:20, 32:13, 33:18, 34:3, 35:9, 36:7, 37:14, 38:7, 44:3, 44:12, 44:18, 45:9, 45:10, 59:12, 59:20, 73:16, 80:13, 94:19, 96:7, 96:11, 100:23, 102:4, 103:4 Years - 74:19 yourself - 4:5 Yves - 40:8, 41:4</p>		
		Z		
		<p>zero - 42:14</p>		

Michael D. Ramsdell
mramsdel@orr-reno.com
Direct Dial 603.223.9185
Direct Fax 603.223.9085

Orr&Reno
Professional Association

One Eagle Square, P.O. Box 3550
Concord, NH 03302-3550
Telephone 603.224.2381
Facsimile 603.224.2318
www.orr-reno.com

February 11, 2010

VIA EMAIL & FIRST CLASS MAIL

Steven M. Notinger, Esq.
Donchess, Notinger & Tamposi, PC
547 Amherst Street
Suite 204
Nashua, NH 03063

***In Re: Scott D. Farah
Case No. 09-14902-JMD***

Dear Steve:

Enclosed are copies of all of the documents in Scott D. Farah's possession that are responsive to the subpoena dated January 29, 2010, in the above-referenced case. It is Mr. Farah's understanding that additional documents that are responsive to the subpoena and that were located at Financial Resources Mortgage, Inc., remain in the custody of the United States Attorney's Office or the Federal Bureau of Investigation. Mr. Farah tendered custody and control of Financial Resources Mortgage, Inc. to federal investigators on or about November 14, 2009.

Please do not hesitate to contact me if you have any questions regarding my letter.

Sincerely,


Michael D. Ramsdell

MDR/mem
Enclosures
cc: Scott D. Farah (w/enclosures) (via email)
632010_1.DOC



RECEIVED FEB 16 2010

001175



62 Pleasant Street / Laconia, NH 03246

ACCOUNT: [REDACTED]

PAGE: 1
/14/2009

LCNS

Temp-Return Service Requested



001175 0.4500 AT 0.357 TR00005

SCOTT D FARAH
SUSAN G FARAH 36-0
PO BOX 1404 0
MEREDITH NH 03253-1404 0

NOW ACCOUNT [REDACTED]

MINIMUM BALANCE	538.81	LAST STATEMENT 11/09/09	538.81
AVERAGE BALANCE	538.81	1 CREDITS	.03
		DEBITS	.00
		THIS STATEMENT 12/14/09	538.84

DESCRIPTION	OTHER CREDITS	DATE	AMOUNT
INTEREST		12/14	.03

INTEREST

AVERAGE LEDGER BALANCE:	538.81	INTEREST EARNED:	.03
INTEREST PAID THIS PERIOD:	.03	DAYS IN PERIOD:	35
INTEREST PAID 2009:	.31	ANNUAL PERCENTAGE YIELD EARNED:	.06%

ITEMIZATION OF NSF PAID AND RETURNED ITEM FEES

	THIS PERIOD	YEAR TO DATE
NSF PAID ITEM FEE:	.00	.00
NSF RETURNED ITEM FEE:	.00	.00
OVERDRAFT FEES:	.00	.00

DAILY BALANCE			
DATE.....	BALANCE	DATE.....	BALANCE
12/14	538.84		

LCNS-001-001175-001-000-091215 001175 506
03253140404

001185



62 Pleasant Street / Laconia, NH 03246

ACCOUNT: [REDACTED]

PAGE: 1
11/09/2009

LCNS

Temp-Return Service Requested



001185 0.6387 AT 0.357 TR00008

SCOTT D FARAH
SUSAN G FARAH 36-0
PO BOX 1404 0
MEREDITH NH 03253-1404 0

NOW ACCOUNT [REDACTED]

MINIMUM BALANCE 538.79 LAST STATEMENT 10/09/09 538.79
AVERAGE BALANCE 538.79 1 CREDITS .02
DEBITS .00
THIS STATEMENT 11/09/09 538.81

DESCRIPTION OTHER CREDITS DATE AMOUNT
INTEREST 11/09 .02

I N T E R E S T

AVERAGE LEDGER BALANCE: 538.79 INTEREST EARNED: .02
INTEREST PAID THIS PERIOD: .02 DAYS IN PERIOD: 31
INTEREST PAID 2009: .28 ANNUAL PERCENTAGE YIELD EARNED: .04%

ITEMIZATION OF NSF PAID AND RETURNED ITEM FEES

THIS PERIOD YEAR TO DATE
NSF PAID ITEM FEE: .00 .00
NSF RETURNED ITEM FEE: .00 .00
OVERDRAFT FEES: .00 .00

DAILY BALANCE

DATE.....BALANCE DATE.....BALANCE DATE.....BALANCE
11/09 538.81

LCNS-001-001185-001-000-091110 001185 S05
03253140404

**DISCRETIONARY LINE OF CREDIT AGREEMENT
AND
PROMISSORY NOTE**

\$10,000,000

Date: 6/1/05

FOR VALUE RECEIVED, Scott D. Farah, with an address of P.O. Box 1404, Meredith, New Hampshire 03253 (the "Borrower"), promises to pay to the order of CL and M, inc. of P.O. Box 7603, Gilford, New Hampshire 03247 (the "Lender"), the amount of money advanced by Lender to Borrower hereunder up to the maximum principal sum of TEN MILLION DOLLARS (\$10,000,000), together with interest thereupon at the fixed rate of TEN PERCENT (10 %) per annum, payable as follows:

1. Borrower shall pay interest to the lender or assigns (if loan funds source is third party loan to lender, i.e., bank loan) on the outstanding principal at the rate of Ten percent (10 %) per annum on the outstanding principal balance at least annually by December 31 of each year.

2. Borrower shall make principal payments ON DEMAND.

3. The full amount of principal and accrued interest, together with any late charges, costs, charges, attorney's fees and expenses, shall be due on DEMAND (the "Maturity Date"), TIME BEING OF THE ESSENCE.

NOTWITHSTANDING THE FOREGOING, ALL AMOUNTS OF PRINCIPAL, INTEREST, LATE CHARGES, COSTS, CHARGES, ATTORNEY'S FEES AND EXPENSES SHALL BE DUE AND PAYABLE ON DEMAND OF THE HOLDER OF THIS NOTE.

Borrower and Lender agree that the principal sum shown above is the maximum amount of principal that can be borrowed under this note. The principal amount may be advanced to Borrower by Lender in multiple advances up to the maximum principal sum more than one time. *All advances shall be memorialized by a Note or Notes in Series of the Borrower.*

Lender may make advances to Borrower from time to time until the Maturity Date. Lender may in his/her sole and unfettered discretion refuse to make an advance loan to Borrower under this Line of Credit Agreement at any time.

Advance payments of principal or interest may be made at any time without premium or penalty to the lender or assigns (if loan funds source is a third party loan to lender, i.e., bank loan).

This note is secured by all of Scott Farah's assets, including his interest in any corporations and/or the business life insurance proceeds, including life insurance (to be assigned to CL&M) payable to Jeff Long, VP, or other officer, to settle business debts of Financial Resources and other business activities of Scott Farah, inventory, receivables, tools, and equipment, etc.

All payments shall be made in lawful money of the United States of America.

No delay or omission on the part of the Lender or holder hereof in exercising any right hereunder against the Borrower shall operate as a waiver of such right or of any other right under this note. A waiver on any one occasion against the Borrower shall not be construed as a bar to or a waiver of such right and/or remedy on any future occasion.

The acceptance by the Lender or holder hereof of any payment after any default hereunder shall not operate to extend the time of payment of any amount then remaining unpaid hereunder or constitute a waiver of any rights of the payee or holder hereof under this note.

The Borrower agrees to pay on demand the reasonable fees of an attorney and all costs of collection in the event this note, while in default for any reason, is placed in the hands of an attorney for collection, whether or not foreclosure, setoff, or any other action was then, or is thereafter, instituted, at the discretion of the holder hereof. This right to costs and attorney's fees shall be reciprocal to the extent required by RSA Chapter 361-C.

This note constitutes a New Hampshire contract to be governed by the Laws of the State of New Hampshire. The undersigned hereby waives presentment for payment, demand and protest, notice of demand, protest, dishonor and of non-payment of this note; the liability of the Borrower hereunder shall remain unimpaired notwithstanding (1) any extension of the time of payment or other indulgence granted by the holder hereof, whether the same is granted to the Borrower or any guarantor or endorser of this note, or (2) the release of all or any part of the security of this note or the liability of any party who may be obligated hereon, either now or hereafter.

All notices to be given hereunder shall be given to the parties at the above addresses unless one party notifies the other of a change of address by certified mail, return receipt requested.

In the event any payment is not made when due, this note shall be considered to be in default, there expressly being NO GRACE PERIOD. Breach of any terms, conditions, or covenants contained in the Loan agreement and Security Instrument of even date which secure this note shall constitute a default of this note and give the Lender or holder hereof all rights and remedies created hereby, there expressly being NO GRACE PERIOD.

In the event any payment due hereunder is not paid within ten (10) days of the date it is due, the Lender may assess a late charge equal to FIVE PERCENT (5%) of the overdue payment amount, which late charge Borrower agrees to pay.

IN WITNESS WHEREOF, the Lender and Borrower has caused this Line of Credit Agreement to be executed on the day and year first above written.

BORROWER: Scott D. Farah



Borrower: Scott D. Farah

LENDER: CL and M, Inc.



Authorized: Donald E. Dodge president

NOTE IN SERIES


FOR VALUE RECEIVED, Scott D. Farah, of PO box 1404, Meredith, New Hampshire 03253, herein referred to as Maker or Borrower, promises to pay to the order of CL and M, Inc. of P.O. Box 7603, Gilford, New Hampshire 03247, herein referred to as Payee or Lender, on demand, the sum of \$20,348,321.43 Dollars (\$ _____). *TOTAL TO DATE* with interest thereon at the rate of ___ % payable no less than annually. Any interest balance due at the end of each calendar year shall compound at an additional 1% interest (annual rate) until the date paid.

TWENTY TWO
1. **Series of Notes.** This note is one of a series of notes, all of like tenor, except as to amount, issued and to be issued by Maker, amounting in the aggregate to not more than the principal sum of ~~TEN~~ MILLION DOLLARS (\$~~10,000,000~~), as authorized by the Discretionary Line of Credit Agreement and Promissory Note dated June 1, 2005. Said principal and interest are to be paid on demand, however, no later than 120 months commencing from the date of each credit distribution and/or note in series date, whichever is earlier.

2. **Prepayment.** Maker reserves the right at any time to prepay, in whole or in part, the principal or interest owing on any or all of the issued and outstanding notes of this series.

3. **Record of Payments.** Receipt of all payments on account, of principal and interest of this note, made by Maker prior to maturity may be documented by endorsement on the reverse side of this note.

Dated: 11 . 5 , 2009


Maker / Borrower: Scott D. Farah

PROMISSORY NOTES IN SERIES - Scott Farah to CL, Inc - 6/1/05

DATE	AMOUNT	DATE	AMOUNT	PD BACK
11/02/09	\$ 25,000.00			
10/29/09	\$ 40,000.00			
10/29/09	\$ 25,000.00			
10/26/09	\$ 20,000.00			
10/23/09	\$ 50,000.00			
10/19/09	\$ 20,000.00			
10/16/09	\$ 60,000.00			
10/02/09	\$ 10,000.00			
10/02/09	\$ 25,000.00			
10/01/09	\$ 60,000.00			
09/28/09	\$ 45,000.00			
09/24/09	\$ 25,000.00			
09/22/09	\$ 50,000.00			
09/18/09	\$ 25,000.00			
09/16/09	\$ 25,000.00			
09/09/09	\$ 52,800.00			
09/10/09	\$ 15,000.00			
09/10/09	\$ 20,000.00			
?	\$ 30,000.00			
09/02/09	\$ 63,000.00			
08/31/09	\$ 35,000.00			
08/27/09	\$ 20,000.00			
08/25/09	\$ 70,000.00			
08/21/09	\$ 20,000.00			
08/19/09	\$ 30,000.00			
08/14/09	\$ 50,000.00			
08/12/09	\$ 25,000.00			
08/10/09	\$ 25,000.00			
08/05/09	\$ 30,000.00			
07/31/09	\$ 25,000.00			
?	\$ 45,000.00			
07/27/09	\$ 20,215.00			
07/24/09	\$ 30,000.00			
07/23/09	\$ 55,000.00			
07/17/09	\$ 70,000.00			
07/15/09	\$ 50,000.00			
07/10/09	\$ 30,000.00			
07/09/09	\$ 20,000.00			
07/07/09	\$ 35,000.00			
07/02/09	\$ 40,000.00			
06/26/09	\$ 40,000.00			
06/23/09	\$ 110,857.43			
06/22/09	\$ 145,000.00			
06/19/09	\$ 95,000.00			
06/17/09	\$ 40,000.00			
06/15/09	\$ 30,000.00			
06/05/09	\$ 65,000.00			
05/27/09	\$ 70,000.00			
05/21/09	\$ 50,000.00			
05/19/09	\$ 20,000.00			
05/11/09	\$ 25,000.00			
05/04/09	\$ 68,500.00			
04/27/09	\$ 60,000.00			
04/24/09	\$ 81,200.00			
04/24/09	\$ 59,000.00			
04/23/09	\$ 60,000.00			
04/21/09	\$ 30,000.00			

3,400

9458

PROMISSORY NOTES IN SERIES - Scott Farah to CL, Inc - 6/1/05

04/20/09	\$	40,000.00
04/15/09	\$	25,000.00
04/10/09	\$	40,000.00
04/06/09	\$	40,000.00
02/06/09	\$	25,000.00
02/03/09	\$	62,000.00
01/20/09	\$	30,000.00
01/16/09	\$	20,000.00
01/13/09	\$	45,000.00
01/07/09	\$	50,000.00
?	\$	72,000.00
12/19/08	\$	20,000.00
?	\$	75,000.00
?	\$	40,000.00
12/15/08	\$	60,000.00
12/05/08	\$	50,000.00
11/19/08	\$	95,000.00
11/18/08	\$	45,000.00
?	\$	100,000.00
10/27/08	\$	30,000.00
09/29/08	\$	30,000.00
09/24/08	\$	50,000.00
09/24/08	\$	50,000.00
09/15/08	\$	30,000.00
09/12/08	\$	35,000.00
09/12/08	\$	30,000.00
09/11/08	\$	50,000.00
08/27/08	\$	70,000.00
08/22/08	\$	30,000.00
08/20/08	\$	60,000.00
08/13/08	\$	25,000.00
08/12/08	\$	15,000.00
08/08/08	\$	60,000.00
08/01/08	\$	30,000.00
07/31/08	\$	51,000.00
07/29/08	\$	48,000.00
07/25/08	\$	40,000.00
07/22/08	\$	50,000.00
07/17/08	\$	50,000.00
07/08/08	\$	50,000.00
07/01/08	\$	50,000.00
06/12/08	\$	120,000.00
06/13/08	\$	29,000.00
06/13/08	\$	90,000.00
06/04/08	\$	180,000.00
05/20/08	\$	129,400.00
05/20/08	\$	25,000.00
05/13/08	\$	20,000.00
05/09/08	\$	30,000.00
05/06/08	\$	45,000.00
04/29/08	\$	55,000.00
04/24/08	\$	60,000.00
04/09/08	\$	50,000.00
03/28/08	\$	100,000.00
03/24/08	\$	50,000.00
03/20/08	\$	8,000.00

934

PROMISSORY NOTES IN SERIES - Scott Farah to CL, Inc - 6/1/05

03/20/08	\$	20,000.00
03/06/08	\$	80,000.00
03/03/08	\$	75,000.00
02/01/08	\$	42,500.00
02/15/08	\$	50,000.00
02/06/08	\$	125,000.00
01/31/08	\$	75,000.00
01/25/08	\$	40,000.00
12/31/07	\$	240,000.00
12/27/07	\$	50,000.00
12/21/07	\$	25,000.00
12/05/07	\$	150,000.00
12/04/07	\$	175,250.00
11/30/07	\$	20,000.00
11/16/07	\$	25,000.00
11/12/07	\$	16,000.00
11/12/07	\$	30,000.00
11/09/07	\$	100,000.00
11/01/07	\$	61,500.00
10/30/07	\$	60,000.00
10/25/07	\$	20,000.00
10/19/07	\$	100,000.00
10/11/07	\$	30,000.00
10/02/07	\$	50,000.00
10/01/07	\$	25,000.00
09/27/07	\$	25,000.00
09/19/09	\$	25,000.00
08/31/07	\$	100,000.00
08/23/07	\$	50,000.00
08/23/07	\$	25,000.00
08/20/07	\$	20,000.00
08/07/07	\$	40,000.00
08/03/07	\$	1,000,000.00
08/03/07	\$	82,000.00
07/30/07	\$	50,000.00
07/25/07	\$	45,000.00
07/19/07	\$	23,086.00
07/17/07	\$	22,000.00
07/17/07	\$	50,185.00
07/14/07	\$	50,000.00
07/08/07	\$	45,000.00
07/06/07	\$	300,000.00
06/27/07	\$	50,000.00
05/25/07	\$	25,000.00
05/23/07	\$	45,000.00
04/26/07	\$	75,000.00
03/21/07	\$	400,000.00
03/20/07	\$	50,000.00
03/16/07	\$	109,000.00
?	\$	56,000.00
?	\$	125,000.00
?	\$	155,000.00
?	\$	20,000.00
?	\$	105,000.00
?	\$	35,000.00
02/28/07	\$	70,000.00
?	\$	270,000.00
01/07/07	\$	50,000.00

PROMISSORY NOTES IN SERIES - Scott Farah to CL, Inc - 6/1/05

?	\$	55,000.00
01/07/07	\$	83,000.00
01/07/07	\$	50,000.00
12/22/06	\$	106,000.00
?	\$	10,000.00
?	\$	35,000.00
11/21/06	\$	75,000.00
10/11/06	\$	100,000.00
08/23/06	\$	47,000.00
08/22/06	\$	27,000.00
08/17/06	\$	24,000.00
08/17/06	\$	50,000.00
08/16/06	\$	15,000.00
08/15/06	\$	3,000.00
08/14/06	\$	23,000.00
08/14/06	\$	20,000.00
08/09/06	\$	50,000.00
08/02/07	\$	17,000.00
07/31/06	\$	38,866.00
07/17/06	\$	47,000.00
?	\$	40,000.00
06/28/06	\$	250,000.00
06/16/06	\$	100,000.00
06/09/06	\$	100,000.00
06/01/06	\$	200,000.00
05/22/06	\$	150,000.00
05/11/06	\$	300,000.00
05/11/06	\$	47,812.00
05/10/06	\$	100,000.00
05/09/06	\$	68,200.00
05/09/06	\$	36,650.00
05/09/06	\$	200,000.00
05/09/06	\$	180,000.00
05/09/06	\$	29,000.00
05/05/06	\$	250,000.00
05/03/06	\$	100,000.00
04/28/06	\$	50,000.00
04/25/06	\$	10,000.00
04/25/06	\$	155,000.00
04/18/06	\$	100,000.00
04/13/06	\$	50,000.00
04/07/06	\$	100,000.00
03/28/06	\$	27,000.00
03/28/06	\$	23,000.00
03/28/06	\$	93,000.00
03/21/06	\$	350,000.00
03/21/06	\$	225,000.00
03/17/06	\$	26,000.00
03/01/06	\$	4,500.00
01/13/06	\$	175,000.00
01/13/06	\$	290,000.00
01/13/06	\$	145,000.00
01/12/06	\$	430,000.00
01/12/06	\$	317,000.00
12/22/06	\$	50,000.00
12/14/05	\$	100,000.00
12/03/05	\$	100,000.00
11/29/05	\$	30,000.00
11/27/05	\$	40,000.00

PROMISSORY NOTES IN SERIES - Scott Farah to CL,Inc - 6/1/05

11/14/05	\$	40,000.00
11/04/05	\$	125,000.00
11/02/05	\$	100,000.00
10/25/05	\$	60,000.00
10/17/05	\$	125,000.00
10/12/05	\$	100,000.00
10/11/05	\$	50,000.00
10/06/05	\$	100,000.00
10/05/05	\$	70,000.00
10/03/05	\$	200,000.00
10/03/05	\$	816,000.00
09/30/05	\$	100,000.00
09/28/05	\$	100,000.00
09/22/05	\$	50,000.00
09/16/05	\$	50,000.00
09/13/05	\$	150,000.00
09/06/05	\$	160,000.00
09/01/05	\$	140,000.00
08/25/05	\$	100,000.00
08/25/05	\$	50,000.00
08/15/05	\$	50,000.00
08/04/05	\$	50,000.00
07/22/05	\$	150,000.00
07/15/05	\$	100,000.00
07/08/05	\$	330,000.00
07/05/05	\$	200,000.00
06/30/05	\$	200,000.00
06/27/05	\$	70,000.00

\$ 20,348,321.43

Copy C, for employees records

Form W-2 Wage and Tax Statement 2009

a Control number		Void		e Employer's name, address, and ZIP code		Department of the Treasury - Internal Revenue Service OMB No. [REDACTED]			
b Employer's identification number		d Employer's social security number		f FINANCIAL RESOURCES MORTGAGE I P O BOX 1158 MEREDITH NH 03253		1 Wages, tips, other compensation 109620.00		2 Federal income tax withheld 15432.65	
13 Statutory employee		Retirement plan		14 Other		3 Social security wages 106800.00		4 Social security tax withheld 6621.60	
12 See Instrs. for Box 12 D 16380.00		X		g Employee's name, address, and ZIP code SCOTT D FARAH P O BOX 1404 MEREDITH NH 03253		6 Medicare wages and tips 126000.00		8 Medicare tax withheld 1827.00	
16 State		Employer's state ID No.		18 State wages, tips, etc.		17 State income tax		18 Local wages, tips, etc.	
								19 Local income tax	
								20 Locality name	

This information is being furnished to the Internal Revenue Service

Copy B, to be filed with employees FEDERAL tax return

Form W-2 Wage and Tax Statement 2009

a Control number		Void		e Employer's name, address, and ZIP code		Department of the Treasury - Internal Revenue Service OMB No. [REDACTED]			
b Employer's identification number		d Employer's social security number		f FINANCIAL RESOURCES MORTGAGE I P O BOX 1158 MEREDITH NH 03253		1 Wages, tips, other compensation 109620.00		2 Federal income tax withheld 15432.65	
13 Statutory employee		Retirement plan		14 Other		3 Social security wages 106800.00		4 Social security tax withheld 6621.60	
12 See Instrs. for Box 12 D 16380.00		X		g Employee's name, address, and ZIP code SCOTT D FARAH P O BOX 1404 MEREDITH NH 03253		6 Medicare wages and tips 126000.00		8 Medicare tax withheld 1827.00	
16 State		Employer's state ID No.		18 State wages, tips, etc.		17 State income tax		18 Local wages, tips, etc.	
								19 Local income tax	
								20 Locality name	

This information is being furnished to the Internal Revenue Service

Form W-2 Wage and Tax Statement 2009

a Control number		Void		e Employer's name, address, and ZIP code		Department of the Treasury - Internal Revenue Service OMB No. [REDACTED]			
b Employer's identification number		d Employer's social security number		f FINANCIAL RESOURCES MORTGAGE I P O BOX 1158 MEREDITH NH 03253		1 Wages, tips, other compensation 109620.00		2 Federal income tax withheld 15432.65	
13 Statutory employee		Retirement plan		14 Other		3 Social security wages 106800.00		4 Social security tax withheld 6621.60	
12 See Instrs. for Box 12		X		g Employee's name, address, and ZIP code SCOTT D FARAH P O BOX 1404 MEREDITH NH 03253		6 Medicare wages and tips 126000.00		8 Medicare tax withheld 1827.00	
16 State		Employer's state ID No.		18 State wages, tips, etc.		17 State income tax		18 Local wages, tips, etc.	
								19 Local income tax	
								20 Locality name	

This information is being furnished to the Internal Revenue Service

Form W-2 Wage and Tax Statement 2009

a Control number		Void		e Employer's name, address, and ZIP code		Department of the Treasury - Internal Revenue Service OMB No. [REDACTED]			
b Employer's identification number		d Employer's social security number		f FINANCIAL RESOURCES MORTGAGE I P O BOX 1158 MEREDITH NH 03253		1 Wages, tips, other compensation 109620.00		2 Federal income tax withheld 15432.65	
13 Statutory employee		Retirement plan		14 Other		3 Social security wages 106800.00		4 Social security tax withheld 6621.60	
12 See Instrs. for Box 12		X		g Employee's name, address, and ZIP code SCOTT D FARAH P O BOX 1404 MEREDITH NH 03253		6 Medicare wages and tips 126000.00		8 Medicare tax withheld 1827.00	
16 State		Employer's state ID No.		18 State wages, tips, etc.		17 State income tax		18 Local wages, tips, etc.	
								19 Local income tax	
								20 Locality name	

This information is being furnished to the Internal Revenue Service

2009 MORTGAGE INTEREST STATEMENT - FORM 1098 SUBSTITUTE

CORRECTED (if checked) OMB No. 1545-0901

HOME LOAN SERVICES, INC.
150 ALLEGHENY CENTER MALL
IDC 09071
PITTSBURGH PA 15212

Phone No. 1-800-346-6437
Recipient's Tax ID No. [REDACTED]
Loan type CONV. RES

005866/001956A

SCOTT D FARAH
SUSAN G FARAH
PO BOX 1404
MEREDITH NH 03253-1404

1 Mortgage interest received from payer(s)/borrower(s)*	\$11,508.42
2 Points paid on purchase of principal residence (See Box 2 on back.)	\$0.00
3 Refund of overpaid interest (See Box 3 on back.)	\$0.00
4 Mortgage insurance premiums	\$0.00
5 Real estate taxes paid	\$0.00
Account No. (See Instructions)	Payer's SSN
[REDACTED]	[REDACTED]

* Caution: The amount shown may not be fully deductible by you. Limits based on the loan amount and the cost and value of the secured property may apply. Also, you may only deduct interest to the extent it was incurred by you, actually paid by you, and not reimbursed by another person.

**Copy B
For Payer**

The information in boxes 1, 2, 3, and 4 is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if the IRS determines that an underpayment of tax results because you overstated a deduction for this mortgage interest or for

THIS STATEMENT FOR YOUR INCOME TAX RECORDS

Property Location: [REDACTED] MAP ID: [REDACTED] Bldg Name: State Use: 1010
 Vision ID: [REDACTED] Account # 15290 Bldg #: 1 of 1 Sec #: 1 of 1 Card 1 of 1 Print Date: 02/05/2010 14:40

CURRENT OWNER		TOPO	UTILITIES	STRT/ROAD	LOCATION	CURRENT ASSESSMENT													
FARAH, SCOTT D & SUSAN G		1 Level	5 Well	1 Paved	3 Residential	Description	Code	Appraised Value	Assessed Value										
PO BOX 1404		3 Below Street	6 Septic			RESIDNTL	1010	210,800	210,800										
MEREDITH, NH 03253-1404		SUPPLEMENTAL DATA Other ID: 00R02 00023 00000 WSA: SUBDIV: LOT 2 ABATEM'T: PHOTO: BTLA/SC: LAKE-FRT: VAR/SP EX: LAKE-ACC: MER PLAN: BK8PG142 CYCLICAL YR1 ASSOC PID# GIS ID: 411				RES LAND	1010	57,100	57,100										
Additional Owners:						RESIDNTL	1010	17,900	17,900										
						CU LAND	7300	16,300	2,125										
						CU LAND	7340	68,000	416										
						CU LAND	7480	15,400	573										
		Total		385,500	288,914														
RECORD OF OWNERSHIP		BK-VOL/PAGE	SALE DATE	q/u	w/l	SALE PRICE	V.C.	PREVIOUS ASSESSMENTS (HISTORY)											
FARAH, SCOTT D & SUSAN G		1050/0454	05/02/1988	Q	1	157,900	00	Yr.	Code	Assessed Value	Yr.	Code	Assessed Value						
DE PIPPO, JOHN A								2009	1010	210,800	2008	1010	232,500						
								2009	1010	57,100	2008	1010	64,900						
								2009	1010	17,900	2008	1010	15,300						
								2009	7300	2,125	2008	7300	2,046						
								2009	7340	416	2008	7340	300						
								Total		288,914	Total		315,689						
								Total		385,500	Total		312,352						
EXEMPTIONS				OTHER ASSESSMENTS				This signature acknowledges a visit by a Data Collector or Assessor											
Year	Type	Description	Amount	Code	Description	Number	Amount	Comm. Int.											
Total																			
ASSESSING NEIGHBORHOOD								APPRAISED VALUE SUMMARY											
NBHD/ SUB	NBHD NAME	STREET INDEX NAME	TRACING	BATCH	Appraised Bldg. Value (Card)				210,800										
0001/A					Appraised XF (B) Value (Bldg)				0										
					Appraised OB (L) Value (Bldg)				17,900										
					Appraised Land Value (Bldg)				57,100										
					Special Land Value				99,700										
					Total Appraised Parcel Value				385,500										
					Valuation Method:				C										
					Adjustment:				0										
					Net Total Appraised Parcel Value				385,500										
BUILDING PERMIT RECORD								VISIT/ CHANGE HISTORY											
Permit ID	Issue Date	Type	Description	Amount	Insp. Date	% Comp.	Date Comp.	Comments	Date	Type	IS	ID	Cd.	Purpose/Result					
267-01	10/16/2001	FG	Garage	20,000	02/28/2002	100	02/04/2004		12/10/2007			BF	01	Measur+1 Visit					
23-01	01/30/2001	AD	Addition	100,000	02/28/2002	100			7/31/2007			JJC	CU	CU \$ change Current L					
5076	01/26/1998	TC	TIMBER CUT	320		0	09/11/1998		3/5/2007			KW	14	Field Review					
									4/23/2006			DG	14	Field Review					
									9/29/2005			DG	01	Measur+1 Visit					
LAND LINE VALUATION SECTION																			
B Use #	Code	Use Description	Zone	Frontage	Depth	Units	Unit Price	I. Factor	S. A	Acre Disc	C. Factor	ST. Idx	S.I. Adj.	Notes- Adj	Rec Y/N	CU Cond	Special Pricing	Adj. Unit Price	Land Value
1	1010	SINGLE FAM	FR	1200	1000	43,560	SF	1.38	1.00	1.0000	1.00	500	0.95		N	0.000		1.31	57,100
1	7340	WETLAND	FR	900		20.80	AC	5,000.00	1.00	0	0.8600	0.80	500	0.95	N	1.000	CU5:20	3,268.00	68,000
1	7480	F-OTHER UN	FR			4.70	AC	5,000.00	1.00	0	0.8600	0.80	500	0.95	N	1.000	CU5:122	3,268.00	15,400
1	7300	FARM	FR			5.00	AC	5,000.00	1.00	0	0.8600	0.80	500	0.95	N	1.000	CU5:425	3,268.00	16,300
Total Card Land Units:				31.50	AC	Parcel Total Land Area:				31.5	AC	Total Land Value:				156,800			

1508
 MEREDITH, NH
VISION

Property Location [REDACTED]
 Vision ID [REDACTED]

Account #56460

Bldg #: 1 of 1

Bldg Name:
 Sec #: 1 of 1 Card 1 of 1

State Use: 1300
 Print Date: 02/05/2010 14:39

CURRENT OWNER		TOPO	UTILITIES	STRT/ROAD	LOCATION	CURRENT ASSESSMENT				1508 MEREDITH, NH VISION									
FARAH, SCOTT D PO BOX 1404 MEREDITH, NH 03253-1404 Additional Owners:		4 Rolling		1 Paved	3 Rural	Description	Code	Appraised Value	Assessed Value										
						RES LAND	1300	64,800	64,800										
SUPPLEMENTAL DATA:						Total: 64,800 64,800													
Other ID: 00R02 00023A 00000 SUBDIV: LOT 1 PHOTO: LAKE-FRT: LAKE-ACC: CYCLICAL YR1 GIS ID: 412		WSA: ABATEM'T: BTLA/SC: VAR/SP EX: MER PLAN: BK8PG142 ASSOC PID#																	
RECORD OF OWNERSHIP			BK-VOL/PAGE	SALE DATE	q/u	v/t	SALE PRICE	V.C.	PREVIOUS ASSESSMENTS (HISTORY)										
FARAH, SCOTT D			1121/ 455	12/22/1989	U	V	0	1A	Yr. Code	Assessed Value	Yr. Code	Assessed Value	Yr. Code	Assessed Value					
FARRAH, SCOTT D & SUSAN G			1050/ 454	05/02/1988	U	V			2009 1300	64,800	2008 1300	73,000	2007 1300	72,700					
Total:									64,800	Total:	73,000	Total:	72,700						
EXEMPTIONS			OTHER ASSESSMENTS					This signature acknowledges a visit by a Data Collector or Assessor											
Year	Type	Description	Amount	Code	Description	Number	Amount	Comm. Int.											
Total:																			
ASSESSING NEIGHBORHOOD										APPRaised VALUE SUMMARY									
NBHD/ SUB	NBHD NAME		STREET INDEX NAME		TRACING		BATCH			Appraised Bldg. Value (Card)	0								
0001/A										Appraised XF (B) Value (Bldg)	0								
NOTES										Appraised OB (L) Value (Bldg)	0								
WELL ESMNT ON R02/23										Appraised Land Value (Bldg)	64,800								
2008=ADJ AC PER PLAN										Special Land Value	0								
										Total Appraised Parcel Value	64,800								
										Valuation Method:	C								
										Adjustment:	0								
										Net Total Appraised Parcel Value	64,800								
BUILDING PERMIT RECORD										VISIT/ CHANGE HISTORY									
Permit ID	Issue Date	Type	Description	Amount	Insp. Date	% Comp.	Date Comp.	Comments	Date	Type	IS	ID	Cd.	Purpose/Result					
2005-CU	03/02/2005	CU	Current Use	1,500		0	06/28/2005	BK2188/0443	7/1/2008			JJC	00	Change per deed/plan					
									4/23/2006			DG	14	Field Review					
									9/29/2005			DG	00	Measur+Listed					
LAND LINE VALUATION SECTION																			
B #	Use Code	Use Description	Zone	Frontage	Depth	Units	Unit Price	I. Factor	S. A	Acres Disc	C. Factor	ST. Idx	S.I. Adj.	Notes-Adj	Rec Y/N	CU Cond	Special Pricing	Adj. Unit Price	Land Value
I	1300	VACANT BLD	FR			43,560 SF	1.38	1.00	A	1.0000	1.00	500	0.95		N	0.000		1.31	57,100
I	1300	VACANT BLD	FR			2.03 AC	5,000.00	1.00	0	1.0000	0.80	500	0.95	TOPO	N	0.000		3,800.00	7,700
Total Card Land Units:						3.03 AC	Parcel Total Land Area: 3.03 AC						Total Land Value: 64,800						

In re Scott David Farah
Debtor

Case
(If known)

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
Primary residence house <u> </u> <u> </u> Meredith NH	ownership	I	385,500.00	251,000.00
3 acre lot <u> </u> Meredith NH	ownership	h	64,800.00	0

Total **450,300.00**
(Report also on Summary of Schedules.)

In re Scott David Farah
DebtorCase No.
(If known)**SCHEDULE B - PERSONAL PROPERTY**

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	H U S B A N D, W I F E, J O I N T, O R C O M M U N I T Y	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand.		in possession	h	68.00
2. Checking, savings or other financial accounts, certificates of deposit or shares in banks, savings and loan, thrift, building and loan, and home-stead associations, or credit unions, brokerage houses, or cooperatives.		Laconia Savings Bank checking account	j	538.34
3. Security deposits with public utilities, telephone companies, landlords, and others.	x			
4. Household goods and furnishings, including audio, video, and computer equipment.		in possession	h	3,000.00
5. Books, pictures and other art objects; antiques; stamp, coin, record, tape, compact disc, and other collections or collectibles.	x			
6. Wearing apparel.		in possession	h	500.00
7. Furs and jewelry.	x			
8. Firearms and sports, photographic, and other hobby equipment.	x			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	x			
10. Annuities. Itemize and name each issuer.	x			
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)	x			

In re Scott David Farah
Debtor

Case No.
(If known)

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.		Molnar Associates trustee for 401(k)	h	49,000.00
13. Stock and interests in incorporated and unincorporated businesses. Itemize.		Financial Resources stock	h	0.00
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and non-negotiable instruments.	X			
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A – Real Property.	X			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			

In re Scott David Farah
Debtor

Case No. [REDACTED]
(If known)

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.		1996 gmc pickup truck 2002 audi 4 door	h	7,000.00
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.	X			
29. Machinery, fixtures, equipment, and supplies used in business.	X			
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.	X			

continuation sheets attached Total ▶ \$ 60,106.34

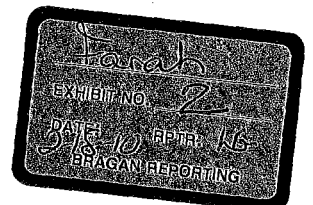
(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)

GUARANTY

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, SCOTT D. FARAH, with a mailing address of P.O. Box 1404 Meredith, NH 03253, does hereby guarantee prompt payment to the Lender [REDACTED] [REDACTED] [REDACTED], with an address of [REDACTED] [REDACTED], its successors and assigns, (the "Lender"), the sum of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS owed by SMM 2007 REALTY TRUST udt January 4, 2007, with a mailing address of P.O. Box 7017 Gilford, New Hampshire 03247 (the "Debtor" and/or the "Obligor") to the Lender.

The foregoing debt together with interest at the rate of Eighteen percent (18%) per annum are collectively referred to as the Indebtedness under a certain Promissory Note, of even date, ("Note"), and all costs and expenses, including counsel fees, which maybe incurred in the collection of said obligations from the Borrower (herein collectively referred to as "Obligations" and singularly called "Obligation"). Guarantor further guarantees to Lender that Borrower will fully and punctually perform each and every agreement, covenant and condition of said Note and the undersigned agrees with the Lender as follows:

1. The undersigned Guarantor(s) hereby unconditionally and irrevocably guarantees the prompt payment and performance of all debts and obligations owing by SMM 2007 REALTY TRUST, (the "Obligor") to the Lender or remaining unpaid by the Obligor to the Lender under the Obligations.
2. Guarantor hereby waives all suretyship defenses and defenses in the nature thereof and waives all notices whatsoever in respect to this Guaranty including notice of Lender's acceptance hereof, Lender's intention to act, Lender's action in reliance hereon, the present existence or future incurring of any Liability, the terms or amounts thereof, and any default thereon.
3. The liability of the Guarantor(s) hereunder shall be absolute, unconditional and continuing and shall not be diminished or affected by any lack of validity or enforceability of any Obligations or any change in the time, manner or place of payment



of or in any other term of the Obligations or any other law, regulation or other circumstance which might otherwise constitute a defense available to, or a discharge of, the Obligor in respect of any or all of the Obligations.

4. The liability of the Guarantor(s) hereunder shall not be released, discharged, limited or in any way affected by anything done, suffered or permitted by the Lender in connection with any duties or liabilities of the Obligor to the Lender. The Lender, without releasing, discharging, limiting or otherwise affecting in whole or in part the Guarantor's liability hereunder, may grant time, renewals, extensions or indulgences to the Obligor or take or abstain from taking securities or collateral from the Obligor or from perfecting securities or collateral of the Obligor or otherwise deal with the Obligor and all other persons and securities as the Lender may see fit.

5. The Lender shall not be bound or obligated to exhaust its recourse against the Obligor or other persons or any securities or collateral it may hold or take any other action (other than to make demand pursuant to Section 6 below) before being entitled to demand payment from the Guarantor(s) hereunder.

6. The Guarantor(s) shall not claim any set-off or counterclaim against the Obligor in respect of any liability of the Obligor to the Guarantor(s).

7. The Guarantor(s) shall make payment to or performance in favor of the Lender of the Obligations of the Guarantor(s) forthwith after demand therefor is made to the Guarantor(s). The Lender shall be entitled to make demand upon the Guarantor(s) at any time upon a default in payment of any amount owing by the Obligor to the Lender and upon such default the Lender may treat all Obligations as due and payable and may forthwith collect from the Guarantor(s) the total amount guaranteed hereunder. Lender may forthwith recover from any or all Guarantors the whole amount due, notwithstanding that Lender is unable to pursue or exhaust its remedies against Borrower, whether as a consequence of intervening bankruptcy of Borrower, or for any other reason whatsoever. Lender shall not be bound to exhaust its recourse against Borrower or other persons or upon any collateral or liens it may hold before being entitled to payment from Guarantor of the Liabilities. This is a guaranty of payment, when due, and not merely of collectability.

8. The Guarantor(s) hereby waives notice of acceptance of this instrument.

9. Guarantor hereby, assigns to Lender all rights of subrogation which Guarantor may from time to time have against Borrower. Borrower agrees that Lender may exercise all rights attendant to such subrogation claims as it sees fit without the prior consent of Guarantor.

10. General Provisions. This Guarantee shall inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and permitted assigns of the Guarantor(s) and the Lender. This Guarantee constitutes the entire agreement between the Lender, the Obligor and the Guarantor(s) with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between such parties with respect thereto. The Guarantor(s) may not assign its obligations under this Guarantee. This Guarantee shall be governed by and construed in accordance with the laws of the State of New Hampshire and the laws of the United States of America applicable therein.

This Guaranty shall continue in full force and effect until all Liabilities are satisfied in full.

IN WITNESS WHEREOF the Guarantor has set his hand this 1 day of Sept., 2008

[Redacted Signature]

WITNESS

[Redacted Signature]

SCOTT D. FARAH



POLICY SCHEDULE

FORM NUMBER	TYPE OF COVERAGE	EXPIRATION DATE	FACE AMOUNT	*ANNUAL PREMIUM	RATING CLASSIFICATION
T-97	RENEWABLE AND CONVERTIBLE TERM	10/30/2058	\$15,000,000	\$27,000.00	STANDARD PLUS NONTOBACCO
	POLICY FEE			\$50.00	
			TOTAL	\$27,050.00	

MAXIMUM ANNUAL PREMIUM: YEAR 1 \$27,050.00
 YEARS 2+ SEE SCHEDULE PAGE 3A

* PREMIUMS MAY BE CHANGED AS PROVIDED IN THE CHANGE OF PREMIUM PROVISION, BUT THE ANNUAL PREMIUM WILL NOT EXCEED THE MAXIMUM ANNUAL PREMIUM SHOWN.

PREMIUM MODE: QUARTERLY
 PREMIUM DUE DATE: 10/30

PREMIUM MODES AVAILABLE:	ANNUAL	SEMI-ANNUAL	QUARTERLY	PAC
	\$27,050.00	\$13,795.50	\$7,033.00	\$2,366.88

END OF CONVERSION PERIOD: 10/29/2027

END OF EXCHANGE PERIOD: 10/29/2027

INSURED: SCOTT FARAH
 SUE AGE & SEX: 44 MALE
 OWNER: FINANCIAL RESOURCES

TERM PERIOD: 20 YEAR
 ISSUE DATE: 10/09/2007
 POLICY DATE: 10/30/2007
 POLICY NUMBER: [REDACTED]



Life[®] Insurance Company

1701 Research Boulevard
Rockville, MD 20850

RIGHT TO EXAMINE POLICY FOR 20 DAYS. Within 20 days after this policy is received, it may be returned to the agent through whom it was purchased or to our home office. We will pay the Face Amount to the Beneficiary if the Insured dies while this policy is in force. Such payment will be subject to the provisions of this policy.

READ YOUR POLICY CAREFULLY - This policy is a legal contract between the policy owner and Banner Life Insurance Company.


In this policy, Banner Life Insurance Company will be referred to as "we", "our" or "us".

We will pay the face amount to the beneficiary if the insured dies while this policy is in force. Such payment will be subject to the provisions of this policy.

All payments are subject to the terms of this policy. The following pages are part of this policy.

This policy is issued in consideration of the application and of the payment of the first premium as provided herein. A copy of the application is attached and is made a part of the policy.

Signed for Banner Life Insurance Company at its home office in Rockville, Maryland, on the policy date.


Secretary


President



Renewable and Convertible Term Life Insurance

A change of premium provision is applicable subject to guaranteed maximum premiums

The face amount is payable at death prior to expiration date

Nonlevel premiums are payable as shown in the policy schedule to the expiration date or until the death of the insured

This policy is renewable to the expiration date

This policy is convertible to the end of the conversion period

This policy is nonparticipating and no dividends are payable

RT-97



GUARANTY

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, SCOTT D. FARAH, with a mailing address of P.O. Box 1404 Meredith, NH 03253, does hereby guarantee prompt payment to the Lender [REDACTED], with an address of [REDACTED], its successors and assigns, (the "Lender"), the sum of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS owed by SMM 2007 REALTY TRUST udt January 4, 2007, with a mailing address of P.O. Box 7017 Gilford, New Hampshire 03247 (the "Debtor" and/or the "Obligor") to the Lender.

The foregoing debt together with interest at the rate of Eighteen percent (18%) per annum are collectively referred to as the Indebtedness under a certain Promissory Note, of even date, ("Note"), and all costs and expenses, including counsel fees, which maybe incurred in the collection of said obligations from the Borrower (herein collectively referred to as "Obligations" and singularly called "Obligation"). Guarantor further guarantees to Lender that Borrower will fully and punctually perform each and every agreement, covenant and condition of said Note and the undersigned agrees with the Lender as follows:

1. The undersigned Guarantor(s) hereby unconditionally and irrevocably guarantees the prompt payment and performance of all debts and obligations owing by SMM 2007 REALTY TRUST, (the "Obligor") to the Lender or remaining unpaid by the Obligor to the Lender under the Obligations.
2. Guarantor hereby waives all suretyship defenses and defenses in the nature thereof and waives all notices whatsoever in respect to this Guaranty including notice of Lender's acceptance hereof, Lender's intention to act, Lender's action in reliance hereon, the present existence or future incurring of any Liability, the terms or amounts thereof, and any default thereon.
3. The liability of the Guarantor(s) hereunder shall be absolute, unconditional and continuing and shall not be diminished or affected by any lack of validity or enforceability of any Obligations or any change in the time, manner or place of payment

of or in any other term of the Obligations or any other law, regulation or other circumstance which might otherwise constitute a defense available to, or a discharge of, the Obligor in respect of any or all of the Obligations.

4. The liability of the Guarantor(s) hereunder shall not be released, discharged, limited or in any way affected by anything done, suffered or permitted by the Lender in connection with any duties or liabilities of the Obligor to the Lender. The Lender, without releasing, discharging, limiting or otherwise affecting in whole or in part the Guarantor's liability hereunder, may grant time, renewals, extensions or indulgences to the Obligor or take or abstain from taking securities or collateral from the Obligor or from perfecting securities or collateral of the Obligor or otherwise deal with the Obligor and all other persons and securities as the Lender may see fit.

5. The Lender shall not be bound or obligated to exhaust its recourse against the Obligor or other persons or any securities or collateral it may hold or take any other action (other than to make demand pursuant to Section 6 below) before being entitled to demand payment from the Guarantor(s) hereunder.

6. The Guarantor(s) shall not claim any set-off or counterclaim against the Obligor in respect of any liability of the Obligor to the Guarantor(s).

7. The Guarantor(s) shall make payment to or performance in favor of the Lender of the Obligations of the Guarantor(s) forthwith after demand therefor is made to the Guarantor(s). The Lender shall be entitled to make demand upon the Guarantor(s) at any time upon a default in payment of any amount owing by the Obligor to the Lender and upon such default the Lender may treat all Obligations as due and payable and may forthwith collect from the Guarantor(s) the total amount guaranteed hereunder. Lender may forthwith recover from any or all Guarantors the whole amount due, notwithstanding that Lender is unable to pursue or exhaust its remedies against Borrower, whether as a consequence of intervening bankruptcy of Borrower, or for any other reason whatsoever. Lender shall not be bound to exhaust its recourse against Borrower or other persons or upon any collateral or liens it may hold before being entitled to payment from Guarantor of the Liabilities. This is a guaranty of payment, when due, and not merely of collectability.

8. The Guarantor(s) hereby waives notice of acceptance of this instrument.

9. Guarantor hereby, assigns to Lender all rights of subrogation which Guarantor may from time to time have against Borrower. Borrower agrees that Lender may exercise all rights attendant to such subrogation claims as it sees fit without the prior consent of Guarantor.

10. General Provisions. This Guarantee shall inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and permitted assigns of the Guarantor(s) and the Lender. This Guarantee constitutes the entire agreement between the Lender, the Obligor and the Guarantor(s) with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between such parties with respect thereto. The Guarantor(s) may not assign its obligations under this Guarantee. This Guarantee shall be governed by and construed in accordance with the laws of the State of New Hampshire and the laws of the United States of America applicable therein.

This Guaranty shall continue in full force and effect until all Liabilities are satisfied in full.

IN WITNESS WHEREOF the Guarantor has set his hand this 1 day of Sept., 2008

[Redacted signature]

WITNESS

[Redacted signature]

SCOTT D. FARAH



POLICY SCHEDULE

FORM NUMBER	TYPE OF COVERAGE	EXPIRATION DATE	FACE AMOUNT	*ANNUAL PREMIUM	RATING CLASSIFICATION
T-97	RENEWABLE AND CONVERTIBLE TERM	10/30/2058	\$15,000,000	\$27,000.00	STANDARD PLUS NONTOBACCO
	POLICY FEE			\$50.00	
			TOTAL	\$27,050.00	

MAXIMUM ANNUAL PREMIUM: YEAR 1 \$27,050.00
 YEARS 2 + SEE SCHEDULE PAGE 3A

* PREMIUMS MAY BE CHANGED AS PROVIDED IN THE CHANGE OF PREMIUM PROVISION, BUT THE ANNUAL PREMIUM WILL NOT EXCEED THE MAXIMUM ANNUAL PREMIUM SHOWN.

PREMIUM MODE: QUARTERLY
 PREMIUM DUE DATE: 10/30

PREMIUM MODES AVAILABLE:	ANNUAL	SEMI-ANNUAL	QUARTERLY	PAC
	\$27,050.00	\$13,795.50	\$7,033.00	\$2,368.88

END OF CONVERSION PERIOD: 10/29/2027

END OF EXCHANGE PERIOD: 10/29/2027

INSURED: SCOTT FARAH
 SUE AGE & SEX: 44 MALE
 OWNER: FINANCIAL RESOURCES

TERM PERIOD: 20 YEAR
 ISSUE DATE: 10/09/2007
 POLICY DATE: 10/30/2007
 POLICY NUMBER: [REDACTED]



BannerLife® Insurance Company

1701 Research Boulevard
Rockville, MD 20850

RIGHT TO EXAMINE POLICY FOR 20 DAYS. Within 20 days after this policy is received, it may be returned to the agent through whom it was purchased or to our home office. We will pay the Face Amount to the Beneficiary if the Insured dies while this policy is in force. Such payment will be subject to the provisions of this policy.

READ YOUR POLICY CAREFULLY - This policy is a legal contract between the policy owner and Banner Life Insurance Company.

In this policy, Banner Life Insurance Company will be referred to as "we", "our" or "us".

We will pay the face amount to the beneficiary if the insured dies while this policy is in force. Such payment will be subject to the provisions of this policy.

All payments are subject to the terms of this policy. The following pages are part of this policy.

This policy is issued in consideration of the application and of the payment of the first premium as provided herein. A copy of the application is attached and is made a part of the policy.

Signed for Banner Life Insurance Company at its home office in Rockville, Maryland, on the policy date.



Secretary



President

Renewable and Convertible Term Life Insurance

A change of premium provision is applicable subject to guaranteed maximum premiums

This policy is renewable to the expiration date

The face amount is payable at death prior to expiration date

This policy is convertible to the end of the conversion period

Nonlevel premiums are payable as shown in the policy schedule to the expiration date or until the death of the insured

This policy is nonparticipating and no dividends are payable

RT-97



GUARANTY

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, SCOTT D. FARAH, with a mailing address of P.O. Box 1404 Meredith, NH 03253, does hereby guarantee prompt payment to the Lender [REDACTED], with an address of [REDACTED], its successors and assigns, (the "Lender"), the sum of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS owed by SMM 2007 REALTY TRUST udt January 4, 2007, with a mailing address of P.O. Box 7017 Gilford, New Hampshire 03247 (the "Debtor" and/or the "Obligor") to the Lender.

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1. The undersigned Guarantor(s) hereby unconditionally and irrevocably guarantees the prompt payment and performance of all debts and obligations owing by SMM 2007 REALTY TRUST, (the "Obligor") to the Lender or remaining unpaid by the Obligor to the Lender under the Obligations.
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3. The liability of the Guarantor(s) hereunder shall be absolute, unconditional and continuing and shall not be diminished or affected by any lack of validity or enforceability of any Obligations or any change in the time, manner or place of payment

of or in any other term of the Obligations or any other law, regulation or other circumstance which might otherwise constitute a defense available to, or a discharge of, the Obligor in respect of any or all of the Obligations.

4. The liability of the Guarantor(s) hereunder shall not be released, discharged, limited or in any way affected by anything done, suffered or permitted by the Lender in connection with any duties or liabilities of the Obligor to the Lender. The Lender, without releasing, discharging, limiting or otherwise affecting in whole or in part the Guarantor's liability hereunder, may grant time, renewals, extensions or indulgences to the Obligor or take or abstain from taking securities or collateral from the Obligor or from perfecting securities or collateral of the Obligor or otherwise deal with the Obligor and all other persons and securities as the Lender may see fit.

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6. The Guarantor(s) shall not claim any set-off or counterclaim against the Obligor in respect of any liability of the Obligor to the Guarantor(s).

7. The Guarantor(s) shall make payment to or performance in favor of the Lender of the Obligations of the Guarantor(s) forthwith after demand therefor is made to the Guarantor(s). The Lender shall be entitled to make demand upon the Guarantor(s) at any time upon a default in payment of any amount owing by the Obligor to the Lender and upon such default the Lender may treat all Obligations as due and payable and may forthwith collect from the Guarantor(s) the total amount guaranteed hereunder. Lender may forthwith recover from any or all Guarantors the whole amount due, notwithstanding that Lender is unable to pursue or exhaust its remedies against Borrower, whether as a consequence of intervening bankruptcy of Borrower, or for any other reason whatsoever. Lender shall not be bound to exhaust its recourse against Borrower or other persons or upon any collateral or liens it may hold before being entitled to payment from Guarantor of the Liabilities. This is a guaranty of payment, when due, and not merely of collectability.


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10. General Provisions. This Guarantee shall inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and permitted assigns of the Guarantor(s) and the Lender. This Guarantee constitutes the entire agreement between the Lender, the Obligor and the Guarantor(s) with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between such parties with respect thereto. The Guarantor(s) may not assign its obligations under this Guarantee. This Guarantee shall be governed by and construed in accordance with the laws of the State of New Hampshire and the laws of the United States of America applicable therein.

This Guaranty shall continue in full force and effect until all Liabilities are satisfied in full.

IN WITNESS WHEREOF the Guarantor has set his hand this 1 day of Sep, 2008



WITNESS




SCOTT D. FARAH

POLICY SCHEDULE

<u>FORM NUMBER</u>	<u>TYPE OF COVERAGE</u>	<u>EXPIRATION DATE</u>	<u>FACE AMOUNT</u>	<u>*ANNUAL PREMIUM</u>	<u>RATING CLASSIFICATION</u>
RT-97	RENEWABLE AND CONVERTIBLE TERM	10/30/2058	\$15,000,000	\$27,000.00	STANDARD PLUS NONTOBACCO
	POLICY FEE			\$50.00	
			TOTAL	\$27,050.00	

MAXIMUM ANNUAL PREMIUM: YEAR 1 \$27,050.00
 YEARS 2+ SEE SCHEDULE PAGE 3A

* PREMIUMS MAY BE CHANGED AS PROVIDED IN THE CHANGE OF PREMIUM PROVISION, BUT THE ANNUAL PREMIUM WILL NOT EXCEED THE MAXIMUM ANNUAL PREMIUM SHOWN.

PREMIUM MODE: QUARTERLY
 PREMIUM DUE DATE: 10/30

*PREMIUM MODES AVAILABLE:	ANNUAL	SEMI-ANNUAL	QUARTERLY	PAC
	\$27,050.00	\$13,795.50	\$7,033.00	\$2,366.88

END OF CONVERSION PERIOD: 10/29/2027

END OF EXCHANGE PERIOD: 10/29/2027

INSURED: SCOTT FARAH
 ISSUE AGE & SEX: 44 MALE
 OWNER: FINANCIAL RESOURCES

TERM PERIOD: 20 YEAR
 ISSUE DATE: 10/09/2007
 POLICY DATE: 10/30/2007
 POLICY NUMBER: [REDACTED]



BannerLife® Insurance Company

1701 Research Boulevard
Rockville, MD 20850

RIGHT TO EXAMINE POLICY FOR 20 DAYS. Within 20 days after this policy is received, it may be returned to the agent through whom it was purchased or to our home office. We will pay the Face Amount to the Beneficiary if the Insured dies while this policy is in force. Such payment will be subject to the provisions of this policy.

READ YOUR POLICY CAREFULLY - This policy is a legal contract between the policy owner and Banner Life Insurance Company.

In this policy, Banner Life Insurance Company will be referred to as "we", "our" or "us".

We will pay the face amount to the beneficiary if the insured dies while this policy is in force. Such payment will be subject to the provisions of this policy.

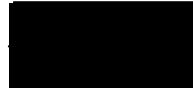
All payments are subject to the terms of this policy. The following pages are part of this policy.

This policy is issued in consideration of the application and of the payment of the first premium as provided herein. A copy of the application is attached and is made a part of the policy.

Signed for Banner Life Insurance Company at its home office in Rockville, Maryland, on the policy date.



Secretary



President



Renewable and Convertible Term Life Insurance

A change of premium provision is applicable subject to guaranteed maximum premiums

The face amount is payable at death prior to expiration date

Nonlevel premiums are payable as shown in the policy schedule to the expiration date or until the death of the insured

This policy is renewable to the expiration date

This policy is convertible to the end of the conversion period

This policy is nonparticipating and no dividends are payable

RT-97



STATE OF NEW HAMPSHIRE
BUREAU OF SECURITIES REGULATION
DEPARTMENT OF STATE
CONCORD, NEW HAMPSHIRE

)
)
STAFF PETITION FOR RELIEF)
IN THE MATTER OF:)

Scott D. Farah,)
Financial Resources and Assistance)
of the Lakes Region, Inc.,)
and T. Gary Coyne)

No.INV00-007

Respondents)

)

STATEMENT OF FACTS

- I. The Bureau of Securities Regulation, Department of State, State of New Hampshire (hereinafter referred to as "the Bureau"), hereby petitions the Director, and makes the following statements of fact:
1. Financial Resources and Assistance of the Lakes Region, Inc. (hereinafter "FRA"), is a business entity with a principal office located at 15 Northview Drive, PO Box 1158, Meredith, New Hampshire 03235. FRA was incorporated in the State of New Hampshire on or about 5/18/89. Scott D. Farah (hereinafter "Farah"), is the President and sole owner of FRA. FRA is a licensed New Hampshire mortgage broker and small loan lender engaged in the business of consumer and mortgage lending. T. Gary Coyne (hereinafter "Coyne"), is the sole proprietor of Coyne Associates located at 60 Pleasant Street, PO Box 568, Meredith, New Hampshire 03235. Coyne, is also engaged in the business of consumer and mortgage lending, and during all times material to this petition, his principal office was located at the address of FRA, and he used the letter head and office equipment of FRA. During all times material to this petition, Coyne acted with the apparent and or actual authority of Farah and FRA.
 2. On or about January 1996, investor #1, of Pompano Beach, Florida, was introduced to Coyne through a friend. Through a series of phone conversations with Coyne, investor #1 agreed to invest in a series of promissory notes dated 2/26/96, 2/29/96, and 3/19/96. Investor #1 was lead to believe by Coyne, that he was working with FRA. The 2/26/96 note was

issued by Coyne from his office location at FRA in the amount of \$20,000, and investor #1 made a check out to FRA in the amount of \$20,000 for this note. The note has no maturity date and promises to pay investor #1 \$500.00 per month while the note was outstanding. \$500.00 payments were made by Coyne for eleven months and then the payments stopped. Coyne paid back the principal of \$20,000 in December of 1997. The \$20,000 principal was due and payable on demand. The 2/29/96 note was issued by Coyne for \$60,000 from his office at the FRA location, and investor #1 made a check out for \$50,000 to FRA for this note which promises to pay investor #1 \$10,000 in interest plus the principal and was to mature on 6/29/96. The 3/19/96 note was issued by Farah and FRA from the FRA Meredith office location to investor #1 in the amount of \$22,500, and investor #1 wire transferred \$20,000 for this note to FRA. The note was to mature on 5/19/96. Investor #1 was paid \$23,000 on this note on or about 10/25/96.

3. Investor #1 was induced by Coyne to invest in the three promissory notes listed in paragraph 2 through statements by Coyne that the money would be invested in mortgages. In actuality, the money for the 2/26/96 and 3/19/96 notes was placed in the general operating account of FRA and commingled with the funds of FRA for general operating expenses. Neither Coyne, Farah, or any representative of FRA informed investor #1 of this material information.
4. FRA and Farah issued additional promissory notes as follows: On or about 3/5/99, investor #2 was issued a note for \$5,000. On or about 7/2/99, investor #3 was issued a note for \$10,000. On or about 7/2/99, investor #4 was issued a note for \$15,042.61. On or about 8/31/99, investor #5 was issued a note for \$10,000. On or about 2/1/00, investor #6 was issued a note for \$29,000. On or about 2/24/00, investor #7 was issued a note for \$8,000. On or about 2/4/00, investor #8 was issued a note for \$15,000. On or about 3/7/00, investor #9 was issued a note for \$25,000. On or about 4/12/00, investor #10 was issued a note for \$7,000. On or about 6/5/00, investor #11 was issued a note for \$30,000. On or about 6/26/00, investor #12 was issued a note for \$10,000. On or about 6/26/00, investor #13 was issued a note for \$7,000. On or about 7/18/00, investor #14 was issued a note for \$11,000. On or about 9/15/00, investor #8 was issued a note for \$5,000. On or about 10/11/00, investor #15 was issued a note for \$11,310.41. On or about 10/18/00, investor #16 was issued a note for \$179,000. On or about 12/1/00, investor #8 was issued a note for \$20,000, and on or about 1/11/01, investor #17 was issued a note for \$60,000. These notes have a term of repayment ranging from 10 days to indefinite, and a range of effective interest rate from 0% to 119%.
5. During the investigation into the promissory notes listed in this petition, the Bureau, by letters dated 4/19/01, 5/8/01, and 5/10/01, requested additional relevant and material information from Coyne, Farah, and FRA. (The letters

are attached to this petition). The 5/8/01 letter to Coyne was sent certified mail and received by Coyne on 5/10/01. The 5/10/01 letter to Farah and FRA was sent certified mail and received by Farah and FRA on or about 5/14/01. No information was received by the Bureau from Coyne, Farah, or FRA, as a result of those letters.

6. Based on Bureau records, at the time of the issuance of the promissory notes listed in paragraph 4 of the Statement of Facts, Farah and FRA, did not have license or authority to do so by the State of New Hampshire, and the promissory notes were not registered, exempt from registration, or a federal covered security as defined by RSA 421-B.

STATEMENTS OF LAW

II. The Bureau hereby petitions the Director and makes the following statements of law under the New Hampshire Revised Statutes Annotated, RSA 421-B, and regulations thereunder (hereinafter referred to as the Act):

1. Coyne, Farah, and FRA, are each a "Person" within the meaning of RSA 421-B:2.
2. The promissory notes are "securities" within the meaning of RSA 421-B:2.
3. The distribution of the securities listed above constitute "sales" within the meaning of RSA 421-B:2.
4. Farah, and FRA, is an "issuer-dealer" within the meaning of RSA 421-B:2.
5. Pursuant to RSA 421-B:3,II, it is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly: To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading. Coyne violated this section by indicating to investor #1 that the money for the 2/26/96 and 3/19/96 promissory notes listed above would be invested in mortgages and by omitting the actual fact that the money would be deposited in the sole bank account of FRA which was used for the general business operations of FRA. Farah and FRA violated this section by failing to inform investor #1 of this material fact.
6. Pursuant to RSA 421-B:8,III, the Secretary of State may require at any reasonable time and in any reasonable manner from any person or company subject to the chapter, statements, reports, including reports audited by independent public accountants, answers to questionnaires and

other information, and evidence thereof, in whatever form he designates, and at such reasonable intervals as he may choose. Coyne, Farah, and FRA, are in violation of this section for not producing the requested information.

7. Pursuant to RSA 421-B:22,I(f), the Secretary of State may require an issuer to report to him all transactions as they pertain to any security. Such reports shall be made within 10 days after the demand. Coyne, Farah, and FRA, are in violation of this section for not producing the requested information.
8. Pursuant to RSA 421-B:22,II, for the purpose of any investigation, hearing or proceeding under RSA 421-B, the secretary of state or any officer designated by him may subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the secretary of state deems relevant or material to the inquiry. Coyne, Farah, and FRA, are in violation of this section for not producing the requested information.
9. Pursuant to RSA 421-B:11, I, it is unlawful for any person to offer or sell any security in this state unless it is registered under RSA 421-B, exempt under RSA 421-B:17, or a federal covered security for which the fee has been paid and notice has been filed as required by RSA 421-B:11,I-a. Farah, and FRA, are in violation of this section for distributing securities in New Hampshire that were not registered, exempt from registration, or federal covered securities.
10. Pursuant to RSA 421-B:6,I, it is unlawful for any person to transact business in this state as a issuer-dealer unless such person is licensed under RSA 421-B or exempt from licensing. Farah, and FRA, is in violation of this section for transacting business in securities in New Hampshire as an unlicensed issuer-dealer.
11. Pursuant to RSA 421-B:17,V, and RSA 421-B:11,I-b(a) and (c), the burden of proving an exemption, preemption, or an exception from a definition is upon the person claiming it.
12. Pursuant to RSA 421-B:23, whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule under this chapter, he shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. Coyne, Farah, and FRA, are subject to this section for violations of RSA421-B:3, 421-B:6, 421-B:8, 421-B:11, and 421-B:22.

13. Pursuant to RSA 421-B:26,III, any person who, either knowingly or negligently, violates any provisions of this chapter may, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation or denial of any registration or license, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation. Coyne is subject to a suspension, revocation, or denial, and a fine for violations of RSA 421-B:3, 421-B:8, and 421-B:22. Farah and FRA are subject to a suspension, revocation, or denial, and a fine for violations of RSA 421-B:3, 421-B:6, 421-B:8,421-B:11, and 421-B:22.
14. Pursuant to RSA 421-B:26,III-a, every person who directly or indirectly controls a person liable under paragraph III, every principal executive officer, or director of such person, may, upon hearing, and in addition to any other penalty provided by law, be subject to such suspension, revocation, or denial of any registration or license, or administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal penalties imposed pursuant to RSA 421-B:24 or civil liabilities imposed pursuant to RSA 421-B:25. Farah and FRA are subject to this section.
15. Pursuant to RSA 421-B:26,V, after notice and hearing, the Secretary of State may enter an order of rescission, restitution, or disgorgement directed to a person who has violated RSA 421-B. Coyne, Farah, and FRA are subject to his section for violations of RSA 421-B.

RELIEF REQUESTED

III. The Bureau makes the following requests for relief in the above-referenced matter as permitted under the Act.

1. Find as fact the statements contained in section I of the Statements of Fact.
2. Make conclusions of law relative to the statements contained in section II of the Statements of Law.
3. Pursuant to RSA 421-B:23, issue an order to cease and desist against Coyne, Farah, and FRA, for violations under the Act pursuant to RSA 421-B:23.
4. Assess administrative fines and penalties of \$2,500 per violation against Coyne totaling \$5,000, and against Farah and FRA of \$2,500 per violation totaling \$95,000, for the above-referenced violations under the Act.

5. Order the Respondents to produce the following information: The promissory notes listed in the 4/19/01 letter to Coyne, and items #1 (years 2000 and 2001 only), #2, and #3 listed in the 4/19/01 letter to Farah and FRA.
6. Issue an order denying, suspending, and revoking, any license and registration privileges of the Respondents pursuant to RSA 421-B:26,III and 421-B:26,III-a.
7. Take any other just and equitable relief as permitted under the Act including but limited to rescission, restitution, or disgorgement.

RIGHT TO AMEND

The Bureau's staff reserves the right to amend this Petition for Relief and requests that the Director of Securities Regulation take further enforcement action.

Respectfully submitted by:



Jeffrey D. Spill
Staff Attorney

11/5/01

Date

STATE OF NEW HAMPSHIRE
 BUREAU OF SECURITIES REGULATION
 DEPARTMENT OF STATE
 CONCORD, NEW HAMPSHIRE

)	
STAFF PETITION TO AMEND)	
STAFF PETITION FOR RELIEF)	
IN THE MATTER OF:)	
)	
Scott D. Farah,)	
Financial Resources and Assistance)	
of the Lakes Region, Inc.,)	
and T. Gary Coyne)	NoINV.00-007
)	
Respondents)	
)	

STATEMENT OF FACTS

I. The Bureau of Securities Regulation, Department of State, State of New Hampshire (hereinafter referred to as "the Bureau"), hereby petitions to amend the Staff Petition For Relief dated 11/5/2001, by making the following additional statements of fact:

1. Financial Resources and Assistance of the Lakes Region, Inc. (hereinafter "FRA"), is a business entity with a principal office located at 15 Northview Drive, PO Box 1158, Meredith, New Hampshire 03235. FRA was incorporated in the State of New Hampshire on or about 5/18/89. Scott D. Farah (hereinafter "Farah"), is the President and sole owner of FRA. FRA is a licensed New Hampshire mortgage broker and small loan lender engaged in the business of consumer and mortgage lending.
2. On 11/15/2001 a Staff Petition For Relief was filed with the Director of the Bureau alleging violations of RSA 421-B:3, 421-B:6, 421-B:8, 421-B:11, and RSA 421-B:22. Pursuant to said petition a Cease and Desist Order was executed on 11/8/2001, which ordered the Respondents to cease and desist, produce information, and to show cause why relief and penalties should not be imposed. Following said Order to Cease and Desist, Respondents, Farah and FRA produced information which contains evidence of additional violations of RSA 421-B in the issuance of preferred stock of FRA.
3. FRA and Farah issued shares of preferred stock of FRA as follows: On or about 5/96, investor #18 was issued 10 shares. On or about 5/96, investor #18 was

issued 90 shares. On or about 7/96, investor #19 was issued 113 shares. On or about 7/96, investor #18 was issued 80 shares. On or about 9/96, investor #20 was issued 30 shares. On or about 12/96, investor #19 was issued 8 shares. On or about 1/97, investor #16 was issued 68 shares. On or about 4/99, investor #21 was issued 5 shares. On or about 3/00, investor #9 was issued 25 shares. On or about 7/00, investor #22 was issued 39 shares. On or about 7/00, investor #23 was issued 4 shares. On or about 7/00, investor #24 was issued 19 shares. On or about 8/00, investor #11 was issued 40 shares. On or about 10/00, investor #16 was issued 86 shares. These shares have a dividend rate of 12%.

4. FRA and Farah issued additional preferred stock as follows: On or about 1/02, investor #25 was issued 34 shares and investor #26 was issued 34 shares. FRA and Farah redeemed 5 shares of preferred stock on or about 2/02 from investor #21.
5. Based on Bureau records, at the time of the issuance of the preferred shares listed in paragraph 3 of the Statement of Facts, Farah and FRA, did not have license or authority to do so by the State of New Hampshire, and the shares were not registered, exempt from registration, or a federal covered security as defined by RSA 421-B.
6. Based on Bureau records, at the time of the issuance and redemption of the preferred shares listed in paragraph 4 of the Statement of Facts, Farah and FRA, were under a Cease and Desist Order of the New Hampshire Secretary of State dated 11/08/01, and said transactions were conducted without issuer-dealer licensure or approval of the Bureau.

STATEMENTS OF LAW

II. The Bureau hereby petitions the Director to amend the Staff Petition For Relief dated 11/5/2002 by making the following additional statements of law under the New Hampshire Revised Statutes Annotated, RSA 421-B, and regulations thereunder (hereinafter referred to as the Act):

1. Farah, and FRA, are each a "Person" within the meaning of RSA 421-B:2.
2. The preferred stock of FRA are "securities" within the meaning of RSA 421-B:2.
3. The distribution of the securities listed above constitute "sales" within the meaning of RSA 421-B:2.
4. Farah, and FRA, is an "issuer-dealer" within the meaning of RSA 421-B:2.

5. Pursuant to RSA 421-B:11, I, it is unlawful for any person to offer or sell any security in this state unless it is registered under RSA 421-B, exempt under RSA 421-B:17, or a federal covered security for which the fee has been paid and notice has been filed as required by RSA 421-B:11,I-a. Farah, and FRA, are in violation of this section for distributing securities in New Hampshire that were not registered, exempt from registration, or federal covered securities.
6. Pursuant to RSA 421-B:6,I, it is unlawful for any person to transact business in this state as a issuer-dealer unless such person is licensed under RSA 421-B or exempt from licensing. Farah, and FRA, is in violation of this section for transacting business in securities in New Hampshire as an unlicensed issuer-dealer.
7. Pursuant to RSA 421-B:17,V, and RSA 421-B:11,I-b(a) and (c), the burden of proving an exemption, preemption, or an exception from a definition is upon the person claiming it.
8. Pursuant to RSA 421-B:23, whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule under this chapter, he shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. Farah, and FRA, are subject to this section for violations of RSA421-B:6, and 421-B:11.
9. Pursuant to RSA 421-B:26,I and II, any person who knowingly or negligently violates any rule or order of the secretary of state may, upon hearing, except where another penalty is expressly provided, be subject to such suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or administrative fine for each violation in lieu of or in addition to such suspension or revocation as may be applicable under this RSA 421-B for violation of the provision to which such rule or order relates.
10. Pursuant to RSA 421-B:26,III, any person who, either knowingly or negligently, violates any provisions of this chapter may, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation or denial of any registration or license, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation. Farah and FRA are subject to a suspension, revocation, or denial, and a fine for violations of RSA 421-B:6, and 421-B:11.
11. Pursuant to RSA 421-B:26,III-a, every person who directly or indirectly controls a person liable under paragraph III, every principal executive

officer, or director of such person, may, upon hearing, and in addition to any other penalty provided by law, be subject to such suspension, revocation, or denial of any registration or license, or administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal penalties imposed pursuant to RSA 421-B:24 or civil liabilities imposed pursuant to RSA 421-B:25. Farah and FRA are subject to this section.

12. Pursuant to RSA 421-B:26,V, after notice and hearing, the Secretary of State may enter an order of rescission, restitution, or disgorgement directed to a person who has violated RSA 421-B. Farah, and FRA are subject to his section for violations of RSA 421-B.

RELIEF REQUESTED

III. The Bureau makes the following amended requests for relief in the above-referenced matter as permitted under the Act.

1. Find as fact the statements contained in section I of the Statement of Fact in the Staff petition For Relief with amendments.
2. Make conclusions of law relative to the statements contained in section II of the Statements of Law in the Staff Petition For Relief with amendments.
3. Pursuant to RSA 421-B:23, issue an order to cease and desist against Coyne, Farah, and FRA, for violations under the Act pursuant to RSA 421-B:23.
4. Assess administrative fines and penalties of \$2,500 per violation against Coyne totaling \$5,000, and against Farah and FRA of \$2,500 per violation totaling \$137,500.
5. Issue an order denying, suspending, and revoking, any license and registration privileges of the Respondents pursuant to RSA 421-B:26,I, 421-B:26,II, 421-B:26,III and 421-B:26,III-a.
6. Take any other just and equitable relief as permitted under the Act including but limited to rescission, restitution, or disgorgement.

Respectfully submitted by:



Jeffrey D. Spill
Staff Attorney

9/13/02

Date

I hereby certify that a copy of the within Petition To Amend was forwarded this 13th day of September, 2002, to Attorney Denis Maloney, counsel for Respondents Scott Farah and FRA, and Michael Burke, counsel for T. Gary Coyne.

A handwritten signature in black ink, appearing to read "J. Spill", written over a horizontal line.

Jeffrey D. Spill
Staff Attorney

9/13/02

Date

**STATE OF NEW HAMPSHIRE
BUREAU OF SECURITIES REGULATION
DEPARTMENT OF STATE
CONCORD, NEW HAMPSHIRE**

)	
)	
STAFF PETITION FOR RELIEF)	
IN THE MATTER OF:)	
)	
Scott D. Farah, and)	
Financial Resources and Assistance)	
of the Lakes Region, Inc.)	NoINV.00-007
)	
Respondents)	
)	

MOTION TO AMEND STAFF PETITION FOR RELIEF

NOW COMES the State of New Hampshire, by and through the Secretary of State, Bureau of Securities Regulation (“the Bureau”), and hereby requests that the hearing examiner grant leave for the State to amend its Staff Petition For Relief filed on September 13th, 2002, and as grounds therefore says:

1. Financial Resources and Assistance of the Lakes Region, Inc. (hereinafter "FRA"), is a business entity with a principal office located at 15 Northview Drive, PO Box 1158, Meredith, New Hampshire 03235. FRA was incorporated in the State of New Hampshire on or about 5/18/89. Scott D. Farah (hereinafter "Farah"), is the President and sole owner of FRA. FRA is a licensed New Hampshire mortgage broker and small loan lender engaged in the business of consumer and mortgage lending.

2. On 11/15/2001 a Staff Petition For Relief was filed with the Director of the Bureau alleging violations of RSA 421-B:3, 421-B:6, 421-B:8, 421-B:11, and RSA 421-B:22. Pursuant to said petition a Cease and Desist Order was executed on 11/8/2001, which ordered the Respondents to cease and desist, produce information, and to show cause why relief and penalties should not be imposed. Following said Order to Cease and Desist, on July 19, 2002, Respondents, Farah and FRA produced information which contains evidence of additional violations

of RSA 421-B in the issuance and subscription for the issuance of preferred stock of FRA. Based on this information, the State filed an additional Staff Petition For Relief on September 13th, 2002, and said petition was joined for hearing by order of Examiner Glennon with Staff Petition For Relief dated November 5, 2001.

3. Not contained in the second Staff Petition For Relief were certain undated securities transactions and sales of FRA preferred stock wherein no stock certificate was issued. Further, following the filing of the second Staff Petition For Relief, on October 1, 2002, the Respondents notified the Bureau of an additional investor in preferred shares of FRA occurring on or about April 1999. The Bureau now wants to add these transactions to its Staff Petition For Relief as well as eight other securities transactions. The Bureau, therefore, requests amendment of its Staff Petition For Relief date September 13th, 2002, by adding to the "Facts" paragraph 3A containing the following additional securities transactions: FRA and Farah issued shares of preferred stock of FRA as follows: On or about 4/99, investor #27 was issued 17 shares. On or about 3/97, investor #19 was issued 2 shares. On or about 12/97, investor #19 was issued 15 shares. On or about 3/98, investor #28 was issued 111 shares. On or about 6/98, investor #28 was issued 32 shares. On or about 4/98, investor #20 was issued 9 shares. On or about 2/99, investor #16 was issued 25 shares. On or about 2/95, investor #29 was issued 15 shares. Investors subscribed for, but were not issued preferred stock of FRA upon information and belief some time after December 31st, 1999 as follows: Investor #30 subscribed for 61 shares. Investor #31 subscribed for 344 shares. Investor #32 subscribed for 36 shares. Investor #33 subscribed for 401 shares. Investor #34 subscribed for 22 shares. Finally, on or about 1/00, investor #35 invested approximately \$142,000 in an "account" with FRA. Based on Bureau records, at the time of the issuance of preferred shares, grant of subscriptions for preferred shares, and acceptance of investor money as listed in paragraph 3A, Farah and FRA, did not have license or authority to do so by the State of New Hampshire, and the subscriptions, shares, and investments were not registered, exempt from registration, or federal covered securities as defined by RSA 421-B.

WHEREFORE, the State of New Hampshire, by and through the Secretary of State, Bureau of Securities Regulation, hereby respectfully requests that the hearing examiner:

- 1) Grant leave for the Bureau to amend its Staff Petition For Relief filed on September 13, 2002.
- 2) Grant such other and further relief as deemed just and proper.

Respectfully submitted,



Jeffrey D. Spill, Esq.
Staff Attorney
Secretary of State's Office
State House Room 204
Concord, New Hampshire 03301

6/16/03

Dated

I hereby certify that a copy of the foregoing motion has been forwarded via fax and 1st class mail this 16th day of June, 2003 to Attorneys Denis Maloney and Philip Brouillard for the Respondents.



Jeffrey D. Spill, Esq.

6/16/03

Dated



CHRISTOPHER C. GALLAGHER
MICHAEL R. CALLAHAN
DONALD E. GARTRELL
W. JOHN FUNK
EDWARD F. SHUMAKER, III
MICHAEL D. RUEDIG
ANNE G. SCHEER
DENIS J. MALONEY
DAVID A. GARFUNKEL

DONALD J. PFUNDSTEIN
ANDREW B. EILLS
DONALD R. SAXON
SUSAN B. HOLLINGER
ANDREA K. JOHNSTONE
MICHAEL D. RAMSDALL
DODD S. GRIFFITH
WALTER L. MARONEY
ARI B. POLLACK

SETH L. SHORTIDGE
LYNMARIE C. CUSACK
JEANNE F. HERRICK
CELIA LEONARD WAGNER
INGRID E. WHITE
JAMES D. KEROUAC
JON M. GARON
OF COUNSEL
ROBERT P. KIRBY
1961-1995

January 14, 2003

**VIA FACSIMILE AND
FIRST CLASS MAIL**

Bureau of Securities Regulation
Department of State
State of New Hampshire
State House, Room 204
Concord, New Hampshire 03301-4989

Attn: Jeffrey Spill, Esquire

Re: In re Scott D. Farah, Financial Resources & Assistance of the Lakes
Region, Inc., Respondents
No. INV00-007

Ladies and Gentlemen:

On behalf of Scott D. Farah and Financial Resources & Assistance of the Lakes Region, Inc. (the "Company"; collectively with Scott D. Farah, the "Farah Respondents"), for purposes of setting forth several material undertakings to be performed by the Company in lieu of presently scheduled administrative proceedings, the Farah Respondents hereby undertake and agree with the Bureau of Securities Regulation, Department of State, State of New Hampshire (the "Bureau"), as follows:

- The administrative proceedings scheduled for Tuesday, January 14, 2003 are hereby postponed until Tuesday, April 29, 2003 pending satisfaction of the undertakings expressed herein and subsequent execution of a formal Consent Agreement, as discussed further below, in this proceeding. The Farah Respondents will file a joint motion with the Presiding Officer in the administrative proceeding requesting a continuance until April 29, 2003, and will attach a true copy of this letter agreement thereto.

GALLAGHER, CALLAHAN & GARTRELL, P.A.
214 NORTH MAIN STREET · P.O. BOX 1415 · CONCORD, NEW HAMPSHIRE 03302-1415
TEL 603-228-1181 · 800-528-1181 · FAX 603-224-7588 · 603-226-3477
www.gcglaw.com

Bureau of Securities Regulation

January 14, 2003

Page 2

- The Bureau will furnish a letter to each of the stakeholders of the Company, namely "holders" of shares of its preferred stock and notes, substantially in the form of the letter attached as Schedule 1 hereto. The Company will furnish the Bureau with the names and current addresses of each of such stakeholders within seven (7) days after the date hereof.
- The Company will not issue any new securities without the prior approval of the Bureau (for purposes hereof, the term securities shall include but is not limited to, shares of preferred stock and notes or "Accounts", so called). Neither the Company nor its agents will communicate with any stakeholder for the purpose of soliciting the stakeholder to keep or to sell his, her or its investment in the Company.
- Upon the prior request of a preferred holder or a note holder, the Company is authorized to pay-off and thereby redeem any outstanding preferred stock or note.
- The Company will subsequently undertake a rescission offer to the holders of its outstanding preferred stock and notes, such undertaking to be commenced at the discretion of the Bureau. The Company will cooperate with the Bureau in undertaking such a rescission offer, which will include full disclosure with respect to the Company's operations and financial status. The rescission offer must be fully funded by the Company.
- The Company will immediately commence procedures necessary to have its financial statements for the periods ended December 31, 2001 and 2002 prepared and audited by an independent third party, Connor & Associates, P.C. Any change in the identity of such auditor must be approved by the Bureau. The Company will furnish the Bureau with a complete copy of said audited financial statements as soon as they are finalized and received. Not later than April 14, 2003, the Company will file with the Bureau updated schedules listing the stakeholders of the Company and the amounts of their investments, substantially in the form of the schedules previously furnished to the Bureau. The Bureau may withdraw from this letter agreement at its own initiative following April 14, 2003, or in the event of a material adverse change in the financial condition of the Company.

Bureau of Securities Regulation
January 14, 2003
Page 3


- Following satisfactory completion of the rescission offer to the satisfaction of the Bureau, the parties will thereafter enter into a negotiated Consent Agreement in this matter in which, among other things, the Farah Respondents, without admitting or denying the allegations and findings set forth therein, including but not limited to compliance with the registration and licensing provisions of the Act for any sale of securities, will consent to certain findings, conclusions and undertakings set forth therein, included but not limited to the payment of an administrative fine in the amount of \$25,000.

Very truly yours,

Scott Farah
Financial Resources & Assistance of the
Lakes Region, Inc.

By Its Attorneys
Gallagher, Callahan & Gartrell, P.A.

By:


Denis J. Maloney

H:\LIB\DOCS\F040\0001\AGREE\776145.DOC

Schedule 1

[Bureau Letterhead]

Name and Address of Stakeholder**Re: Scott Farah and Financial Resources and Assistance
of the Lakes Region, Inc. (the "Company")**

Dear _____;

The Bureau of Securities Regulation (the "Bureau"), Department of State, State of New Hampshire, is responsible for administering the Uniform Securities Act RSA 421-B (the "Act"). The Bureau has been conducting an investigation of the above-referenced Company with respect to its compliance with the Act. Based upon the results of our investigation, the Bureau believes that your investment in the Company sold to you was done in violation of the Act. The Company and its principal, Scott Farah, have been cooperating with the Bureau, and have provided your name and address to the Bureau. The Bureau and the Company have reached a conditional agreement regarding these alleged violations.

Be advised that in our role as regulator, we are not authorized to bring a civil action to obtain recovery of an investment on behalf of individual investors. Therefore, you may wish to consult a private attorney regarding any claim you may have. We represent the state in this matter, and can neither represent you or provide you with legal or financial advice, nor act as your personal attorney or representative.

Our settlement negotiations with the Company may lead to a formal offer by the Company for you to either confirm or rescind your investment with the Company. If so, you will receive further information from the Company regarding such offer at a later date.

If you have any question, please call me.

Sincerely,

Jeffrey Spill
Staff Attorney

cc:file

The State of New Hampshire

Mailing Address

State House Room 204
Concord, New Hampshire 03301-4989
Telephone (603) 271-1463
Facsimile (603) 271-7933

Location

State House Annex
25 Capitol St.
Concord, New Hampshire 03301

Department of State
Bureau of Securities Regulation

6/17/2003

Suzanne Gorman, Esq.
Senior Assistant AG
33 Capitol Street
Concord, NH 03301

Re: Scott Farah and Financial Resources and Assistance of the Lakes Region, Inc.
("FRA")

Dear Suzanne:

This letter is a follow-up to our conversation on 6/12/2003. Thank you for spending the time assisting our office. Yesterday, 6/16/2003, the above named Respondents were notified that negotiations for settlement of the state's claims would terminate and the state will proceed to a hearing on 7/8/2003. The investors were also notified by letter of the same date that there will be a hearing to determine the outcome of the alleged violations of unregistered and unlicensed securities transactions and that we represent the state and not the investors. I will wait to hear from you regarding the issue of securing assets for the benefit of the investors. Our hearing date remains 7/8/2003.

Sincerely,


Jeffrey Spill
Staff Attorney

cc:file
via fax

This is a printer-friendly version of an article from the Concord Monitor at <http://www.concordmonitor.com>.

*Parishioners
Use of proceeds*

Article published Apr 25, 2006
Center Harbor

Churchmen accused of fraud Ex-parishioner sues over lost investment
By **LAUREN R. DORGAN**
Monitor staff

The leaders of a Lakes Region church have been accused in a lawsuit of enacting a "deceitful scheme" to part parishioners from their money. The civil case filed by a former church member alleges that the Center Harbor Christian Church's treasurer, who runs an investment company, took hundreds of thousands of dollars from parishioners and told them they were investing it in a variety of enterprises.

But according to the suit, church treasurer Scott Farah and his father, Pastor Robert Farah, instead used the money for themselves.

In an interview, Robert Farah said he did nothing wrong. He said he looks forward to his day in court - tentatively scheduled for next month - to clear his name.

"I was just blown off my feet when I saw that they made these allegations against me. I don't think I ever cheated anybody out of a dime in my whole life," he said. "Our life is to give to people."

The suit was brought by Ronnie Stone, a former parishioner who invested \$234,000 of his own and his father's money with Scott Farah's company, Financial Resources Inc., according to court papers.

Stone started investing with Financial Resources in 2002. According to the suit, Scott Farah told Stone he'd invested \$50,000 in a federally funded nursing home project and put \$109,000 into a self-funded IRA. Farah also told Stone that he'd invested \$75,000 with a Kansas company called National Inspection and Repair, which at that point had ceased operating, according to the lawsuit. In 2004, Stone asked for his money back, according to the suit, but Farah never returned it.

Stone's lawsuit claims that his money was not put in "legitimate investments" but instead "in a single bank account that Scott Farah used for various personal and business purposes."

Scott Farah's attorney did not return a call for comment.

The suit contends that Stone was not the only victim. It says that in 2003, Robert Farah "induced" church member Gudrun Hanington to invest \$140,000, her life savings, in National Inspection and Repair, which had ceased operating a year before. The pastor directed \$10,000 of her money to himself, the suit alleges.

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A week before Hanington died in April 2004, Robert Farah persuaded her to name him executor of her estate, the suit alleges.

Hanington's daughters found out about the investment when they were sorting through her papers, according to the lawsuit, and they demanded the money be returned.

But the Farahs did not fully comply until after details of the "fraud scheme" came out in a trial in the summer of 2004, according to the lawsuit.

Robert Farah said that he did become executor of the estate, but only because Hanington asked him to, and that he never took any of Hanington's money. He said he stepped aside because Hanington's father wanted to be executor and said it was fine by him.

"I never took a dime from them," he said. "All the trips I made to the hospital, I could have taken gas money. I never took a dime."

Stone has placed attachments on property owned by both Farahs and by the church. Those have been upheld by a Belknap County judge. The case is scheduled to go to trial next month, but Stone is seeking an extension.

In court filings, defense attorneys assert that if Stone would only remove the attachments, Scott Farah's company would return the money. They have written that Stone's refusal to do so shows that he is seeking "enhanced damages."

But Chris Carter, Stone's attorney, said that the return of the principal is not enough. Stone faces "huge penalties" from the IRS because some of the money came from his 401(k) and was not invested as it should have been, Carter said.

An odd case

Carter first crossed paths with Hanington's family as an attorney representing National Inspection and Repair, the Kansas company. Scott Farah's company took National Inspection and Repair to court, saying it owed his company money, and won a \$300,000 ruling that was upheld last month by the state Supreme Court.

The information about Hanington's investments came out at that trial, according to court papers. A major part of National Inspection and Repair's defense, according to the Supreme Court ruling, was arguing that Farah's company got the money through "unlawful means." The court dismissed that argument as irrelevant to the debt.

That lawsuit is key to establishing the timeline in the current case. Scott Farah's company filed suit against National Inspection and Repair in August 2002 for recovery of the debt, according to court papers. Three months later, according to the current lawsuit, Scott Farah persuaded Ronnie Stone to give him \$50,000 to invest in National Inspection and Repair. And it was nearly a year later, according to the lawsuit, that Hanington gave Scott Farah \$140,000 that was supposed to be invested with National Inspection and Repair.

In another odd twist, tapes of church services played on Lakes Region Public Access television have been the subject of a lengthy legal fight. The plaintiffs contend that they are essential to the case, and a Belknap County judge has ruled that the church should hand over whatever tapes it has.

"The tapes, we believe, contain information which supports the Stones' claim that these defendants acted in concert with each other in preying upon and inducing members of this church to put their trust and life savings in the care of Scott Farah," Carter said.

Carter formally requested the tapes in May 2005. The church produced 92 tapes from a five-year span that presumably included 260 services, according to court papers.

In a filing last fall, the church's lawyer wrote that many of the missing tapes had been destroyed in a house fire at the home of a congregant who is also one of Scott Farah's employees at Financial Resources. Robert Farah, the pastor, said that man took the tapes because he was making a compilation of all the musical performances from weekly services.

On the subject of Stone's efforts to get information from the church, filings from the church's lawyer, Brian McEvoy, have been particularly pointed.

"The reality of the situation is that plaintiffs are simply on a fishing expedition designed to harvest more potential plaintiffs," he wrote.

Robert Farah said that lost in the legal filings is the charitable work the church does. He cited a few of the church's programs that give to low-income people, including a furniture nook, a clothing closet and a food pantry that gives out 1,200 meals a month.

For most of the time he knew the Stones, he had no idea that they had any money, he said.

"The interesting thing is these people who have accused us were part of our congregation, and they took from the food pantry, and they took from the furniture nook," he said.

The pending lawsuit hasn't impacted the church a bit, the pastor said, because no one believes it. Only one family has left church, a nondenominational Christian congregation with about 100 members, Farah said.

----- End of article

By LAUREN R. DORGAN

Monitor staff

Jeff Spill

From: Jeff Spill
Sent: Tuesday, May 27, 2003 5:06 PM
To: 'Jurta, Mary'
Subject: RE: Financial Resources of the Lakes Region Inc.

Mary, Has the commission reached a conclusion on the release of the audit to this office? What provisions of the law does the commission rely on in its decision?

-----Original Message-----

From: Jurta, Mary [mailto:mjurta@banking.state.nh.us]
Sent: Wednesday, April 23, 2003 2:04 PM
To: Barry Glennon; Kevin Moquin; Jeff Spill
Subject: Financial Resources of the Lakes Region Inc.

We have an examination of the mortgage activity of this company scheduled for May 19th. -
Mary

Jeff Spill

From: Jurta, Mary [mjurta@banking.state.nh.us]
Sent: Wednesday, May 28, 2003 12:55 PM
To: Jeff Spill
Subject: RE: Financial Resources of the Lakes Region Inc.

Hi Jeff,

Donna Soucy, the department's general counsel, is out of the office until Tuesday. The relevant statutes to look at are 397-A:12, 383:9, 383:10-b, all of which apply to our examinations of mortgage brokers and bankers. 383:10-b seems to be very clear as to the confidential nature of the exam and reports but doesn't specifically address other state agencies.....- Mary

-----Original Message-----

From: Jeff Spill [mailto:JSpill@SOS.STATE.NH.US]
Sent: Tuesday, May 27, 2003 5:06 PM
To: Jurta, Mary
Subject: RE: Financial Resources of the Lakes Region Inc.

Mary, Has the commission reached a conclusion on the release of the audit to this office? What provisions of the law does the commission rely on in its decision?

-----Original Message-----

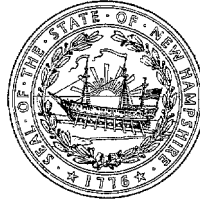
From: Jurta, Mary [mailto:mjurta@banking.state.nh.us]
Sent: Wednesday, April 23, 2003 2:04 PM
To: Barry Glennon; Kevin Moquin; Jeff Spill
Subject: Financial Resources of the Lakes Region Inc.

We have an examination of the mortgage activity of this company scheduled for May 19th. -
Mary

The State of New Hampshire

Mailing Address

State House Room 204
Concord, New Hampshire 03301-4989
Telephone (603) 271-1463
Facsimile (603) 271-7933



Location

State House Annex
25 Capitol St.
Concord, New Hampshire 03301

Department of State Bureau of Securities Regulation

9/21/2006

Denis Maloney
Gallagher Callahan & Gartrell
PO Box 1415
Concord, NH 03302-1415

Re: Financial Resources & Assistance ("FRA")

Dear Mr. Maloney;

Reference is made to your letters dated 6/5, 6/23, 8/4, and 8/25/2006. This letter is also a follow-up to mine of 5/22/2006. I believe by your letter dated 8/25/2006, that there are more "participation notes", than was first represented during our audit on 5/19/2006. The names of the additional investors are listed in Mr. Connor's letter to you dated 8/22/2006. In my letter dated 5/22/2006, I requested copies of all of the participation notes. It appears that some were sent with your letter dated 6/5/2006. I believe those were referred to during the audit. Given that all of these notes were not actually secured mortgages, they are securities having no registration or exemption. Moreover, it appears that some of these notes were issued after the hearing held on 7/24/2003, a time when Mr. Farah clearly would have or should have known that distribution of such notes would be in question.

Within 10 days from the date of this letter, provide copies of all participation notes issued and include the date of issue and the amount of the note. Also, please forward the current audit of FRA.

I would like to discuss with you the potential resolution of all outstanding matters with Mr. Farah and FRA in a consent agreement which would include payment back to all note, account, or stock holders, a cease and desist order, and administrative fine. Please contact me and indicate whether this matter can be resolved short of additional enforcement action.

Thank you.

Sincerely,

Jeffrey Spill
Deputy Director

cc:file

**STATE OF NEW HAMPSHIRE
BUREAU OF SECURITIES REGULATION
DEPARTMENT OF STATE
CONCORD, NEW HAMPSHIRE**

IN THE MATTER OF:

**Financial Resources and Assistance
of the Lakes Region, Inc.**

Scott Farah

RESPONDENTS

**No. INV 00-007
06-049**

CONSENT AGREEMENT

- I. For purposes of settling the above-referenced matter and in lieu of further administrative proceedings, Scott Farah and Financial Resources and Assistance of the Lakes Region, Inc. (hereinafter referred to as "Farah" and "FRA") have submitted an offer of settlement, which the Bureau of Securities Regulation, Department of State, State of New Hampshire (hereinafter referred to as "the Bureau") has determined to accept. Accordingly, solely for the purposes of this proceeding, and without admitting or denying The Facts, The Law, or any other allegations herein, the Respondents do hereby consent to the entry of this Consent Agreement as set forth below:

The Facts

1. FRA is a business entity with a principal office located at 15 Northview Drive, PO Box 1158, Meredith, New Hampshire 03235. FRA was incorporated in the State of New Hampshire on or about 5/18/89. Farah is the President and sole owner of all of the outstanding voting common stock of FRA. FRA is a licensed New Hampshire mortgage broker and small loan lender engaged in the business of consumer and mortgage lending.
2. From 1996 to the present, ("relevant time period"), Farah and FRA issued a series of preferred stock, promissory notes, accounts, and participation agreements, (hereinafter "the securities") to investors at varying rates of interest payable periodically over the term of the investment.

3. Based on Bureau records, at the time of the issuance of the securities listed in paragraph 2, certain of the securities issued were not registered, exempt from registration, or a federal covered security as defined by RSA 421-B.
4. Based on Bureau records, at the time of the issuance of the securities listed in paragraph 2, FRA and Farah did not have an issuer-dealer license or an agent's license related thereto, respectively, and were not authorized to sell certain of the securities.
5. The Bureau commenced an adjudicative proceeding against the Respondents pursuant to RSA 421-B (the "Chapter") by means of a Staff Petition for Relief dated November 5, 2001 ("Petition"). On November 8, 2001, the New Hampshire Secretary of State issued an Order to Show Cause, Order to Cease and Desist against the Respondents ("Order"). On September 13, 2002, the Bureau filed an amended Petition For Relief.

The Law

1. Pursuant to New Hampshire RSA 421-B:11, it is unlawful for any person to offer or sell any security in this state unless it is registered under the Chapter, the security or transaction is exempted under RSA 421-B:17, or it is a federally covered security. Respondents Farah and FRA are in violation of RSA 421-B:11 with respect to certain issuances of securities.
 2. During the relevant time period described above, neither Farah nor FRA, or any other person acting on FRA's behalf, was licensed to offer or sell securities in the State of New Hampshire nor were all of such securities exempt under RSA 421-B.
 3. Pursuant to RSA 421-B:6, it is unlawful for any person to transact business in this state as an issuer-dealer or agent unless such person is licensed under this chapter. Respondents are in violation of this section with respect to certain issuances of securities.
 4. Pursuant to RSA 421-B:23 and RSA 421-B:26, the Bureau, under the authority of the Secretary of State, can order the Respondents to cease and desist, the payment of restitution, and a fine for violations of RSA 421-B.
- II. In view of the foregoing, the Respondents agree to the following undertakings and sanctions:
1. Respondents agree that that they have voluntarily consented to the entry of this Agreement and represent and aver that no employee or representative of the Bureau has made any promise, representation or threat to induce their execution.

2. Respondents agree to waive their right to an administrative hearing and any appeal therein under the Chapter.
3. Respondents agree to cease and desist from violations of RSA 421-B:11 and RSA 421-B:6,I as described above.
4. Upon execution of this Agreement by FRA and Farah, Respondents agree to pay an administrative fine in the amount of Twenty Thousand Dollars (\$20,000) to the State of New Hampshire. Payment shall be made by 1) United States postal money order, certified check, bank cashier's check, or bank money order; 2) made payable to the State of New Hampshire; and 3) hand-delivered or mailed to the Bureau of Securities Regulation, Department of State, State House, Room 204, Concord, New Hampshire, 03301.
5. Respondents agree to make restitution and to redeem the outstanding securities, including interest owed, from any remaining investors currently holding securities of the Respondents. Redemption shall be paid in the time frame as described in the letter of Respondents' counsel to the Bureau dated October 12, 2006, with the attached schedules of outstanding capital debt; provided however, that the securities issued to [REDACTED] shall be redeemed no later than 09/30/07. Therefore, by 09/30/07, all investors shall be paid in full, and a report of those payments and confirmation of payment in full shall be sent to the Bureau periodically as the payments are made.
6. Respondents agree that in the event Respondents receive notice of the apparent existence of a holder of securities of FRA other than those known to Respondents and disclosed to the Bureau prior to the date hereof, whether in form of shares of preferred stock, an unsecured promissory note or an 'account,' so called, or otherwise, Respondents will take the actions set forth in this paragraph. Respondents will immediately cause such investigation of such securities issuance as deemed necessary and appropriate to verify the holder's claim of ownership. In the event the Respondents agree with such claim ("verified securities"), they will take such actions as are necessary to redeem such verified securities in full and will provide a copy of such redemption correspondence to the Bureau. In the event the Respondents are unable to verify a claim of securities ownership within 30 days of receipt of such a claim, or are unable to fully redeem verified securities within 90 days of the receipt of a claim, Respondents will provide written notice to the Bureau of such a disputed claim or the proposed time frame within which such verified securities will be redeemed in full. Respondents further agree to cooperate with the Bureau in resolving such a disputed claim or the proposed time frame within which verified securities will be redeemed in full.

7. Respondents agree that this Agreement is entered into for purposes of resolving the matters as described herein and all pending matters before the Bureau regarding Respondents. The Bureau agrees that this Agreement is entered into to resolve all claims asserted in the Petition and the Order as well as all pending matters before the Bureau regarding Respondents. This Agreement shall not be construed to restrict the Bureau's right to initiate an administrative investigation or proceeding relative to conduct by Respondents which the Bureau has no knowledge at the time of the date of final entry of this Agreement. Should the Respondents fail to comply with any aspect of this Agreement, this Agreement may be vacated, and the Bureau may proceed with enforcement action.
8. The Respondents may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in this Agreement or create the impression that the Agreement is without factual basis. Nothing in this provision affects the Respondent's testimonial obligations or right to take legal positions or factual positions in litigation or proceedings in which the Bureau is not a party.

III. Based on the foregoing, the Bureau deems it appropriate and in the public interest to accept and enter into this Consent Agreement. **THEREFORE, IT IS HEREBY ORDERED THAT:**

1. Respondents will cease and desist from violations of the Chapter discussed above, particularly RSA 421-B:11 and RSA 421-B:6,I.
2. Respondents will pay an administrative fine to the Bureau in the amount of Twenty Thousand Dollars (\$20,000).
3. Respondents will make restitution and redeem its outstanding securities as described above.
4. Respondents will comply with the above-referenced undertakings.

Executed this 24th day of January, 2007.


on behalf of FRA

(Please print name below:)

Scott Farah

Scott Farah
Its President

Executed this 24th day of January, 2007



Scott Farah

Entered this 25 day of Jan, 2007.



Mark Connolly, Director
Bureau of Securities Regulation

**STATE OF NEW HAMPSHIRE
BUREAU OF SECURITIES REGULATION
DEPARTMENT OF STATE
CONCORD, NEW HAMPSHIRE**

IN THE MATTER OF:)

Financial Resources and Assistance)
of the Lakes Region, Inc.)

Scott Farah)

RESPONDENTS)

No. INV 00-007
06-049

AMENDMENT TO CONSENT AGREEMENT

- I. For purposes of settling the above-referenced matter and in lieu of further administrative proceedings, Scott Farah and Financial Resources and Assistance of the Lakes Region, Inc. (hereinafter referred to as "Farah" and "FRA") and the Bureau of Securities Regulation, Department of State, State of New Hampshire (hereinafter referred to as "the Bureau"), entered into a Consent Agreement dated as of January 25, 2007; the terms, conditions and undertakings set forth in the Consent Agreement are incorporated by reference herein. Respondents have requested and the Bureau has agreed to a revision of the restitution and redemption schedule set forth in the Consent Agreement; the parties hereby agree that the Consent Agreement is amended as set forth below:

The Facts


1. In the Consent Agreement, the Respondents agreed to make restitution and to redeem the outstanding securities, including interest owed, from any then remaining investors currently holding securities of the Respondents. The Consent Agreement provides that such restitution and redemption was to be made within the time frames described in the letter of Respondents' counsel to the Bureau dated October 12, 2006, with the attached schedules of outstanding capital debt; provided however, that the final redemption of securities was to occur no later than 09/30/07.
2. The redemption schedule provided that securities held by certain "[REDACTED]" (" [REDACTED] ") were to be redeemed no later than 06/30/07; the securities held by certain "[REDACTED]" (" [REDACTED] ") were to be redeemed no later than 09/30/07.

3. On or before June 30, 2007, the Respondents verbally requested, and the Bureau verbally agreed, that the Respondents could reverse the order of said remaining redemption schedule, such that [REDACTED] securities could be redeemed on or prior to 06/30/07, and the [REDACTED] securities redeemed on or prior to 09/30/07.
4. On or prior to June 30, 2007, the Respondents redeemed the [REDACTED] securities and provided notice thereof to the Bureau dated June 8, 2007.
5. On June 28, 2007, the Bureau verbally agreed to the revision of the said redemption schedule and requested that the Respondents enter into this Amendment to Consent Agreement reflecting the revised schedule.

The Law

- II. In view of the foregoing, the Respondents agree to the following undertakings and sanctions:
 1. Respondents agree that that they have voluntarily consented to the entry of this Amendment to Consent Agreement and represent and aver that no employee or representative of the Bureau has made any promise, representation or threat to induce such execution.
 2. Respondents agree to make restitution and to redeem the outstanding securities, including interest owed, from [REDACTED] no later than 09/30/07. Therefore, by 09/30/07, all investors shall have been paid in full, and a report and confirmation of such payment in full shall be sent to the Bureau as such final payment is made.
- III. Based on the foregoing, the Bureau deems it appropriate and in the public interest to accept and enter into this Amendment to Consent Agreement. **THEREFORE, IT IS HEREBY ORDERED THAT:**
 1. Except as modified hereby, the terms, conditions and undertakings set forth in the Consent Agreement remain in full force and effect.
 2. Respondents will make restitution and redeem its remaining outstanding securities as described above.

Executed this 2nd day of July, 2007.



on behalf of FRA
(Please print name below:)

Scott Farah
Its President

Executed this 2nd day of July, 2007



Scott Farah

Entered this 12th day of July, 2007.



Jeffrey Spill, Deputy Director
Bureau of Securities Regulation

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State of New Hampshire Banking Department

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In re the Matter of:)	Case No.: 05-071
)	
State of New Hampshire Banking)	Order to Show Cause for License
Department,)	Revocation
)	
Petitioner,)	
)	
and)	
)	
Financial Resources & Assistance of)	
)	
the Lakes Region Inc. and Scott)	
)	
Farah,)	
)	
Respondent)	

STATEMENT OF ALLEGATIONS

I. The staff of the Banking Department, State of New Hampshire (hereinafter referred to as the "Department") alleges the following facts:

Background.

1. The Respondent, Financial Resources & Assistance of the Lakes Region Inc. and Scott Farah (herein after "FRA") is licensed as a first mortgage banker and second mortgage home loan lender and a small loan lender since at least 1997 through present. As provided in New Hampshire Banking Laws, the Respondent must comply with all applicable state and federal laws and regulations.
2. FRA is a New Hampshire corporation with its principal office or place of business at 15 Northview Drive, Meredith, NH 03253.
3. Scott Farah is president of said corporation.

Count 1 - Failure to implement a program to safeguard consumers' sensitive financial information.

4. The Department re-alleges all prior paragraphs in this staff petition.
5. FRA, a mortgage company, is a "financial institution" as that term is defined in Section 599(3)(A) of the Gramm-Leach-Bliley Act

- 1 (GLBA), and is therefore subject to the requirements of the
2 Safeguards Rule and the Privacy Rule.
- 3 6. The acts and practices of respondent alleged in this complaint have
4 been in or affecting commerce, as "commerce" is define in Section 4
5 of the FTC Act, 15 U.S.C. 44.
- 6 7. The Department conducted a regularly scheduled examination of the
7 Respondent on or about October 11, 2004.
- 8 8. Through loan officers FRA accepts copies of documentation providing
9 sensitive personal information (such as social security numbers,
10 credit reports etc) in order to assist the consumer in obtaining
11 mortgage financing.
- 12 9. The examiner conducted an oral interview with Scott Farah, president
13 of FRA, regarding his policies and procedures for
14 handling/destruction of documentation containing sensitive consumer
15 information in compliance with the Gramm-Leach-Bliley Act and
16 accompanying federal Trade Commission ("FTC") rules.
- 17 10. Mr. Farah informed the examiner that the process for disposing of
18 documents containing sensitive information was to shred said
19 documents. The shredding was specifically assigned to two
20 designated employees who were to shred documents at a shredding
21 machine located at the Respondent's location.
- 22 11. The examiner received verbal permission from Mr. Farah to remove two
23 garbage bags from the dumpster outside the office to spot check for
24 compliance with the verbal procedure.
- 25 12. Upon review of the trash bags numerous documents containing
sensitive consumer information (such as credit reports, loan
applications (1003 forms), etc) were found in tact and were not
shred as previously indicated. See Exhibits 1 - X.
- Count II - Failure to have a written safeguard plan.
13. The Department re-alleges all prior paragraphs in this staff
petition.
14. Mr. Farah informed the examiner that FRA did not have a written
privacy policy.
- Count III - Failure to facilitate an examination
15. The Department re-alleges all prior paragraphs in this staff
petition.
16. The examiner discovered a letter from one of FRA's Lenders (First
Franklin) on a file brokered by FRA claiming that the borrower's

1 income was misrepresented, and mandated that FRA buy the loan back
2 or pay it off with in 20 days.

3 17. The examiner requested FRA provide a complete explanation of the
4 circumstances surrounding its handling of the response to and
5 ultimate resolution of the alleged misrepresentation to the lender.

6 18. FRA failed to provide the examiner with the requested information.

7 II. The staff of the Banking Department, State of New Hampshire alleges the
8 following issues of law:

- 9 1. The Banking Department ("Department"), has jurisdiction to issue an
10 order to show cause for violating NH law pursuant to NH RSA 397-A:17
11 and RSA 397-A:21 respectively.
- 12 2. The Safeguard Rule, which was promulgated by the FTC on May 23, 2002
13 became effective on May 23, 2003. The rule implements section 501(b)
14 of the GLB Act.
- 15 3. 16 C.F.R. 314 (the Safeguard Rule) requires financial institutions to
16 protect the security, confidentiality, and integrity of consumer
17 information by developing a comprehensive written information security
18 program that contains reasonable administrative, technical and physical
19 safeguards.
- 20 4. FRA violated the Safeguard Rule because they failed to actually
21 implement their plan (by failing to shred documents).
- 22 5. A violation of the Safeguards Rule constitutes an unfair or deceptive
23 act or practice in violation of Section 5(a)(1) of the FTC act.
- 24 6. The GLB Act further requires that the Safeguard program be in writing.
25 See 16 CFR 314.3.
7. Violations of the FTC Act and Safeguard Rules are violations of New
Hampshire Revised Statute Annotated Chapter 397-A (See RSA 397-A:2
III).
8. RSA 397-A:12 provides that licensees shall make freely available to the
commissioner or his examiners, the accounts, records, documents, files,
information, assets, and matters in their possession or control
relating to the subject of the examination and shall facilitate the
examination. Failure to provide or respond to an examiner's request
for information pertaining to the First Franklin letter is a violation
of the Chapter.

- 1 9. The above acts are sufficient to constitute "good cause shown" under
2 RSA 397-A:17 to revoke FRA's mortgage lending licenses in New
3 Hampshire.
4 10. Revocation of said licenses is in the public interest as FRA and Mr.
5 Farah have illustrated a willingness to forgo the laws and rules of the
6 State of New Hampshire whenever they see fit.

7 RELIEF REQUESTED

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

- 10 1. Find as fact the allegations contained in section I of the Statement of
11 Allegations of this petition;
12 2. Make conclusions of law relative to the allegations contained in section
13 II of the Statement of Allegations of this petition;
14 3. Assess fines and administrative penalties in accordance RSA 397-A:21, for
15 violations of the New Hampshire Banking Laws, in the number and amount
16 equal to the violations set forth in section II of the Statement of
17 Allegations of this petition; and
18 4. Take such other administrative and legal actions as are necessary for
19 enforcement of the New Hampshire Banking laws, the protection of New
20 Hampshire citizens, and to provide other equitable relief.

21 RIGHT TO AMEND

22 The Department reserves the right to amend this Petition for Relief and
23 to request that the Banking Department Commissioner take additional
24 administrative action. Nothing herein shall preclude the Department from
25 bringing additional enforcement action under RSA 397-A or the regulations
thereunder.

Respectfully submitted by:

23 [Redacted]
24 Andrea J. Shaw
25 Andrea J. Shaw
Staff Attorney

December 16, 2005

Date

State of New Hampshire Banking Department

1
2 In re the Matter of:) Case No.: 05-071
))
3 State of New Hampshire Banking) Order to Show Cause for License
) Revoation
4 Department,)
))
5 Petitioner,)
))
6 and)
))
7 Financial Resources & Assistance of)
))
8 the Lakes Region Inc. and Scott)
))
9 Farah,)
))
10 Respondent

NOTICE OF ORDER

This Order commences an adjudicative proceeding under the provisions of RSA 541-A:31, RSA 397-A, and BAN 204.03.

LEGAL AUTHORITY and JURISDICTION

Pursuant to RSA 397-A:17, the Commissioner of the New Hampshire Banking Department (hereinafter "the Department") may issue an Order to Show Cause why a license should not be revoked. RSA 397-A:17 states that the Department may issue such Order for good cause shown. Further, RSA 397-A:21 states that the Commissioner may impose administrative fines not to exceed \$2,500 per violation for knowingly or negligently violating this chapter.

NOTICE OF RIGHT TO REQUEST A HEARING

The above named respondent has the right to request a hearing on this Order to Show Cause, as well as the right to be represented by counsel. Any such request for a hearing shall be in writing, and signed by the respondent or by the duly authorized agent of the above named respondent, and shall be delivered either by hand or certified mail, return receipt request, to the

1 Banking Department, State of New Hampshire, 64B Old Suncook Road, Concord, NH
2 03301.

3 If respondent fails to request a hearing or respond to the show cause
4 order within 30 calendar days of receipt of this order, respondent shall be
5 deemed in default, and the penalties requested will be imposed.

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

7 The Staff Petition dated December 16, 2005 (a copy of which is attached
8 hereto) are incorporated by reference hereto.

9 **ORDER**

10 WHEREAS, finding it necessary and appropriate and in the public
11 interest, and consistent with the intent and purposes of the New Hampshire
12 banking laws, and

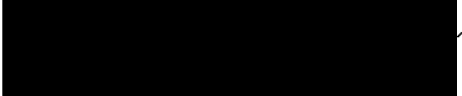
13 WHEREAS, finding that the allegations contained in the Staff Petition,
14 if proved true and correct, form the legal basis of the relief requested,

15 It is hereby ORDERED, that:

- 16 1. The Respondent show cause why its license should not be
17 revoked;
- 18 2. The Respondent show cause why fines in the amount of
19 \$17,000.00 in accordance with the above referenced staff
20 petition should not be imposed; and
- 21 3. Failure to request a hearing within 30 days of the date of
22 receipt of this Order shall result in a default judgment being
23 rendered and administrative penalties being imposed upon the
24 defaulting Respondent.

25 SIGNED,

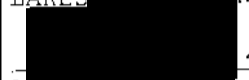

Dated: 12/20/05


ROBERT A. FLEURY
DEPUTY BANK COMMISSIONER

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing ORDER TO SHOW CAUSE, Docket No. 05-071, has been sent via certified mail on December 20, 2005 to MR SCOTT FARAH, PRESIDENT, FINANCIAL RESOURCES & ASSISTANCE OF THE LAKES REGION INC., PO BOX 1152, MEREDITH NH 03253.

Andrea J. Shay
Staff Attorney

12/20/05
Date

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State of New Hampshire Banking Department

In re the Matter of:)	Case No.: 05-071
)	
State of New Hampshire Banking)	Notice of Hearing
)	
Department,)	
)	
Petitioner,)	
)	
and)	
)	
Financial Resources and Assistance)	
)	
of the Lakes Region, Inc. and)	
)	
Scott Farah,)	
)	
Respondent)	

NOTICE OF HEARING

Pursuant to RSA 397-A:17, the Commissioner of the New Hampshire Banking Department (hereinafter "the Department") may issue an Order to Show Cause why a license should not be revoked. RSA 397-A:17 states that the Department may issue such Order for violations of the chapter. RSA 397-A:2 states that violations of federal law constitutes a violation of Chapter RSA 397-A. Further, RSA 397-A:21 states that the Commissioner may impose administrative fines not to exceed \$2,500 per violation for knowingly or negligently violating this chapter.

The Respondent, Financial Resources & Assistance of the Lakes Region Inc. and Scott Farah (herein after "FRA") is licensed as a first mortgage banker and second mortgage home loan lender and a small loan lender since at least 1997 through present. As provided in New Hampshire Banking Laws, the Respondent must comply with all applicable

all copies

1 state and federal laws and regulations. FRA is a New Hampshire
2 corporation with its principal office or place of business at 15
3 Northview Drive, Meredith, NH 03253. Scott Farah is president of said
4 corporation.

5 The Department conducted an examination of Respondent on or
6 about October of 2004. This action is regarding the alleged RSA 397-
7 A:2 / Gramm Leach Bliley Act violations.

8 The Department alleges the following issues to be determined at
9 hearing:

10 **Issue 1:** Whether the Respondents had a written consumer information
11 safeguard policy in place as required by 16 CFR 314;

12 **Issue 2:** Whether the Respondents failed to implement a program to
13 safeguard customer information as required by 16 CFR 314;

14 **Issue 3:** Whether the Respondents' violated RSA 397-A:2 for non-
15 compliance with the Gramm Leach Bliley Act;

16 **Issue 4:** Whether the Respondents failed to facilitate the examination
17 by not providing requested information in a timely manner, regarding
18 First Franklin's December 15, 2003 letter about 2 suspect loans First
19 Franklin purchased from Respondents.

20 Accordingly, an adjudicative proceeding shall be commenced
21 pursuant to 541-A:31 and Chapter 200 of the Department's rules (NH
22 Code of Administrative Rules BAN 200) for the purpose of permitting
23 the Respondents to show compliance with RSA 397-A.

24 Each party has the right to have an attorney present to represent
25 the party at the party's expense, or may represent itself. Each party
has the right to have the Department provide a certified shorthand
court reporter at the requesting party's expense. Any such request

1 must be submitted in writing to the Department at least 10 days prior
2 to a scheduled hearing date.

3 THEREFORE, IT IS ORDERED, that the Licensee appear before the New
4 Hampshire Banking Department on Thursday, March 9, 2006 at 10:00am, at
5 the Department's offices at 64B Old Suncook Road, Concord, New
6 Hampshire, for the purpose of participating in an adjudicative
7 proceeding, at which time the Respondents will have the opportunity to
8 demonstrate why fines should not be imposed and/or why their lending
9 license should not be revoked; and

10 IT IS FURTHER ORDERED, that if Licensee elects to be represented
11 by Counsel, said Counsel shall file notice of appearance at the
12 earliest possible date; and

13 IT IS FURTHER ORDERED, that Andrea J. Shaw, Staff Attorney, New
14 Hampshire Banking Department is designated as Hearing Counsel in this
15 matter with authority to represent the public interest within the
16 scope of the Department's authority. Hearing Counsel shall have the
17 status of a party to this proceeding; and

18 IT IS FURTHER ORDERED, that Todd Wells, shall serve as the
19 Presiding Officer in this proceeding and shall issue a RECOMMENDED
20 DECISION in this matter which shall be reviewed and approved,
21 disapproved or modified by the Bank Commissioner; and

22 IT IS FURTHER ORDERED, that Respondents shall file an answer to
23 each of the allegations set forth in this Notice of Hearing, and any
24 amendments hereto, by no later than 15 days from receipt. Such answer
25 shall first admit or deny the allegation and then set forth any and
all explanations or defenses to the allegation; and

1 IT IS FURTHER ORDERED, that any proposed exhibits shall be pre-
2 marked, for identification only, and filed with the Department and
3 provided to the opposing party not later than March 2, 2006. Hearing
4 Counsel shall pre-mark the Department's exhibits with Arabic numbers.
5 Respondents shall pre-mark exhibits with capital letters. An
6 index/list of exhibits providing a brief description of each exhibit
7 with its corresponding pre-marked number or letter shall be filed by
8 both parties simultaneous with the filing of exhibits; and

9 IT IS FURTHER ORDERED, that the parties shall exchange a list of
10 all exhibits and witnesses to be called at the hearing with a brief
11 summary of their testimony by no later than February 23, 2006 and
12 shall at the same time file a copy of their respective witness lists
13 with the Presiding Officer; and

14 IT IS FURTHER ORDERED, that all periods referenced in this notice
15 shall be calendar days. If the last day of the period so computed
16 falls on a Saturday, Sunday, or legal holiday, then the time period
17 shall be extended to include the first business day that is not a
18 Saturday, Sunday, or legal holiday; and

19 IT IS FURTHER ORDERED, that parties shall file answer/objections
20 to pleadings within ten (10) calendar days of the date the pleading is
21 deemed "filed"; and

22 IT IS FURTHER ORDERED, that the burden of proof shall be by a
23 preponderance of the evidence, and shall be borne by the Respondent
24 once the Department has set forth a prima facie case; and

25 IT IS FURTHER ORDERED, that Respondents' failure to appear at the
time, date, and place specified may result in the hearing being held in

1 *absentia* and/or default ruling in favor of the Department, without
2 further notice or opportunity to be heard; and

3 IT IS FURTHER ORDERED, that the entirety of all oral proceedings
4 shall be recorded verbatim by the Banking Department. Upon request of
5 any party, or upon the Presiding Officer's own initiative, such record
6 shall be transcribed by a certified court reporter designated by the
7 Presiding Officer, and that all costs shall be borne solely by the
8 requesting party. Any such request shall be submitted in writing to
9 the Presiding Officer prior to hearing.

10 IT IS FURTHER ORDERED, that all documents shall be filed with the
11 Presiding Officer in the form of an original and one (1) copy and shall
12 bear a certification that a copy is being delivered to Hearing Counsel
13 and any other parties to this matter in accordance with NH Code of
14 Administrative Rules Ban 204.08. All documents shall be filed by
15 mailing or delivering them to the New Hampshire Banking Department,
16 ATTN: Todd Wells 64-B Old Suncook Road, Concord, NH 03301. Filing by
17 facsimile or electronic transmission shall not be accepted; and

18 IT IS FURTHER ORDERED, that the parties may submit Proposed
19 Orders, which shall include findings of fact and conclusions of law,
20 separately stated, no later than ten (10) days following conclusion of
21 the hearing(s) in this matter; and

22 IT IS FURTHER ORDERED, that routine procedural inquiries may be
23 made by telephoning Todd Wells at (603)-271-3561, but all other
24 communications with the Presiding Officer and with the Department shall
25 be in writing and shall be filed as provided above. *Ex parte*
communications are forbidden by statute; and

1 IT IS FURTHER ORDERED, that a copy of this Notice of hearing
2 shall be mailed to Respondents' attorney, Michael Burke, Law Office of
3 Gould and Burke, P.O. Box 666, Meredith, New Hampshire, 03253, and
4 that a copy shall also be delivered to Andrea J. Shaw, Hearing
5 Counsel, and to Todd Wells, Presiding Officer, at the New
6 Hampshire Banking Department.

7 SO ORDERED,

8 

9 Robert A. Fleury
10 Deputy Commissioner
11 State of New Hampshire
Banking Department

1-19-06
Date

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Shaw, Andrea

From: Shaw, Andrea
Sent: Monday, April 24, 2006 4:17 PM
To: 'mburkelaw@earthlink.net'
Subject: Financial Resources and Assistance of the Lakes Region 05-071

Hi Mike-

I just handed a draft Consent Order over to our General Counsel for review. Once she signs off on it, I'll send it out for your review/comments.

Thanks!

Andrea J. Shaw

Staff Attorney

NH Banking Department

64B Old Suncook Road

Concord, NH 03301

Ph. 603-271-3561

Fx. 603-271-0750

4/24/2006

Shaw, Andrea

From: Michael Burke [mburkelaw@earthlink.net]
Sent: Friday, February 17, 2006 8:42 PM
To: Shaw, Andrea
Subject: In re: Banking Dept. and Financial Resources and Assistance of the Lakes Region, Inc.

Andrea:

Thank you for taking the time to speak with me today regarding the complaint in the above-referenced matter. I have spoken to Scott Farah who has indicated a desire to enter into a consent agreement. I understand that you will be sending me a proposed draft of the agreement. In speaking with Mr. Farah he wished me to convey his concern about the size of the proposed fine and explore a possible way to bring it into line with his business concerns.

I look forward to speaking with you next week.

Michael Burke

MSGTAG has notified the sender that you have read this message. This communication is confidential and intended to be privileged pursuant to attorney-client privilege and the work product doctrine. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by return email. Thank you

2/21/2006

From: Shaw, Andrea
Sent: Thursday, February 23, 2006 8:40 AM
To: Jurta, Mary; Griffin, Kim
Subject: RE: Financial Resources & Assistance of the Lakes Region Inc
I'd rather you hold off scheduling the exam until we have a solid agreement in place - then if he has a repeat violation of Gram Leach Bliley we can get him for violating an Order of the Commissioner as well. As soon as I have the settlement agreement in place I'll let you know then you can schedule the examination.

Andrea J. Shaw

Staff Attorney

NH Banking Department

64B Old Suncook Road

Concord, NH 03301

Ph. 603-271-3561

Fx. 603-271-0750

-----Original Message-----

From: Jurta, Mary
Sent: Thursday, February 23, 2006 8:38 AM
To: Griffin, Kim
Cc: Shaw, Andrea
Subject: FW: Financial Resources & Assistance of the Lakes Region Inc

Hi Kim,

You need to get with Andrea about this one...I think she is in the process of settling the privacy matter...-Mary

-----Original Message-----

From: Griffin, Kim
Sent: Thursday, February 23, 2006 8:34 AM
To: Jurta, Mary
Subject: Financial Resources & Assistance of the Lakes Region Inc

Hi Mary,

The database indicates it is time to conduct an exam of this licensee. I know that we are in the process of going to hearing concerning the issues from the last exam. Should I schedule the exam, or wait?

Kimothy C. Griffin
State of New Hampshire Banking Dept.
64 B Old Suncook Road
Concord NH 03301
T. 603.271.3561
F. 603.271.0750

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From: Shaw, Andrea
Sent: Tuesday, April 25, 2006 3:48 PM
To: Couture, Celeste
Cc: Jurta, Mary; Griffin, Kim
Subject: Financial Resources and Assistance of the Lakes Region Inc.
Celeste:

Can licensing send a letter to the above referenced licensee and ask for a complete list of all litigation the licensee has been involved in over the last 6 years (go back to 2000)? Please ask for information regarding cases in which the licensee was the plaintiff as well as defendant. Specifically ask for information on the law suit involving National Inspection and Repair, the Kansas company including a copy of the recent Supreme Court Judgment. Last, I would like copies of all documents filed with the Court in the suit filed against Farah and Financial Resources Inc (those filed by Farah and the company and those documents court documents filed by the plaintiff).
Give him 2 weeks to get the information / docs to us.

Please pend it for two weeks for follow up.

Thanks!

Andrea J. Shaw

Staff Attorney

NH Banking Department

64B Old Suncook Road

Concord, NH 03301

Ph. 603-271-3561

Ex. 603-271-0750

From: Shaw, Andrea
Sent: Tuesday, April 25, 2006 3:49 PM
To: Soucy, Donna
Cc: Jurta, Mary; Griffin, Kim
Subject: Financial Resources & Assistance of the Lakes Region Inc
DS-

I gave you a draft of this consent agreement today. We would like to fast track it and try to get it wrapped up as soon as possible in light of today's newspaper article. We are planning an unannounced examination in the near future.

Thanks!

Andrea J. Shaw

Staff Attorney

NH Banking Department

64B Old Suncook Road

Concord, NH 03301

Ph. 603-271-3561

Fx. 603-271-0750

From: Griffin, Kim
Sent: Thursday, April 27, 2006 10:17 AM
To: Jurta, Mary
Cc: Shaw, Andrea
Subject: RE: Financial Resources
Ok, thank you. I am going to have Kerry conduct the exam, within the next 2 weeks.

Kimothy C. Griffin
State of New Hampshire Banking Dept.
64 B Old Suncook Road
Concord NH 03301
T. 603.271.3561
F. 603.271.0750

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-----Original Message-----

From: Jurta, Mary
Sent: Thursday, April 27, 2006 10:06 AM
To: Griffin, Kim
Cc: Shaw, Andrea
Subject: Financial Resources

I spoke to PCH today and he said I should get in touch with Securities and let them know we were going back to Financial Resources on a routine exam, and see if they wanted to accompany us. I left a voice mail for Barry Giennon. If they are interested, I will get you the name of the person at Securities to contact to set up a time. - Mary

From: Jurta, Mary
Sent: Wednesday, May 24, 2006 8:33 AM
To: Shaw, Andrea
Cc: Soucy, Donna; Griffin, Kim
Subject: Financial Resources of the Lakes Region

Hi Andrea,

My recollection is that you are in the midst of settlement negotiations with Financial Resources for issues arising out of their last exam. Preliminary reports from Anna Maria indicate that he still does not have a privacy policy or privacy procedures (other than having several shredders) and in this exam, similar to the last, he is not providing documents and is stonewalling the whole exam. Based on this, I would recommend that we not engage in any further settlement negotiations, but instead prepare to issue a show cause for license revocation when the exam is complete. Thanks, Mary

From: Shaw, Andrea
Sent: Wednesday, May 24, 2006 8:36 AM
To: Jurta, Mary
Cc: Soucy, Donna; Griffin, Kim
Subject: RE: Financial Resources of the Lakes Region
Donna has previously decided to stop negotiations with them. She is holding the draft agreement and file. I agree that we shouldn't go forward. It should be a straight forward revocation if we base it in part on not implementing a GLBA program.

Andrea J. Shaw

Staff Attorney

NH Banking Department

64B Old Suncook Road

Concord, NH 03301

Ph. 603-271-3561

Fx. 603-271-0750

-----Original Message-----

From: Jurta, Mary
Sent: Wednesday, May 24, 2006 8:33 AM
To: Shaw, Andrea
Cc: Soucy, Donna; Griffin, Kim
Subject: Financial Resources of the Lakes Region

Hi Andrea,

My recollection is that you are in the midst of settlement negotiations with Financial Resources for issues arising out the their last exam. Preliminary reports from Anna Maria indicate that he still does not have a privacy policy or privacy procedures (other than having several shredders) and in this exam, similar to the last, he is not providing documents and it stonewalling the whole exam. Based on this, I would recommend that we not engage in any further settlement negotiations, but instead prepare to issue a show cause for license revocation when the exam is complete. Thanks, Mary

From: Bond, Carolyn
Sent: Wednesday, May 24, 2006 3:55 PM
To: Tsorvas, Anna-Maria
Cc: Griffin, Kim
Subject: Scott - Financial Resources
Scott called from Financial Resources. He said that 05 Bank Reconciliations are at his office, but 06 Bank Reconciliations are at the accountant's office.

Carolyn

From: Shaw, Andrea
Sent: Thursday, April 27, 2006 9:58 AM
To: Jurta, Mary; Couture, Celeste
Cc: Griffin, Kim
Subject: RE: Financial Resources and Assistance of the Lakes Region Inc.
I'd like to see what is going on first and then request details as needed.

Andrea J. Shaw

Staff Attorney

NH Banking Department

64B Old Suncook Road

Concord, NH 03301

Ph. 603-271-3561

Fx. 603-271-0750

-----Original Message-----

From: Jurta, Mary
Sent: Thursday, April 27, 2006 9:56 AM
To: Shaw, Andrea; Couture, Celeste
Cc: Griffin, Kim
Subject: RE: Financial Resources and Assistance of the Lakes Region Inc.

Hi Andrea,

I understand from your e-mail that Celeste should require 1) a list of all litigation, filed by Farah or Financial Resources or filed against them, in the last 6 years and all court documents filed by either party and 2) any court orders or findings in the law suit filed against Robert and Scott Farah and Financial Resources, Inc. in the Church matter reported in the paper. Did you want other court documents or filings? or are you going to see what is on the list and then request what you are interested in? - Mary

-----Original Message-----

From: Shaw, Andrea
Sent: Tuesday, April 25, 2006 3:48 PM
To: Couture, Celeste
Cc: Jurta, Mary; Griffin, Kim
Subject: Financial Resources and Assistance of the Lakes Region Inc.

Celeste:

Can licensing send a letter to the above referenced licensee and ask for a complete list of all litigation the licensee has been involved in over the last 6 years (go back to 2000)? Please ask for information regarding cases in which the licensee was the plaintiff as well as defendant. Specifically ask for information on the law suit involving National Inspection and Repair, the Kansas company including a copy of the recent Supreme Court Judgment. Last, I would like copies of all documents filed with the Court in the suit filed against Farah and Financial Resources Inc (those filed by Farah and the company and those documents court documents filed by the plaintiff).
Give him 2 weeks to get the information / docs to us.

Please pend it for two weeks for follow up.

Thanks!

Andrea J. Shaw

Staff Attorney

NH Banking Department

64B Old Suncook Road

Concord, NH 03301

Ph. 603-271-3561

Fx. 603-271-0750

From: Shaw, Andrea

Sent: Friday, June 09, 2006 1:49 PM

To: Tsorvas, Anna-Maria

Cc: Griffin, Kim

Subject: Financial Resources and Assistance of the Lakes Region

I received a letter from Attorney Burke on behalf of Mr. Farah indicating Mr. Farah has not produced all the documentation we requested in the subpoena. Please notify me ASAP of what documentation you are still missing so I can respond to Attorney Burke on Monday, 06/12/06.

Thanks!

Andrea J. Shaw

Staff Attorney

NH Banking Department

64B Old Suncook Road

Concord, NH 03301

Ph. 603-271-3561

Fx. 603-271-0750

From: Molin, Kerry

Sent: Tuesday, June 13, 2006 11:29 AM

To: Griffin, Kim

Subject: Financial Resources & Assistance of the Lakes Region, Inc.

5/18/06 This is an unannounced examination!

Requested loan list for Mortgages and Small loans closed during past 18 month period 10/1/04 to 5/1/06.

Licensee indicated there has been no Small loan activity.

Selected 12 loans for review from the list concentrating in the period 10/1/05 to 5/1/06.

The licensee received the previous ROE in October 2005.

Presented the Mortgage Banker and Small Loan Lender Officer Questionnaires to management for completion.

Licensee does not maintain a control list for Denied or Withdrawn applications. The applications are kept for 3 years and filed in alpha order by last name.

The NH files are NOT segregated by state. The licensee operates in 13 states. The NH files can not be marked or distinguished in any way from the other states. Management indicated there are about 3,000 applications currently on file!! I requested the licensee pull 10 NH Denied / Withdrawn files (5 each) for the period 10/1/04 to 5/1/06.

Received a copy of the Audited Financial Statements for the twelve month period ending December 31, 2004 and 2003, a copy of the 2004 Form 1120 FIT return, and a copy of the internally prepared December 31, 2005 Financial Statement for review.

5/19/06 Requested the backup and supporting documents to verify the figures reported on the internally prepared 12/31/05 Statement of Condition.

Reviewed responses provided to dated for the Mortgage Banker OQ.

5/22/06 Anna worked on loan review and and Joe started to verify the financial statements

5/23/06

5/24/06 Joe requested bank account statements and verification.

5/25/06

5/26/06

5/29/06 Memorial Day

5/30/06

5/31/06

6/1/06

6/2/06 Determined in conversation with Joe and Anna that licensee does not maintain a General Ledger. Financial records are kept on a cash basis.

Five checking accounts were presented for review. The internally prepared 12/31/05 financial statement provided was not correct. Management indicate he did not have an accounting background and that statements were only accurate when provided by the CPA.

6/7/06 Some additional documents arrived at the NHBD

6/12/06 Some more documents arrived at the NHBD

From: Molin, Kerry
Sent: Wednesday, June 20, 2007 8:03 AM
To: Shepard, James
Cc: Griffin, Kim
Subject: Financial Resources & Assistance of the Lakes Region, Inc. - Donna Marston compliant Jim,

I am in the process of conducting an examination of the above named licensee. Ms. Susan LeDuc, Regulatory Specialist, from the law firm: Gallagher, Callahan & Gartrell, P.C. has been brought in to train the licensee's staff in regulatory issues and compliance. She indicated the licensee responded to the compliant filed by Donna Marston and is waiting for a response from the NHBD. The NHBD Complaint History indicates the complaint was received on February 3, 2006 and acknowledged and responded to on March 31, 2006. The licensee has this item on their records as an open issue. Can a letter be sent to the licensee indicating the status of this compliant to close the file? Thank you.

Kerry R. Molin

Bank Examiner
State of New Hampshire
Banking Department
64 B Old Suncook Road
Concord, NH 03301
T. 603.271.3561
F. 603.271.0750
<http://www.nh.gov/banking/>

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From: Jurta, Mary
Sent: Tuesday, August 15, 2006 8:10 AM
To: Shaw, Andrea; Griffin, Kim
Subject: RE: Financial Resources & Assistance of the Lakes Region Inc
What about the issue of privacy and the records discarded in the trash?

-----Original Message-----

From: Shaw, Andrea
Sent: Tuesday, August 15, 2006 7:53 AM
To: Jurta, Mary; Griffin, Kim
Subject: RE: Financial Resources & Assistance of the Lakes Region Inc

Its at a standstill at the moment. I haven't received anything on the most recent exam other than he was uncooperative - I don't think I can make a solid case out of what I've been given. I haven't been given the ok to communicate our revocation of our last settlement offer regarding the 314 issues - I need this exam to see if the changes have/haven't been made. I haven't heard/seen any findings which is why I've requested to see the ROE before it goes out - I'd like to proactively trouble shoot if possible.

Andrea J. Shaw

Staff Attorney

NH Banking Department

64B Old Suncook Road

Concord, NH 03301

Ph. 603-271-3561

Fx. 603-271-0750

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-----Original Message-----

From: Jurta, Mary
Sent: Tuesday, August 15, 2006 7:40 AM
To: Griffin, Kim; Shaw, Andrea
Subject: RE: Financial Resources & Assistance of the Lakes Region Inc

And Andrea, what is the status of the enforcement on the exam findings? - Mary

-----Original Message-----

From: Griffin, Kim
Sent: Monday, August 14, 2006 3:22 PM

To: Shaw, Andrea
Cc: Jurta, Mary
Subject: Financial Resources & Assistance of the Lakes Region Inc

Hi Andrea,

Can I send out the Report of Examination to this licensee?

Kimothy C. Griffin
State of New Hampshire Banking Dept.
64 B Old Suncook Road
Concord NH 03301
T. 603.271.3561
F. 603.271.0750

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CONSUMER PROTECTION IN NEW HAMPSHIRE
(HB 109, Chapter 12:1, Laws of 2001)

STUDY COMMITTEE FINAL REPORT

November 15, 2001

Overview

There is mounting evidence that consumer fraud and abuse are increasing. There have been an increasing number of bills filed each year in the Legislature to address various aspects of this problem. Testimony from the Attorney General's office, and various state agencies and regulators confirm a rising tide of complaints and problems. New technologies are creating new avenues for abuse. The problems are increasing complex and difficult to uncover. There are indications that the existing Consumer Protection Statute (RSA 358A) may be inadequate to deal with these concerns, and has been weakened by recent court decisions.

History of RSA 358-A, the New Hampshire Consumer Protection Act

The New Hampshire Consumer Protection Act was adopted in the 1970 legislative session. Earlier attempts to adopt a Consumer Protection Act in New Hampshire had failed in 1967 and 1969. All three bills on this subject were very similar in scope and content. They were based on model legislation that was developed by the Committee of State Officials on Suggested state Legislation and published by the Council of State Governments (CSG). In 1967, two states, Hawaii and Washington had adopted similar versions of the model act. By 1969, it had been adopted by nine additional states (Arizona, Kansas, Maryland, Massachusetts, Missouri, New Mexico, Rhode Island, Texas and Vermont).

The Statute has been interpreted to contain a broad exemption for "regulated" industries. At the time this statute was adopted in New Hampshire, 42 of the 81 professions currently regulated by a board or agency of the state were regulated. Since 1970, 39 new professions have been added to the list of regulated entities.

Findings

The Study Committee has met on eight occasions and received testimony from the Attorney General, the head of the Consumer Protection Division of the AG's office, the Insurance Department, the Banking Department, consumer advocates and industry lobbyists. Testimony from these interested parties indicates the following:

- There is statistical evidence of a rising tide of complaints by consumers of abuse, fraud and misrepresentation.
- Resources to respond to complaints, investigate issues, and prosecute abuse are limited.

- New technologies and advanced marketing techniques make it increasingly difficult to monitor commercial practices and enforce existing statutes.
- Companies domiciled outside of New Hampshire are transacting a significant and increasing volume of retail commerce.
- The existing Consumer Protection Statute (RSA 358A) has been interpreted to contain a broad exemption for "regulated" industries. Recent court interpretations appear to have weakened the reach of the statute and the ability of the individual or the state to pursue effective remedy.

Conclusions

Based on evidence and testimony presented, the Committee has reached the following conclusions:

- The manner in which commerce is conducted, and the methods and avenues for marketing to consumers are constantly evolving.
- New technologies and marketing delivery systems enhance access to the consumer, but also provide new opportunities for fraud and abuse.
- The volume of complaints has increased in proportion with the growth in the underlying population of the state, and the growth in consumer marketing and spending.
- Senior citizens are an increasing percentage of the population and are uniquely vulnerable to postal and telemarketing fraud.
- State regulatory resources dedicated to deal with these issues have not grown proportionately with the scope and magnitude of the problem.
- Existing statutes to protect the consumer have not been updated to address emerging issues.
- Broad exemptions resulting from recent court decisions appear to limit the ability of the individual to pursue redress through the right of private action, or the ability of the Attorney General's office to pursue effective enforcement.

Recommendations

The Committee recommends consideration by the legislature of the following course of action:

1. A significant increase in the resources allocated to the Attorney General's office, Bureau of Consumer Protection, to provide adequate manpower to investigate and prosecute consumer fraud.

2. Improved coordination and communication between the various regulatory departments and authorities to better assess and define the scope and magnitude of the problem, and to coordinate effective remedy.
3. A careful review and analysis by the legislature of the scope and breadth of the "regulated industries" exemption of the Consumer Protection Statute to determine if adequate supervision and control of business activities of regulated entities exists to protect the consumer.
4. A clarification of statutory language to assure a right of private action for abuses in areas of business not actively regulated by state supervisory authorities.

Establishment of a dedicated fund within the office of the Attorney General for deposit of licensing fees and settlement awards to support the cost of increased staffing in the Bureau of Consumer Protection

Department; Regulator	Profession Regulated	Statute	Type	Statutory Provisions:		
				<i>Fraudulent Acts Prohibited</i>	<i>Disciplinary Authority of Agency</i>	<i>Continuing Education Required</i>
Insurance; Commissioner	Insurance Agent	402	L	Laws address prohibited acts such as offering rebates, companies purchasing their own stock, and limitations on investments Class A felony: <ul style="list-style-type: none"> • Embezzlement, or willfull misapplication of funds • Representing another person's property as property of the company • False entry in any book, report or statement • Deceiving officers or the commissioner 	<ul style="list-style-type: none"> • License revocation or revocation and/or fine up to \$2,500 for violations of the act 	None required
Insurance; Commissioner	Insurance Broker	405:32	L	Not specified in statute	<ul style="list-style-type: none"> • License revocation 'for good cause shown' 	None required
Insurance; Commissioner	Insurance Consultant	405:44-a	L	Not specified in statute	<ul style="list-style-type: none"> • License revocation or revocation and/or fine up to \$2,500 for violations of the act 'for good cause shown' 	None required
				<i>Fraudulent Acts Prohibited</i>	<i>Disciplinary Authority of Agency</i>	<i>Continuing Education Required</i>
Insurance; Commissioner	Insurance Producer	402-J	L	<ul style="list-style-type: none"> • Obtaining or attempting to obtain a license through misrepresentation or fraud • Improperly withholding, misappropriating or converting money • Intentionally misrepresenting the terms of an insurance contract • Using fraudulent, coercive or dishonest practices in the conduct of business 	<ul style="list-style-type: none"> • Probation • Suspension or revocation • Refusal to issue or renew • Administrative fine 	Required
Labor Department; Commissioner	Boiler Inspector	157-A	L	None specified	<ul style="list-style-type: none"> • License revocation for cause shown • Civil penalty not to exceed \$500 	None required
	Elevator Inspector	157-B	L			
	Elevator Mechanic	157-B	L			
Parimutuel Commission	Dog Trainer	284	L	None specified	<ul style="list-style-type: none"> • License revocation for cause shown 	None required
	Horse Trainer	284	L			
	Jockey	284	L			
	Jockey Agent	284	L			
Safety	Driver Education School Operator	263:44	L	None specified	<ul style="list-style-type: none"> • License revocation or suspension "for causes and violations" 	None required
State	Bail Bondsman	598-A	R	None specified	<ul style="list-style-type: none"> • Revocation of registration 	None required
State	Lobbyist	15	R	None specified	Penalty for violation of the chapter is a misdemeanor	None required
				<i>Fraudulent Acts Prohibited</i>	<i>Disciplinary Authority of Agency</i>	<i>Continuing Education Required</i>
Superior Court; Chief Justice	Court Reporter	331-B	C	<ul style="list-style-type: none"> • Practice of fraud or deceit in procuring or attempting to procure a certificate • Unprofessional or dishonorable conduct 	<ul style="list-style-type: none"> • Reprimand • Suspension, limitation or restriction of certificate • Revocation • Required continuing education 	None required
Supreme Court	Attorney	311		<ul style="list-style-type: none"> • Fraud, malpractice or contempt of court 	<ul style="list-style-type: none"> • Suspension from practice or removal from office 	12 hours of continuing legal education each year

L = Licensure; C = Certification; R = Registration

Source for continuing education hours: Licensed, Certified, and Registered Occupations in New Hampshire, October 1999, Department of Employment Security

CHAPTER 276

HB 1429 - FINAL VERSION

7mar02...2722h

4/18/02 3626s

2may02...3717cofc

2002 SESSION

02-2415

05/10

HOUSE BILL **1429**

AN ACT relative to the scope of the consumer protection act and relative to the appointment of a director of administration for the office of attorney general.

SPONSORS: Rep. Marshall Quandt, Rock 20; Rep. Keye, Hills 30; Rep. M. Fuller Clark, Rock 36; Rep. Spiess, Hills 14; Rep. Marshall, Graf 2; Sen. D'Allesandro, Dist 20; Sen. Flanders, Dist 7

COMMITTEE: Commerce

AMENDED ANALYSIS

This bill prohibits practices that impede competition under the consumer protection act.

The bill exempts certain regulated persons from the consumer protection act. The bill also provides for the appointment of a director of administration for the office of the attorney general.

Explanation: Matter added to current law appears in **bold italics**.

Matter removed from current law appears [~~in brackets and struckthrough~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

7mar02...2722h

4/18/02 3626s

2may02...3717cofc

02-2415

05/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Two

AN ACT relative to the scope of the consumer protection act and relative to the appointment of a director of administration for the office of attorney general.

Be it Enacted by the Senate and House of Representatives in General Court convened:

276:1 New Paragraph; Regulation of Business Practices for Consumer Protection; Acts Unlawful; Prohibited Pricing Practices. Amend RSA 358-A:2 by inserting after paragraph XIII the following new paragraph:

XIV. Pricing of goods or services in a manner that tends to create or maintain a monopoly, or otherwise harm competition.

276:2 Consumer Protection; Exempt Transactions; Industry Exemptions. RSA 358-A:3, I is repealed and reenacted to read as follows:

I. Trade or commerce that is subject to the jurisdiction of the bank commissioner, the director of securities regulation, the insurance commissioner, the public utilities commission, the financial institutions and insurance regulators of other states, or federal banking or securities regulators who possess the authority to regulate unfair or deceptive trade practices.

276:3 Department of Justice; Director of Administration. RSA 21-M:3, VI is repealed and reenacted to read as follows:

VI. The attorney general shall nominate, subject to confirmation by the governor and council, an unclassified director of administration for the office of attorney general, within the limits of the appropriation made for the appointment, who shall serve for a 5-year term. The director of administration may be removed only as provided by RSA 4:1.

276:4 Director of Administration; Salary of Position. The unclassified position of director of administration for the office of attorney general, authorized in RSA 21-M:3, VI as inserted by section 3 of this act, shall be submitted to the commissioner of administrative services for evaluation by the consulting group on compensation of state officers, contracted pursuant to RSA 21-I:13, XIII, for determination of the salary for the position of director of administration, subject to the approval of the fiscal committee.

276:5 Effective Date.

I. Sections 1 and 2 of this act shall take effect 60 days after its passage.

II. Section 3 of this act shall take effect 90 days after its passage.

III. The remainder of this act shall take effect upon its passage.

(Approved: May 18, 2002)

(Effective Date: I. Sections 1 and 2 of this act shall take effect July 17, 2002.

II. Section 3 of this act shall take effect August 16, 2002.

III. The remainder of this act shall take effect May 18, 2002)

Bill as
Introduced

HB 1429 - AS INTRODUCED

2002 SESSION

02-2415
05/10

HOUSE BILL **1429**

AN ACT relative to the scope of the consumer protection act.

SPONSORS: Rep. Marshall Quandt, Rock 20; Rep. Keye, Hills 30; Rep. M. Fuller Clark, Rock 36;
Rep. Spiess, Hills 14; Rep. Marshall, Graf 2; Sen. D'Allesandro, Dist 20; Sen. Flanders,
Dist 7

COMMITTEE: Commerce

ANALYSIS

This bill:

- I. Prohibits pricing practices that impede competition under the consumer protection act.
- II. Exempts conduct in trade or commerce that is expressly permitted by law or regulation from the consumer protection act.
- III. Limits recovery from strictly regulated industries to actual damages under the consumer protection act.

Explanation: Matter added to current law appears in *bold italics*.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Two

AN ACT relative to the scope of the consumer protection act.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Paragraph; Regulation of Business Practices for Consumer Protection; Acts Unlawful;
2 Prohibited Pricing Practices. Amend RSA 358-A:2 by inserting after paragraph XIII the following
3 new paragraph:

4 XIV. Pricing of goods or services in a manner that tends to create or maintain a monopoly, or
5 otherwise harm competition.

6 2 Regulation of Business Practices for Consumer Protection; Exempt Transactions; Conduct in
7 Trade or Commerce Expressly Permitted by Law. Amend RSA 358-A:3, I to read as follows:

8 I. *Conduct in* trade or commerce [~~otherwise~~] *expressly* permitted under laws, *rules,*
9 *standards, or regulations as promulgated or adopted* [~~administered~~] by any regulatory board or
10 officer acting under statutory authority of this state or of the United States;

11 3 New Section; Regulation of Business Practices for Consumer Protection; Strictly Regulated
12 Industries; Limitation on Damages. Amend RSA 358-A by inserting after section 3 the following new
13 section:

14 358-A:3-a Strictly Regulated Industries; Limitation on Damages. Conduct in strictly regulated
15 industries subject to the control or oversight of a regulatory board or office enacted under the
16 statutory authority of this state shall be exempt from the imposition of double or treble damages
17 under the provisions of RSA 358-A:10, I, provided that:

18 I. To claim an exemption under this section, the claimant shall be subject to each of the
19 following conditions:

20 (a) A license issued by the state regulatory board or office is required to conduct a
21 specific activity.

22 (b) A state licensing board or supervisory entity has reviewed the qualifications of the
23 applicant, and the claimant was operating pursuant to a license issued by the board or entity when
24 the complained of conduct occurred.

25 (c) The licensing board or supervisory entity has, at a minimum, the capacity to review
26 complaints, subpoena evidence, hold hearings, issue cease and desist orders, and suspend or revoke a
27 license.

28 (d) There is evidence of statutory or regulatory standards or professional codes of ethics
29 or conduct which control the activities or conduct to be exempted, and that these regulatory
30 standards or codes provide the consumer with protections equivalent to, or superior to, those
31 provided for in this chapter.

1 II. Conduct in strictly regulated industries remains subject to all other provisions of this
2 chapter.

3 4 Regulation of Business Practices for Consumer Protection; Private Actions; Limited Exemption
4 for Strictly Regulated Industries. Amend RSA 358-A:10, I to read as follows:

5 I. Any person injured by another's use of any method, act or practice declared unlawful
6 under this chapter may bring an action for damages and for such equitable relief, including an
7 injunction, as the court deems necessary and proper. If the court finds for the plaintiff, recovery
8 shall be in the amount of actual damages or \$1,000, whichever is greater. If the court finds that the
9 use of the method of competition or the act or practice was a willful or knowing violation of this
10 chapter, it shall award as much as 3 times, but not less than 2 times, such amount, *except as*
11 *provided in RSA 358-A:3-a*. In addition, a prevailing plaintiff shall be awarded the costs of the suit
12 and reasonable attorney's fees, as determined by the court. Any attempted waiver of the right to the
13 damages set forth in this paragraph shall be void and unenforceable. Injunctive relief shall be
14 available to private individuals under this chapter without bond, subject to the discretion of the
15 court.

16 5 Effective Date. This act shall take effect January 1, 2003.

House Committee

HOUSE COMMITTEE ON COMMERCE

PUBLIC HEARING ON HB 1429

BILL TITLE: relative to the scope of the consumer protection act.

DATE: February 5, 2002

LOB ROOM: 302 **Time Public Hearing Called to Order:** 1:20 pm

Time Adjourned: 3 pm

(please circle if present)

Committee Members: Reps. Hunt, Fraser, Francoeur, Tsiros, Belanger, Avery, Kenney, Langley, DiFruscia, Marshall, Marshall Quandt, D. Flanders, Spiess, M. Clark, Crosby, T. Reardon, Taylor, Keye, Batchelder and Slack.

Bill Sponsors: Reps. M. Quandt, Keye, M. Fuller Clark, Spiess, Marshall and Sens. D'Allesandro and Flanders.

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Lee Quandt, sponsor – Introduced the bill, noting that this is one of three bills coming out of study committee and thanking the committee research assistant for her valuable and extensive efforts during that process.

Rep. Paul Spiess, co-sponsor – Sketched the broad context of consumer issues and the felt need to study them in some depth. Among issues studied was the scope of exemptions to the existing law, changes in scope of the problems due to modern telemarketing, and the question of staffing in the AG's office to meet these demands. He is focusing today on the question of the definition of "regulated" industries which are exempted from this statute. Some industries such as banking and insurance are regulated in detail, while others are less clear.

Q: Rep. John Hunt – Does this repeal the exemption?

A: No.

Q: Isn't there a conflict between "exemption" and changes in consumer protection oversight?

A: Partially, but this statute attempts to refocus the distinction.

Q: Section II and III addresses lawyers' complete exemption under statute, right?

A: Exactly.

* **David Rienzo, Consumer Protection Bureau** – Supports the bill. Part I – Pricing issues is pro-competition, anti-monopoly. Part II tightens up exemption from RSA 258-A re unfair/deceptive acts,

leaving consumers with some recourse, rather than being denied any remedy due to the exemptions enjoyed by regulated industries. Thus, there would be a two-tiered process.

Q: Rep. Tara Reardon – Given this mix, how does the consumer benefit from a regulatory board taking the license of an offending industry?

A: It doesn't. That is why the restraint provided by adding 358A is so important. In some circumstances consumers would have only one recourse and in others it would have two.

Q: Rep. Hunt – If this bill is passed, every agency will submit requests for coverage of these types of items, in order to retain control.

A: Not necessarily so. Many would be guided by the pre-Averrill-Cox-Decision situation.

Q: Rep. Fraser – Doesn't the consumer have right to recover damages now?

A: Not if the "seller" is a regulated industry.

Q: On Line 4 re monopolies, isn't enforcement of monopolies a federal responsibility?

A: Yes, but the state also has a monopoly and combination act which the AG's office enforces.

Q: Rep. Hunt – How would you enforce that?

A: It's very difficult. It's a balancing act – setting low prices is competition but setting unreasonably low prices for the purpose of damaging a competitor is a violation.

Q: Rep. Hunt – Why was this included in this law now?

A: This was not from the AG's Office.

Rep. Lee Quandt – He noted this was meshed during the study committee.

Q: Rep. Hunt – Since these practices are already covered, why include the issue here?

A: This provision is clearer and cleaner than the existing formulation.

Q: Rep. Fraser – Loss leader situation doesn't have to be spread over a wide area does it?

A: Not necessarily – it would depend upon local travel/purchasing patterns, etc.

Q: Has the AG ever prosecuted this type of violation?

A: Yes. He named Optima and several other examples.

Ed O'Brien, representing consumers – Opposes the bill. This is one way to provide some limit to claims for exemption, but it requires sacrificing the opportunity for double/treble damages in order to be eligible for single damages. This is not acceptable nor does it exist in other states. It isn't really a deterrent to misbehavior, in fact, it can work as an incentive for unscrupulous operators.

Q: Rep. Hunt – As the law currently exists, is this an issue which should be addressed or should it just be left in the hands of the courts?

A: The legislature does need to address this issue, but not piecemeal as this bill does. We should look at Massachusetts's 1993 statute. This is a complete cycle of law which has been tested.

Q: Rep. Hunt – But avoid reinventing the wheel?

A: Yes.

John Funk, Counsel to NH Bankers' Association – Worked with the original law while employed in the AG's office. Original law is parallel to what other states did in the 1970's, but we have "strayed" over time. Common law does provide remedies for consumers, but the Consumer Protection Act adds tools such as treble damages, class action, etc. Above is the context. When AG's Office recommends changes in law, they should be sure there are real abuses and must cast the web as narrowly as possible to solve the problem. Language is vague in this bill and he is not confident that it is workable in the instance of banking. Noted that there are many agencies and banks operating in New Hampshire which are chartered federally and in other states, and which would not be subject to state regulation. Lots of technical problems and frustrations. This bill opens a can of worms. He also has specific concerns on the language.

Q: Rep. Fraser – Banking and insurance industries – don't they have to get advance approval for almost any activity?

A: Yes, in a general sense, but no in a specific sense.

Peter Wright, Franklin Pierce Law Center (consumers) – Supports parts of bill and opposes parts of bill. Will give perspective of small consumer: 1. Small consumers have claims for only small amounts. Double or treble damages are still small. 2. These are contingent on proving wilful action. As an incentive for more enforcement, these provisions are of little use because cases aren't big enough to interest attorneys.

Divid Rienzo, NH Consumer Protection Bureau – The language in Section D – don't confuse the remedy with the protection.

Respectfully Submitted:



Gene B. Marshall, Clerk

**Remarks before the House Commerce Committee regarding HB 1429,
An Act Relative to the Scope of the Consumer Protection Act.**

February 5, 2002

David Rienzo, Assistant Attorney General.

Good afternoon Mr. Chairman and members of the Committee. My name is David Rienzo, and I am an assistant attorney general in the Consumer Protection and Antitrust Bureau of the Department of Justice, and I appreciate this opportunity to describe for you the reasons the Bureau supports adoption of HB 1429 ("the Bill").

This bill is in four parts, and amends NH RSA 358-A, the Consumer Protection Act ("the Act"). I shall discuss each part in order.

Part one of the Bill would add a new provision to RSA 358-A:2, that section of the Act which sets out a non-exclusive list of prohibited acts. This provision is, on its face and by its plain language, antimonopoly and procompetitive. These are values the Bureau believes should be promoted by the State and therefore the Bureau supports this provision.

The second and third parts of the Bill seek to eliminate a longstanding confusion related to the exemption language contained in RSA 358-A:3, I. As I have discussed before this Committee before, this section has been the subject of three contradictory interpretations by the New Hampshire Supreme Court. In 1987, in *Rousseau v. Eshelman* 129 N.H. 306 (1987), the Court held this provision exempted all "regulated industries." Then, in 1992, in *Gilmore v. Bradgate Associates*, 135 NH 234 (1992) the Court held that the exemption only covered "transactions otherwise permitted" by another statute or rule. Then in 2000, in *Averill v. Cox*, 145 N.H. 328 (2000) the Court again reversed itself and restated its exemption as previously set out in *Rousseau*.

The Bureau believes the broad exemption enunciated by the Court in *Rousseau* and then again in *Averill* creates a significant impediment to our mission of protecting consumers. This is due to the uncertainty of whether any business the Bureau may be investigating is exempt from RSA 358-A due to the Court's broad interpretation of the exemption provision of RSA 358-A:3.

Accordingly, I will discuss the second and third sections of the Bill in this light.

The second section of the Bill looks directly at this historical confusion. Because the confusion seems to stem from the current language of the statute, specifically the statute's declaration that "trade or commerce otherwise permitted" is exempt, the Bill amends that language to hold "Conduct in trade or commerce expressly permitted" by statute or regulation would be entirely exempt from 358-A. It is the Bureau's opinion that this is a significant improvement in the statute, and would eliminate much of the confusion that currently surrounds the present exemption language by forcing the analysis to focus on

the individual acts alleged rather than whether the actor is a member of a regulated industry. Furthermore, an effect this language would have, and that the Bureau believes is important, is that as amended, the Act would specifically give the state legislature and state regulatory agencies the express power to decide exactly what acts are permitted, and what acts are "unfair or deceptive."

This provision of the Bill would be of great help to the Bureau because when a complaint alleging an unfair or deceptive act is received, and the complaint is against a member of an industry which is covered by specific laws or rules, the Bureau would be able to determine whether the acts alleged are permitted by those rules or regulations. If so, they would be wholly exempt from the Consumer Protection Act, and the Bureau would be unable to take any action. If, however, the acts alleged are not specifically permitted by the regulating agency because they are disallowed, or because the statutes and regulations are silent regarding the acts, the Bureau would have the ability to analyze them under the standards of RSA 358-A. This would reduce confusion relating to the jurisdiction of RSA 358-A, and allow the Bureau to concentrate more of its time on its core mission of protecting consumers.

The third part of the Bill is related to the second, and the Bureau also supports this proposed language. The third section of the Bill adds a new subsection to the Act which provides a framework for the identification of regulated industries and then protects industries so identified from exposure to double or treble damages under RSA 358-A:10, I.

If this proposed amendment is adopted, whenever in the future a complaint is made, the following two-part analysis would be required:

- 1) Is the actor operating as a member of a regulated industry?
- 2) If so, are the acts alleged expressly permitted by any controlling statute or regulation?

If the answers to both 1 and 2 are yes, then the acts alleged would be wholly exempt from RSA 358-A.

If the actor was operating as a member of a regulated industry but the acts alleged are not expressly permitted, (the answer to question 1 is yes, and the answer to question 2 is no), the actor would be subject to RSA 358-A, but would not be exposed to an order to pay double or treble damages. The actor could still be subject to action by its regulatory agency under its own enforcement powers, but as we have heard before, regulatory agencies cannot provide relief for the injured consumer. At best, the regulatory agency can prevent future harm by the use of cease and desist orders, and they can punish bad behavior through administrative fines and other sanctions, but they cannot get the injured consumer his or her money back. This amendment guarantees the consumer a means of securing restitution.

If on the other hand, the actor is not a regulated industry, the entire Consumer Protection Act would apply, and the actor would be liable for an order to pay up to treble damages.

The fourth section of the Bill amends RSA 358-A:10, I to conform with the new requirements set out in the third section of the Bill.

In short, the effects of the second, third, and fourth sections of the Bill would be to return the exemption provisions of the Consumer Protection Act to the status they had from 1992 to the end of 2000, with the added effect of protecting qualified regulated industries from the possibility of having to pay multiple damages for violations of the Act.

As I stated at the beginning of these remarks, the Bureau believes this Bill will provide some much needed clarity in interpretation of the Consumer Protection Act, and will thus significantly streamline the enforcement process. Therefore the Consumer Protection and Antitrust Bureau of the New Hampshire Attorney General's Office strongly supports this legislation.

Thank you again for the opportunity to address the Committee, and I will be glad to respond to any questions you may have.

Amendment to HB 1429

Amend the bill by striking paragraphs 1 through 5 and insert in the place thereof the following:

1. Regulation of Business Practices for Consumer Protection: Exempt Transactions; Exempt Businesses and Professions. Strike RSA 358-A:3, I and insert in the place thereof the following:

1. Any business or profession that is subject to laws or regulations that regulate unfair or deceptive acts or practices in the conduct of such business or profession and is regularly examined for compliance with such laws or regulations by a federal or state regulatory authority.

2 Effective Date. This act shall take effect 60 days after passage.

2/15/2002

John
Kistner
BAUIS

~~BAUIS~~

Amendment to HB 1429 (Alternative version)

Amend the bill by striking Sections 2 through 5 and insert in the place thereof the following:

2. Definition; Regulated Person. Add a new paragraph as follows:

VI. "Regulated Person" is any person, who is subject to laws, regulations or standards that regulate unfair or deceptive acts or practices in the conduct of trade or commerce and who is regularly examined for compliance with such laws, regulations or standards by a federal or state regulatory authority or is subject to sanctions or remedial action by said authority for failure to comply with such laws, regulations or standards, such as a banking, insurance or utility company.

3 Regulation of Business Practices for Consumer Protection: Exempt Transactions; Exempt Trade and Commerce. Strike RSA 358-A:3, I and insert in the place thereof the following:

I. Any act or practice in the conduct of trade or commerce by a regulated person that is specifically permitted by laws, regulations or standards to which it is subject.

→ 4 Applicability of Act to Regulated Persons. Add a new Section as follows:

358-A:3-a. Any regulated person engaging in any act or practice in the conduct of trade or commerce which is not exempt under RSA 358-A:3, I shall be subject to RSA 358-A only to the extent as follows:

I. The attorney general may take enforcement action to remedy any such act or practice in violation of RSA 358-A pursuant to RSA 358-A:4, III and III-a, 5, 7 and 8.

II. Any individual injured by any such act or practice in violation of RSA 358-A may bring an action for damages and for such equitable relief, including an injunction, as the court deems necessary and proper, against a regulated person. The prevailing party shall be awarded reasonable attorneys' fees and costs, as determined by the court.

5 Effective Date. This act shall take effect 60 days after passage.

HB 702 - AS INTRODUCED

2001 SESSION

01-0762
05/10

HOUSE BILL **702**

AN ACT making revisions to the consumer protection act.

SPONSORS: Rep. Kennedy, Merr 7

COMMITTEE: Commerce

ANALYSIS

This bill includes all aspects of trade or commerce, including professions such as the practice of law, within the purview of the consumer protection act. The bill also permits jury trials in private actions brought under the consumer protection act.

Explanation: Matter added to current law appears in *bold italics*.
 Matter removed from current law appears [~~in brackets and struck through.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand One

AN ACT making revisions to the consumer protection act.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Consumer Protection; Act Unlawful; Scope of Chapter Clarified. Amend the introductory
2 paragraph of RSA 358:2 to read as follows:

3 358-A:2 Acts Unlawful. It shall be unlawful for any person to use any unfair method of
4 competition or any unfair or deceptive act or practice in the conduct of any trade or commerce within
5 this state. *All aspects of any trade or commerce within this state shall be subject to the*
6 *provisions hereof, to include the practice of law, or any other profession.* Such unfair method
7 of competition or unfair or deceptive act or practice shall include, but is not limited to, the following:

8 2 New Paragraph; Consumer Protection; Acts Unlawful; Violation of Regulatory Boards and
9 Offices Included. Amend RSA 358-A:2 by inserting after paragraph XIII the following new
10 paragraph:

11 XIV. Any method, act, or practice which would constitute a violation of any laws, rules,
12 standards, or requirements administered by any regulatory board or officer acting under statutory
13 authority of this state or of the United States, whether said laws, rules, standards or requirements
14 are established by said regulatory authority or by state or federal enactment, and regardless of
15 whether or not said regulatory board or officer institutes its own proceeding for said violation.

16 3 Consumer Protection; Exempt Transactions; Reference to Trade or Commerce Changed to
17 Reference to Transactions. Amend RSA 358-A:3, I through III to read as follows:

18 I. [~~Trade or commerce~~] *Transactions* otherwise permitted under laws as administered by
19 any regulatory board or officer acting under statutory authority of this state or of the United States;

20 II. [Repealed.]

21 III. [~~Trade or commerce~~] *Transactions* of any person who shows that such person has had
22 served upon such person by the Federal Trade Commission a complaint pursuant to 15 U.S.C. 45(b)
23 relating to said trade or commerce until the Federal Trade Commission has either dismissed said
24 complaint, secured an assurance of voluntary compliance, or issued a cease and desist order relating
25 to said complaint pursuant to 15 U.S.C. 45(b);

26 4 New Paragraph; Consumer Protection; Enforcement. Amend RSA 358-A:3 by inserting after
27 paragraph V the following new paragraph:

28 VI. The provisions of this section are specifically intended to apply to individual transactions
29 in trade or commerce within this state and nothing herein shall be construed to exempt an entire
30 profession, trade, or industry from the provisions thereof.

31 5 Consumer Protection; Private Actions; Jury Trial. Amend RSA 358-A:10, I to read as follows:

1 I. Any person injured by another's use of any method, act or practice declared unlawful
2 under this chapter may bring an action for damages and for such equitable relief, including an
3 injunction, as the court deems necessary and proper. *In any action for damages, any party shall*
4 *be entitled to a trial by jury.* If the court finds for the plaintiff, recovery shall be in the amount of
5 actual damages or \$1,000, whichever is greater. If the court finds that the use of the method of
6 competition or the act or practice was a willful or knowing violation of this chapter, it shall award as
7 much as 3 times, but not less than 2 times, such amount. In addition, a prevailing plaintiff shall be
8 awarded the costs of the suit and reasonable attorney's fees, as determined by the court. Any
9 attempted waiver of the right to the damages set forth in this paragraph shall be void and
10 unenforceable. Injunctive relief shall be available to private individuals under this chapter without
11 bond, subject to the discretion of the court.

12 6 Effective Date. This act shall take effect January 1, 2002.

House Journal

SPECIAL ORDERS

BILLS REMOVED FROM CONSENT CALENDAR MARCH 6, 2002

HB 1429, relative to the scope of the consumer protection act. OUGHT TO PASS WITH AMENDMENT

Rep. Leo W. Fraser, Jr. for Commerce: This legislation comes before the House as a result of a study committee that met many times over the past summer. The basic purpose of this legislation is to clarify issues pertaining to consumer protection. The committee has recommended an increase in manpower at the Attorney General's Office in order to investigate and prosecute fraud. This issue was addressed in a companion bill (HB 1438). The committee's second recommendation is better coordination and communication between departments. Thirdly, it addressed in the bill the extent to which highly regulated industries such as a public utility company, banking or insurance should be subject to the consumer protection law. This bill, as amended, adds a new violation of the Consumer Protection Act for pricing practices that impede competition. It also narrows the scope of the Act's exemption for regulated trade or commerce from the Act. The amended bill will exempt only activities by regulated businesses or professions that are expressly permitted by governing laws, regulations or standards. The department of justice may enforce an activity that is not exempt and violates the Act. An injured individual in a private right of action may also recover actual damages. Further, the defendant may recover reasonable attorney's fees and costs if the court should determine that the lawsuit was frivolously brought. Vote 15-0.

594

HOUSE JOURNAL MARCH 7, 2002

biennial election which the committee determined was contrary to the intent of the Constitutional Convention in 1870 and was contrary to the strong support by a previous legislature in HB 532 in 1997 and was strongly opposed by the current Secretary of State. Vote 17-0.

Amendment (2774h)

Amend the title of the bill by replacing it with the following:

AN ACT ratifying the 2001 Amherst annual town meeting, and the 2001 Pembroke town meeting.

Amend the bill by replacing all after the enacting clause with the following:

1 Ratification of the 2001 Amherst Annual Town Meeting. All acts, notices, votes, and proceedings pertinent to articles 4 and 7 of the Amherst town meetings held on February 7, 2001 and March 13, 2001, are hereby legalized, ratified, and confirmed.

2 Ratification of April 21, 2001 Pembroke Town Meeting. All acts, votes, notices, and proceedings pertinent to article 3 of the Pembroke town meeting held on April 21, 2001, are hereby legalized, ratified, and confirmed.

3 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill ratifies the town meetings of Amherst and Pembroke.

Adopted.

Rep. Gilmore offered floor amendment (2897h).

Senate Committee

Date: April 17, 2002
Time: 2:16 PM
Room: 104,LOB

The Senate Committee on Executive Departments and Administration held a hearing on the following:

House Bill 1429 (New Title) relative to the scope of the consumer protection act and relative to the appointment of a director of administration for the office of attorney general.

Members of Committee present: Senator Russell Prescott
Senator Robert Flanders
Senator Lou D'Allesandro

The Chair, Senator Russell Prescott, opened the hearing on House Bill 1429 by calling on Representative Marshall Quandt.

Representative Marshall Quandt: Thank you, Mister Chairman, Senator Prescott, and honorable members of the committee. As you know, we worked very hard, bipartisan effort of senators and state representatives, on the consumer protection study of the state of New Hampshire.

Very rarely in my life have I ever been proud to work with such a fine group of people, and also with the Attorney general's office. Ya know, as a conservative republican, in private conversations, we do hear some criticism of the Attorney general's office. Some of it warranted some of it not warranted.

But I'm here to tell you today that assistant Attorney general Rienzo and assistant, (sic) certainly assistant Attorney general Kris Spath are two of the finest people I've ever worked with, in and out of state service. And we've depended heavily on them for legal advice and guidance.

Well it only makes sense, because these are the people that prosecute the laws for the consumers, for our constituents, for our voters, in the state of

New Hampshire. They are the first line of defense in the defense against consumer fraud.

During the process, we ran into some issues concerning what was the, (sic) what was the definition of regulation. Some businesses claim to be regulated. In reality there was no definition of exactly what does that mean. Can you be suspended, fined? Can you have a license denied, revoked, granted. So that, (sic) that became part of the issue. And I was very fortunate chairing the committee to have a very capable state rep, Representative Paul Spiess, who has an extensive business in banking background that was able to deal with that.

During the hearings, we also, (sic) during the hearings, there was also attempts to amend the bill by taking out regulated industry. Well the fact is, that would actually weaken the consumer protection statute from where we even started.

Commerce Committee, and I could be corrected, but my memory, (sic) my memory serves me correctly, we rejected these types of amendments. We don't want to go back in time with our consumer protection effort.

This is a bill, or these are the bills that our constituents want. They wanna to know that we care about them. They wanna to know that we're gonna protect them. They wanna know that we have some minimal resources to do our job to see that they don't get ripped off by unscrupulous businesses.

Now I'm gonna deviate a little bit and talk similar, (sic) some of my frustration over the years as a state representative, sitting in the House, and listen to one of my fellow colleagues stand up and basically say, I'm trying to remember the language without injecting some of my probation parole language, if we can't stick it to the consumers, New Hampshire's not a friendly place to do business.

I sat there flabbergasted. If you want to fire someone and you don't give them a letter of termination, that's not a friendly place in New Hampshire to do business.

One of the things that we can do as republicans and as democrats, and I'm a conservative republican, is we can deal with our constituents. We can help them. They look to us to protect them. And its bills like this that we work hard jointly on, and come up with some good ideas that we start to move ahead, the state of New Hampshire being a small state, the granite state, with guts enough to take on consumer protection fraud, (sic) consumer fraud, so our Consumer Protection Division can defend us.

We often think that consumer protection is strictly against businesses to consumers. Well its also against businesses to businesses. And in New Hampshire, I think our people, our constituents, if they were smart enough to vote for us, then they're smart enough to expect that we look our for their best interest and protect them.

In any of the bills that we've brought through the committee into the Senate, there's nothing earth shattering about them. They are bills that are, (sic) that are very basic in what we're doing. For the first time in years, we have one or two people that have the fire in their bellies in the Attorney general's office to carry these battles. They bring in 100, (sic) \$200,000 a year, against businesses that, (sic) that subscribe to unfair practices, dealing with monopolistic business practices.

In our own republican platform, of course I hadn't taken the time to read the democratic platform, but in the republic platform it talks about New Hampshire, and encouraging businesses. And I think that's an important thing to remember.

We have anti-monopolistic language in our state constitution. We have a very small segment of the Attorney general's staff, that are putting in three to four times the work to meet the standards of the 20,000 complaints a year they receive. We need to listen to them to when they talk about what they need as tools to prosecute unscrupulous businesses. And we need to grant them that right.

And Mister Chairman, we're having a rather contentious day over in the House. And Representative Spiess and I left the House Session just prior to a, (sic) another redistricting vote on the House, so I want to end my testimony and answer what questions I, (sic) I can. For the technical aspects we do have the Attorney general's office here.

Senator Russell E. Prescott, D. 19: Senator D'Allesandro do you want to speak to this?

Senator Lou D'Allesandro, D. 20: Sure, when, (sic) when he's finished I think I might.

Senator Russell E. Prescott, D. 19: Any questions from the committee?

Representative Marshall Quandt: Thank you, Sir. Thank you gentleman and ladies.

Senator Russell E. Prescott, D. 19:
Representative Spiess.

Thank you very much.

Representative Paul Spiess: Thank you, Mister Chairman, members of the committee. For the record my name is Paul Spiess, representing Hillsboro 14, the town of Amherst.

I was one of the members on the study committee that took this particular issue under advisement. And it was a hard working committee. We met on eight occasions. We heard a lot of testimony from our regulators concerning problems in the regulatory area, consumer protection.

And we came forward with three different pieces of legislation. One which dealt with staffing issues at the Attorney general's office. One would put in place the opportunity to fund new staffing positions. And I think most importantly, the position this bill before you now, (sic) the bill that's before you now.

And I think its important because there is, in the current statute, a relatively broad exemption that was put in place many years ago, and was intended to exempt, at that moment in time, a very limited number of industries which were regulated. Principally banks, insurance companies, physicians, attorneys, where there was a high level of regulation supervision oversight commissions in place to, (sic) to monitor their activities. And to perform annual audits and reviews.

Unfortunately, that language which defined the definition back then has had, (sic) has been expanded to the point now where we have 65 "regulated entities" which can't claim exemption. Not a narrow number, but a large number, because we have deemed them to be "regulated" if they have to apply for a license or register to do business with the state or any number of other things.

And the problem is that for many of those industries there is not a breadth of supervision that exists for some of the highly regulated industries. And as a result of recent court decision, its really questionable whether or not the Attorney general's office has the ability to use this statute when these people infringe upon the rights of the consumer.

So we worked very hard to try to redefine or narrow that exemption to those businesses which we deem to be truly regulated. Something more than just applying for a license. And that's what this bill is all about.

Paragraph two, subsection 1-A defines a regulated entity. And basically refers to the fact that there must be something more than licensure. There must be supervision oversight, examination, administrative ability to suspend licenses, revoke, so on and so forth. And additionally then we limit in the subsidiary paragraphs, what the Attorney general can do for a truly regulated business, as opposed to an unregulated business.

So it really is an attempt, if you will, to narrow the breadth of the exemption so that the Attorney general's office and the Consumer Protection Division, in particular, has more ability to use this statute when people really are operating outside of the, (sic) of the exemption.

And you will hear testimony. I know there's an amendment coming up, that's going to attempt, if you will, to soften this definition. I certainly share the concerns of the banking community and the insurance community that they don't want to get drawn into a trap that may be created by the fact we're trying to narrow this exemption. It's now our intent to do that.

It's in our intent to recognize that they are highly regulated industries, but to make sure that people like cosmetologists and, (sic) and roofers, and electricians, and what not, who do not have the level of supervision, are not put in a position where they can abuse consumer protection without doing a follow up.

Senator Russell E. Prescott, D. 19: Senator.

Senator Robert B. Flanders, D. 7: Is it my understanding from your testimony that, (sic) that anything that is highly regulated, such as insurance and banks, are not effected by this?

Representative Paul Spiess: They, (sic) they're exemption remains in place.

Senator Robert B. Flanders, D. 7: And we haven't really named what they are. We've done it through language.

Representative Paul Spiess: We, (sic) we saw attempts to name them, and we felt that that would become a never ending process, where every year someone would try to include their name on the list of "exempted" industries. We felt it was better to try to come up with a definition of..

Senator Robert B. Flanders, D. 7: So banking, insurance...

Representative Paul Spiess: Physicians, utilities...

Senator Robert B. Flanders, D. 7: Attorneys. It would all be exempt from this. Thank you.

Senator Russell E. Prescott, D. 19: Thank you very much.

Representative Paul Spiess: Thank you very much.

Senator Russell E. Prescott, D. 19: Any further questions? For the record, Senator Flanders is signed up in favor, not wishing to speak. Representative Bob Clegg is signed up in favor, not wishing to speak. And is there any others that are sponsors of this bill that wish to speak on behalf of their bill? Seeing none, I'm gonna go down the list, unless someone thinks that they should come forward first.

Senator Lou D'Allesandro, D. 20: I'd like to offer my, (sic) my amendment.

Senator Russell E. Prescott, D. 19: I'm glad I asked. Thank you very much, Senator.

Senator Lou D'Allesandro, D. 20: (Please see attachment #1) Thank you, Mister Chairman and members of the committee. For the record, my name is Lou D'Allesandro, state Senator, representing District 20, that's wards 3, 4, 10, and 11 in Manchester, and the town of Goffstown.

I come before you to ask you to accept amendment 3572s. And I might say that I offered this amendment on a previous piece of legislation, but for some reason, it did not become part of that previous piece of legislation. It somehow got lost in the shuffle.

It, (sic) it, (sic) it's a, (sic) it's a piece of legislation that takes a position in the Attorney general's office, and moves it from a classified position, to an unclassified position. It doesn't require any financing. The monies are there. It just requires the movement of that position.

And it places this position under the control of the Governor and counsel. The appointment, (sic) the Attorney general may appoint a subject to the confirmation by the Governor and counsel. An unclassified director of administration to the office of Attorney general within the limits of the appropriation made to the appointment.

The appointee shall serve a five year term. And the director of administration may be removed only as provided in the statute RSA 4:1.

So that, (sic) that's the (gene), (sic) the content of the legislation. The genesis of this came about some time ago, and I brought it up, as I say, at that time. You recall, I, (sic) I had to leave for, (sic) for another hearing. And, (sic) and just it got, (sic) it got lost in the shuffled. And I think, Senator, someone is here from the attorney general's office who can, (sic) who can comment on this, (sic) on this amendment.

But, the amendment requires no cost. There's no money involved. It's a movement of a position from a classified to an unclassified position. Thank you very much. And have a good day. I'll answer any questions that I, (sic) that I might.

Senator Russell E. Prescott, D. 19: Sure. I don't know how this works with the movement of a position. It does say position added on line fourteen. Should there be, then, a position removed on another line on this amendment?

Senator Lou D'Allesandro, D. 20: The, (sic) the, (sic) if you look on, (sic) on line eight, the Department of Justice, the law office administrator, that's repealed, and its reenacted to create this new position. So we are repealing, getting rid of one, and, (sic) and bringing in another.

Senator Russell E. Prescott, D. 19: Great, thank you.

Senator Lou D'Allesandro, D. 20: Thank you very much.

Senator Russell E. Prescott, D. 19: I'll start down the list with David Rienzo.

(muffled)

David Rienzo: I have some copies of some written testimony...

Senator Russell E. Prescott, D. 19: Thank you very much.

Senator Robert B. Flanders, D. 7: Thank you.

Senator Russell E. Prescott, D. 19: Thank you for your testimony. We have it all here then.

David Rienzo: (Please see attachment #2)

Senator Russell E. Prescott, D. 19: Thank you very much for your testimony. Do you have any questions, Senator? Concerning Senator D'Allesandro's amendment, who is the, (sic) who is the law, (sic) law office administrator? And is that person continuing into the next appointment position?

Steve Judge: Mister Chairman, I'm signed up next to speak, and I'd be happy to talk about that. That's why I'm here.

Senator Russell E. Prescott, D. 19: Very good. Thank you very much.

David Rienzo: You're welcome.

(Tape change)

David Rienzo: I did take a look at this amendment that was proposed. I do want to point out, this amendment essentially would codify the current (mumbled). Okay, it hasn't been proposed yet. But its here. Its coming in. When it does, it would, (sic) it would codify the current...

Senator Russell E. Prescott, D. 19: Very good. Thank you very much. Are you Steve Judge?

Steve Judge: Yes I am. Good afternoon, Mister Chairman, members of the committee. I'm Steve Judge. I'm the deputy attorney general.

I'm tempted to say at this point that Representative Quandt list, (sic) listed off the finest assistant attorney general in the office, of course he left me off the list because I'm the deputy attorney general...I confirmed with him when he left that I am the finest deputy attorney general.. I'm of course also the only deputy attorney general.

I'm here to testify on behalf of the amendment that was offered by Senator D'Allesandro today. We've been persistent about this because it is vitally important to the office as a matter of fundamental fairness.

There are a number of individuals who are state employees who have equally challenging jobs. All of them are unclassified in section GG, except for one. And that's our classified law office administrator.

We recognize this problem. The (Hay) group that you remember did a study of unclassified employees. Identified a director in the attorney general's office in the unclassified side. And we thought they had fixed the problem.

We found out that that was directed at something else. So the problem persisted, which is what brings us this late in the Session to try and fix it.

I had a conversation with Don Hill about the best way to handle this. And he suggested that changing from classified to unclassified was the way to go. And try to find a bill that would accommodate that was the, (sic) the right way to do that.

As Senator D'Allesandro indicated, there is currently existing a classified position. The name of the gentleman who's in that is Mark Thompson. What this bill does is repeals that section, so that the classified position is eliminated and creates an unclassified position at which we would propose to go before the Governor and counsel and put Mark Thompson in.

So that it would be the same person. He'll be doing the same job. He will just be recognized as doing the same sort of job as all the other directors of administration.

As Senator D'Allesandro indicated, this bill costs nothing. It's the same amount of money that we're paying him right now, to the extent that we can accommodate his salaries. Its from the money that has been budgeted to us.

There are 130 employees in a \$10 million agency budget that he handles. Some may think that's not a whole lot, although I would point out to you that 58 of those employees are lawyers. You can draw your own conclusions about how difficult this job is.

He serves on a number of committees and boards. He attends governor and counsel meetings, he attends Fiscal Committee meetings, he attends legislative hearings. But more importantly, what he does is reverses a flow that needs to be reversed. And this past Monday was a significant date in that flow, of course April 15th, its significant as far as taxes are concerned.

There is a great deal of money the flows from New Hampshire to Washington. Less than that amount flows back to New Hampshire. Mark Thompson and the position that he has held since 1985, has brought \$100 million back in the state of New Hampshire through federal grants.

At the moment, he is running \$40 million worth of federal grants. So he is reversing that flow, and making sure that we do better, and try to get as close as we can to for every dollar we send to Washington, we get a dollar back.

I come here, though, as, (sic) this is a matter of fundamental fairness. To put him in the same posture as the other people who are doing equally

challenging jobs that he has. And I would ask that you allow this bill to be amended, put this particular amendment on, 3572s, as identified by Senator D'Allesandro, and help us fix a problem that's really very technical. Same number of positions, no extra money.

Senator Russell E. Prescott, D. 19: Is there a way that you can define equally challenging job, so that the next time someone wants to bring an amendment to a bill, wanting to change a position from not, (sic) classified to non-classified? We can say that, sorry you don't meet, (sic) meet the same classifications.

We have this problem in ED&A all the time. And I really don't like the idea of just people coming in and saying to make it fair, this is what we should do. That's too broad a statement. I'd like a definition.

Steve Judge: Since the director of administrations position is what we're dealing with, there is a definition of that in the state's system. And what he does is in that definition. In fact, its beyond that definition, because generally speaking, the directors of administration aren't dealing with the federal side of the bill. He has six people that he's running just to deal with the federal grant.

So what we have here is a position that has been frozen since 1985. It was created as statute as classified. Nothing has happened to it since then. But since then, the times have changed dramatically.

In 1985, there was no federal component to this. So it, (sic) it mirrors the director of administration. And I think only where you have a situation like this, where its so close to something else. And, (sic) and if you looking at 941A, which is the list of unclassifieds, you would see him there, in GG, under the Department of Justice, director.

That's what, (sic) all we're trying to have added to that is public administration. Because right now there's nobody in that division. I think you won't have a situation like this one. This is so close to what's going on. Probably everybody who sits in front of you says the same thing.

Senator Russell E. Prescott, D. 19: (mumbled) Do you have a letter from Mark Thompson saying this is appropriate to eliminate his job?

Steve Judge: I do not. He's certainly aware of this...

Senator Russell E. Prescott, D. 19: Maybe, (sic) maybe Mark Thompson could get a hold of me and say that.

Steve Judge: Yes. He and I have had the conversation about, there's a risk here for him. Governor and counsel don't go along with this, there's a time frame issue here. This amendment, I believe, would make it effective July 1st 2002. If we don't get it through governor and counsel before that, his job ends July 1st 2002. But I could certainly get that letter to you.

Senator Russell E. Prescott, D. 19: And, yeah, so the whole committee understands that Mark Thompson doesn't feel as though the rug is being pulled out from underneath him.

Steve Judge: He wants this to happen. He's asking for us to do this.

Senator Russell E. Prescott, D. 19: We'd like to know that.

Steve Judge: Yes. I understand.

Senator Russell E. Prescott, D. 19: Thank you very much.

Steve Judge: You're welcome.

Senator Russell E. Prescott, D. 19: Greg Moffett.

Greg Moffett: Good afternoon. Mister Chairman, members of the committee, my name is Gregg Moffett, and I'm an attorney with the Sulloway and Hollis law firm in Concord, New Hampshire. I am representing the American Insurance Association in opposition to the, (sic) to HB 1429.

There are several reasons for the opposition. But the primary opposition with respect to the bill relates to the scope of the exemption and the attempt to tailor the exemption in the manner that, (sic) that has been suggested and is reflected in the current bill.

As you know, the current law provides RSA 3358-A:3 is the statute that provides the insurance industry and other trade or practices, trade or commerce, that are regulate by laws administered by regulatory boards or officers. And exemption from, (sic) from the Consumer Protection Acts provisions.

There's a reason for that. And the reason is as has been set forth by Mister Spiess. And I was delighted to hear him say it was his relief that this bill, HB 1429 would leave the exemption in tact. I think he said it would be totally exempt for the insurance and banking and, (sic) and other similar situated, (sic) regulated industries.

I'm please to hear that, and would have abbreviated my comments today and addressed the main concern with the exception of the fact that I have since heard Mister Rienzo's comments, which seem to take that away. And I'd like to explain why I think that would be a bad idea.

The, (sic) the exemption under the CPA has been held to be applicable to the insurance industry, primarily for the reason that the insurance industry is heavily regulated. Insurance, as you know, is among the most highly regulated of industries in the state of New Hampshire.

There are some 20 separate statutes dealing with insurance, all the way from RSA 400 to RSA 420. Those regulations, as you've seen, deal specifically with the issues of consumer protection. In fact, there's one major provision, RSA 417, the Unfair Insurance Trade Practices Act, which specifically regulates the conduct of insurers with regard to consumers. Its designed to protect consumers from unfair and deceptive acts of practices in the insurance industry.

The RSA 417 provides for several mechanisms, one of which is that it allows claims to be made by disgruntled or aggrieved parties to the Insurance Commission. The insurance commissioner is then entitled and does investigate and conduct hearings on these types of things. Can issue cease and desist orders. It can pull licenses, refuse to renew licenses, suspend licenses, and alike.

Interestingly and importantly the, (sic) the statute also provides later on in its provisions to the 417:19 provides that a private citizen who is aggrieved by an unfair insurance practice adjudicated by or found by the commissioner, can then file a claim directly with the Superior Court to recover damages as an individual for the alleged harm caused by the insurance supplier, as the statute defines the term.

Now that's an important provision, because as (muffled) there is in fact a right of action available to that agreed person who Mister Rienzo was talking about. That aggrieved person who was the subject of an unscrupulous real estate, I mean, an insurance sales man, will in fact not be left without a (revenue). That person having, (sic) I'm certain that that will be a determine to be a violation of the RSA 417, the Unfair Insurance Trade Practices Act. Therefor, that person will have a private live action to recover damages.

That's the very same issue that Mister Rienzo was talking about. That's exactly what is in place in (mumbled) in the current system.

The best, another interesting, and actually very beneficial aspect to RSA 417 in its current formulation, is that it provides the commissioner with the authority to be a gatekeeper.

That's important to the insurance industry for a couple of reasons. One is that as a gatekeeper, the commissioner of insurance keeps an eye on what's coming through. Who better to determine whether something is an unfair insurance practice or not than the insurance commissioner. And that insurance commissioner's gatekeeping function keeps the frivolous and unfounded law suits down to a minimum. That has a positive affect of keeping costs down for the insurance industry generally across the board. Which in turn, no great surprise, keeps the cost of obtaining insurance down for the consumers of this state.

We understand that HB 1429 was intended to be a provision which tightened up, to some extent, the current exemption under the consumer protection statute. And, (sic) and we understand it, and, (sic) and we're sympathetic to that. And the problem with the attempt to do it under the current formulation of 1429 is that it goes too far.

The net is cast. Its been cast to, (sic) basically the purpose of the bill, as I understand it, was to exempt certain regulated persons from the Consumer Protection Act. However, the problem is that HB 1429 provides, in the exemption section, that only conduct that is specifically permitted by laws, regulations, or standards, would be exempt under the (CPA).

Now as you know, or may not know, and I'll, (sic) I'll just mention it now, a, (sic) a complaint made under by an individual or a consumer under the Consumer Protection Act, has to allege several things.

A complaint needs to allege misrepresentation, fraud, false advertising, deceptive practices of some demonstrative sort.

Its hard to imagine any, I'm not aware of any insurance regulation that would permit that kind of, (sic) that kind of conduct to be (mumbled) by, (sic) by an insurer. I'm not aware of any regulatory board of any kind that would permit someone under its control to engage in misrepresentations, fraud, false statements, of that nature.

So essentially, this exemption is an exemption without teeth. Because on one hand they've described individuals who are in fact regulated, and set forth who are heavily regulated. Yet on the other hand they've taken it away because they've said only those (cond), (sic) only that conduct that is specifically permitted by this regulation that you must abide by, will be

exempt. All other conduct, not specifically prohibited by the statutes, rules, regulations, what have you, is in play.

It is therefore a, (sic) is a logical result. And its one in which both, (sic) its one in which that has been addressed by the Supreme Court previously, and its that reason, its one of those reasons why the Supreme Court said, hey, that doesn't make any sense. It wasn't simply to make a broad exemption. The, (sic) the Supreme Court (mumbled), and the other, (sic) and the other read on that doesn't make any sense.

So there are some alternatives. And we do understand the committees needing in interest in regulating or limiting. And we understand the attorney general's interest in regulating or eliminating the scope or class of individuals who could be subject to the exemption. We understand that. We appreciate it.

We believe we have prepared a drafted language that we think incorporates a substantial portion of the present bill. And, (sic) and reformulates it to some degree, using much of the same language which addresses our concern. And, (sic) and what it does is it, (sic) is it sets forth that there will be a very limited, (sic) very limited group of class of, (sic) of businesses that will be exempt under the, (sic) under the Consumer Protection Act.

If the committee would, (sic) would find it helpful, I'd be prepared to pass this out. You'll notice that this language that we have prepared is substantially similar to the definition of regulated person. And also incorporates the, (sic) the attorney general's stated intention to narrow the scope of the individuals who could be subject to it.

Basically, trade or commerce by any person subject to laws or regulations that regulate unfair or deceptive acts or practices, and who is regularly examined for compliance, with such laws, regulations, standards, or other action by a federal or state regulatory authority, or is subject to sanctions or remedial action by such authority for failure to comply.

That substantially narrows the scope of the, (sic) of the individuals or entities that could take advantage of the exemption under, (sic) under the Consumer Protection Act.

And, (sic) so we would urge the committee to consider this language. And I will conclude my remarks. Except I would like to mention that the one example offered by Mister Rienzo with respect to the credit card purchase.

I do think its important to note that, (sic) that the credit card issuer would in fact be subject to New Hampshire's current statute, which is called the New Hampshire Unfair Debt Collection Practices Act. That statute does not have an exemption for heavily regulated industries of any kind. And so there would be, in fact, and currently is in fact, an avenue of redress for that individual as well.

So that's, (sic) that's my remarks.

Senator Russell E. Prescott, D. 19: Senator.

Senator Robert B. Flanders, D. 7: I'm concerned because you never once mentioned Consumer Protection in your whole presentation.

You, let me finish. You said you're gonna take care of the bad insurance company and the bad bank. And you're gonna take their license away from them. And, (sic) but you never, (sic) then your only testimony on the consumer was if they get (hosed) by an insurance company or a bank, they can go out and hire an attorney and try to get their money back.

What the consumer people are trying to do is help them get their money back. You're taking that away. And this is a consumer protection bill, not a protection on the insurance company.

Now, having retired from an insurance company, I know that if you call the Insurance Department with a workers compensation problem, they say call the Labor Department and hang up. You call workers compensation Labor Board and they go to the insurance company.

I don't think that there is any way that they attorney general want (sic) is thinking this bill that they're gonna take insurance company's licenses away.

All the testimony I heard was, that if you've got a person out there selling insurance and somebody has been taken for X number of dollars, they want the authority to step in and help that person get their money back.

All you talked about was the bad insurance company taking their license away.

Greg Moffett: Well, I, (sic) I believe that the, (sic) that the testimony from, (sic) from Mister Rienzo was, (sic) was related to the ability to having a private (mumbled) of action. Or the ability for the consumer to collect. That seemed to be primarily his motivation, was his statement that at the end of

the day, there would be an ability for a, (sic) for a consumer to collect. And I'm assuming that he meant collect money damages.

Senator Robert B. Flanders, D. 7: That's right.

Greg Moffett: And what I'm telling you is that the current, (sic) the current statute under RSA 417 provides, it has that.

And so there's a problem with a competing, (sic) what we're talking about is two competing areas that provide the same right of recovering (in essence). 417 provides on the one hand for a consumer who is, (sic) who is aggrieved, where there's an adjudicated violation of 417 to file that action in superior court and get that right of recovery.

Now together, recovery under the Consumer Protection Act, that same person needs to do the same thing. He needs to go and file a law suit under the Consumer Protection Act. Attorney generals not gonna recover the money for the individual. The individual needs to file a law suit on his own behalf, under RSA 3358-A:10 to get a recovery.

I think that's what we're talking about.

Senator Russell E. Prescott, D. 19: Thank you very much.

Greg Moffett: Thank you.

Jim Bianco: Mister Chairman, I decided not to speak. Thank you.

Senator Russell E. Prescott, D. 19: Thank you. Anybody else decided the same? Oh I'm sorry. Jim (Hatem)? You all set? Matt Quandt is not here, wishes to be noted in favor of the bill. Joe Haas, you wish to speak?

Joe Haas: (Please see attachment #3) Just for two minutes maybe. Good afternoon, Mister Chairman, and one member of the committee.

Senator Russell E. Prescott, D. 19: Go ahead, Joe.

Joe Haas: Okay. What I would like to say right off after hearing the last speaker say the insurance companies do provide hearings, I had a case once against the Citizens bank. And the banking commissioners filed a complaint with (mumbled) office.

And I never got a hearing because they don't have that policy which I think maybe this committee could look into for equal, (sic) equal rights. The people (muffled) as well as the insurance company.

And that being said, I will center in on lines number, (sic) line number 26 where it says that, well actually 25 and 26 that'll start it off. If the court finds that the plaintiff's actions were frivolous, the court shall give reasons thereof in writing, and may assess reasonable attorneys fees and costs.

And I'd like to put the emphasis on the word assess, because I went through this first hand myself. I was assessed in a court case once, \$40,000.

And I'll give you the write up on that. My summary, I'll just leave it with the clerk. I did email all of you too, by the way, so you can get it off the internet.

And the whole point is, I never got my jury trial. Anything that involves over \$1500, you're entitled to by Article 20 of the New Hampshire constitution. And I know that there's an RSA 21 section 2 on the common usage in words.

What's going on, I signed up as a co-founder of both...And from my experience, the courts are assessing that they're affirming the word assess as a tax, because they use a form, its called taxation of costs. And technically a tax is not a debt. If you look in Black's law dictionary.

Senator Russell E. Prescott, D. 19: Is this pertaining the bill?

Joe Haas: Yes, its on line 26.

Senator Russell E. Prescott, D. 19: Okay. Could you describe line 26.

Joe Haas: Line 26 says that if somebody's filed a complaint in court, they will be assessed reasonable attorney fees.

Now my point is, if the judge is going to assess over \$1500, the person has a right to a trial by jury. And we're not getting it in this state.

And I filed a complaint with Beverly Hollingworth, when she was a Senate President, I've alerted your Senate President. And that money bill started in the House.

I've sued the state in this general court. And I'm very upset that I'm not getting any justice. And I think that this bill ought to be put on hold until you investigate these assessments that are done by these courts, which these judges ought to be impeached.

Senator Russell E. Prescott, D. 19: Thank you very much.

Joe Haas: Thank you.

Senator Robert B. Flanders, D. 7: I'd like to hear the other side of this amendment, if I may.

Senator Russell E. Prescott, D. 19: There will be an opportunity to those who can speak a second time. However, we have one that wants to speak for the first time. George Roussos.

George Roussos: A late sign-up.

Senator Robert B. Flanders, D. 7: Yes.

George Roussos: Thank you, Mister Chairman and members of the committee. My name is (tape change)...business in New Hampshire.

And the New Hampshire Association of Domestic Insurance Companies, which is mostly comprised of property (casualty) companies organized under the laws of New Hampshire's National (unclear), Peerless, Concord Group, companies like that. And also for today, Harvard Pilgrim, which is an HMO in Massachusetts that also writes business in New Hampshire.

We support they amendment that was introduced by Mister Moffett just a few moments ago. It, to us, strikes a balance between a very broad, (sic) broad exemption in the current law, and, (sic) and, (sic) and, (sic) and the elimination of the exemption under the bill as its before you today, by striking a middle ground.

The definition, today, is just one sentence long. Exempt transactions is trader (commerce) otherwise permitted under the laws as administered by a regulatory board or officer acting under the statutory authority of the state. That, (sic) that is, we all seem to agree, is broad.

I think there's also general agreement that the bill before you today effectively eliminates the exemption. If you disagree with that, let me explain, because I think a lot of people don't understand that. And I think that the, (sic) this summer at the study committee, we were reassured that banks and insurance companies were not intended to be affected by the work of the study committee.

And I think that if you talk to folks who've passed this bill, many of them would say that they think that banks and insurance and utilities are exempt under the bill before you. And I think that as Representative Spiess said, who's the prime sponsor of the bill, or one of them, he would understand and welcome a softening or clarification of the, (sic) of the exemption so that it includes banks and insurance companies and utilities. I believe that that's what Representative Spiess said. And we agree with him.

So I think there's a lot of confusion as to what this bill does. And let me take a second to look at it as, (sic) as we read it. The bill defines regulated person and that would include, lets assume that would include insurance companies, which, (sic) which it does. It does.

But then, if we stop right there, everything will be fine. And that's one way to handle it. But if you, (sic) if you look below, at section three, Consumer Protection, roman numeral one. Okay?

Senator Robert B. Flanders, D. 7: What line?

George Roussos: It says, roman numeral one, any act or practice in the conduct of trade or commerce by a regulated person that is specifically, do you see that sentence?

That's the exemption. And that act or practice describes nothing in the real world effectively speaking. Because as Mister Moffett said, if the act of practice is permitted, under lets say the insurance laws, then its not gonna be a violation of the Consumer Protection Act.

So the exemption that is supposedly given is a fictional exemption. I don't think it was intended that way, but it doesn't apply to anything. What we're talking about is conduct that would violate the Consumer Protection Act. And if it, I mean, the insurance statutes in this case. And if it violates the insurance statutes, then this exemption doesn't exist.

So that how we read it. Whether it was intended or not I'm not sure.

Senator Russell E. Prescott, D. 19: Let me, (sic) let me say this. Line eight, regulated person. Are they exempt?

George Roussos: Subject to what we just looked, (sic) looked at. They're not, (sic) they're not completely exempt. The exemption is modified by what we've just discussed.

Senator Russell E. Prescott, D. 19: And insurance companies are a regulated person.

George Roussos: Correct. No question about it. No question.

Senator Russell E. Prescott, D. 19: Now, when you go to line seventeen, those that are not exempt, again, under this paragraph, shall be subject to 358-A.

George Roussos: That's right. Let me...

Senator Russell E. Prescott, D. 19: So am I missing something?

George Roussos: Yes.

Senator Robert B. Flanders, D. 7: I'm missing the same thing...

George Roussos: And I haven't explained it well. Let me try...

Senator Robert B. Flanders, D. 7: If I may for a minute. I was on the study committee.

George Roussos: Yes.

Senator Robert B. Flanders, D. 7: And spent a lot of hot Sundays and Saturdays in here.

George Roussos: I know you did. I know you did.

Senator Robert B. Flanders, D. 7: And exactly what we wanted is exactly what's here. We wanted banking, insurance, utility companies. We wanted them all exempt from it.

George Roussos: We all agree. Except, (sic) except for this language. So, it sounds like we're gonna get there. And I was real happy to hear, (sic) I'm very happy to hear this. And to hear what Representative Spiess said, and others have said it as well.

Senator Russell E. Prescott, D. 19: Do you agree that those that are not exempt should be subject to RSA 358-A?

George Roussos: Yes I do.

Senator Russell E. Prescott, D. 19: That's what it says?

George Roussos: Yes. Let, (sic) let me, I won't belabor it, but look at that roman one, the first line again, okay. Stay with me for, (sic) for just a second.

Any act or practice by a regulated person. Okay? That's who we're talking about. A person who's exempt, okay? That is specifically permitted...

Senator Russell E. Prescott, D. 19: I don't see where you're reading.

Senator Robert B. Flanders, D. 7: Right here, fifteen...

Senator Russell E. Prescott, D. 19: Well this is where insurance companies aren't subject to this...

Senator Robert B. Flanders, D. 7: That's right.

Senator Russell E. Prescott, D. 19: Sir. Because they are exempt.

George Roussos: If we agree on that, then, (sic) then ya know, we're gonna be all set.

Senator Robert B. Flanders, D. 7: That's the testimony we've heard from the people in the attorney general's office.

George Roussos: Well, there is a difference. And you can hear from the assistant attorney general. But I think in fairness, let him say it, but I do think there is a difference of view between us as to how broad it should be.

Senator Russell E. Prescott, D. 19: And that is good that you brought it to this committee so this is on permanent record, and for your return to...so you can find the intent of this committee, that they are exempt.

George Roussos: And I very much appreciate that. And that being the case, there's no need to go any further.

Senator Russell E. Prescott, D. 19: Thank you very much.

George Roussos: Thank you.

Senator Robert B. Flanders, D. 7: (mumbled)

Senator Russell E. Prescott, D. 19: Someone wish to speak for a second time to clarify anything that the committee has overlooked?

David Rienzo: I will refer to visual aids. They're at the back of my, (sic) my submission.

The way the current law is, (sic) is dealt with, you start with a, (sic) with an allegation at the top of the flow chart. That some, (sic) someone has committed an unfair and deceptive act.

Currently the decision is immediately followed with a question. Is the act part of a regulated industry?

Senator Russell E. Prescott, D. 19: Now are insurance a regulated industry?

David Rienzo: I think that would, (sic) I think that's been adjudicated, and determined that they are.

Senator Russell E. Prescott, D. 19: Very good.

David Rienzo: If the answer is yes, you go down to the stop sign. We are exempt, we are out of court. If the answer...

Senator Robert B. Flanders, D. 7: That's insurance companies, banking, attorney, medical, utilities?

David Rienzo: Utilities (mumbled) fit it now, yeah.

If the answer is no, then we go through the court process.

Senator Robert B. Flanders, D. 7: Let me re-phrase that. Utilities, banking, insurance companies.

David Rienzo: The next page is what would happen under, (sic) under the current bill. Or the bill that's in front of the committee.

The first question, again, did we have the allegation? Then the first decision is, do we have a regulated person? If the answer is yes, then we know who they are, because we just had them numerated. Most of them.

If the answer is, (sic) then we have another question we have to ask. Is the act that's being proclaimed of allowed somewhere by a (stat), (sic) by one of their regulations?

Now, let me try to point out why this is not illogical. I'll use the credit card example, they're not my credit cards for bank, but it's the credit card example.

We all get these solicitations in the mail for a credit card with a 1.7% finance rate APR. Well, we all know that's a (teaser) rate. But still we may sign up for one. And we all, (sic) most of us who've done this before know that eventually that 1.7 rate is gonna go up to 13 or 14 or whatever the credit card company wants it to be.

And we get complaints in the office where someone would sign up for one of these low-rate cards; and then six months later, oh my gosh, my APRs gone up to 13%. Well, then they think, (sic) they feel that's an unfair act. They were deceived. And remember what 358-A prohibits, unfair and deceptive, (sic) unfair or deceptive acts of a practices. So immediately they, (sic) they may real, (sic) reasonably believe that they have a cause of action under 358-A.

Well, then we look at the banking end. And the officer in control of the currency rate issue...And we find out that under federal regulatory (mumbled), with proper notice, a credit card company can increase your, (sic) your interest rate.

So we say, well, ya know, you need to go back and look at all those little flyers that got stuck in your bill, (sic) billing statement. One of those probably said, next month, your billing, (sic) your APR goes up to 13%. If that's the case, they, even though they had an arguable case that they were deceived, that is an act that is allowed by law or regulation. Therefore, that act, (sic) that act is exempt. That credit card company gets to do that.

So that question has to be answered next. If we look at the ranks of the laws, we find that there is no permissive statute or regulation allowing that kind of activity to go one. Then we go into the question, was it an unfair or deceptive act of practice? 358 now applies.

So that's the, (sic) that's the exemption that we're talking about. And that's why it is not illogical to say that an act or practice otherwise permitted, would be exempt. It would be illogical otherwise. Why else would be ridiculous for and, (sic) and wasteful of judicial resources and our resources if a, (sic) if an act that was otherwise permitted, could still be under 358-A. So it is, (sic) it is entirely, totally, in my mind, logical, but maybe I...

So then we go into the whole arrangement that we have before, except when we get down to the remedy phase. And that is, (sic) that's where the

exemption comes in. The regulator is now exempt from the (trouble) damages, meaning that they can't get, (sic) if I feel I was deceived out of \$300 they can't get \$900 for me...

The next question that I'd like, (sic) does that clarify this?

The second issue I'd like to take, (sic) I'd like to point out, attorney Moffett did correctly say that a consumer may sue the insurance company that the... Attorney Moffett also did correctly point out that the consumer can make, (sic) can sue that insurance company after an adjudication and a decision by the insurance commissioner. That's when the right to sue under 417 came in. After the insurance commissioner...

We're saying that the right under 358-A should, (sic) should be separate from that issue. Not be reliant upon a, (sic) upon an adjudicated process in an administrative agency.

And the third thing that I'd like to point out is, yes, I did in fact think about RSA 358-C when I was looking at my credit card, (sic) the credit card (mumbled).

358-C allows for damages of \$200 per violation. That's not gonna get my credit card company's attention. 358-C also invokes 358-A. Under 358-A the attorney general's office can look for \$10,000 per violation. Now the, (sic) now those 23 calls in that one, (sic) in that one day, that one consumer might get my bank's attention.

So its important that we retain jurisdiction under 358-A. And not be limited solely to 358-C's \$200 limit. Any questions that I can answer?

Senator Russell E. Prescott, D. 19: Seeing none, thank you very much for your testimony.

David Rienzo: Thank you.

Senator Russell E. Prescott, D. 19: Anybody else wish to speak for a second time?

Steve Judge: I just wanted to read into the record and give to you a letter from Mark Thompson to yourself and the members of the committee.

Senator Russell E. Prescott, D. 19: Very good. Thank you.

Steve Judge: (Please see attachment #4)

Senator Robert B. Flanders, D. 7: Mister Thompson, how are you?

Mark Thompson: Fine.

Senator Russell E. Prescott, D. 19: Thank you for coming to our committee.

Mark Thompson: Thank you, Mister Chairman.

Senator Russell E. Prescott, D. 19: Anybody else wish to speak on behalf of this bill? Seeing none, we'll close the, yes?

Don Fonstien: Mister Chairman...

Senator Russell E. Prescott, D. 19: Please come forward for the record.

Don Fonstien: Thank you very much. For the record, my name is Don Fonstien. I appear today on behalf of Granite State Electric, Northern Utilities, Natural Gas, (mumbled), Progressive Insurance.

And I'm very pleased to hear that the intent of the committee is an exemption for the banking, insurance, and utility companies. Basically all I do is work with those types of companies, and the relationships with consumers.

I can tell you the bill does not do what you think it does. The Moffett amendment does, and for that reason I would ask you to adopt the Moffett amendment.

With that, I hope everybody... Thank you.

Senator Russell E. Prescott, D. 19: Thank you.

Senator Robert B. Flanders, D. 7: You never explained to me why it doesn't do it. It says in the bill, (sic) it says in the bill that they're exempt. I was on the study committee.

Don Fonstien: Right.

Senator Robert B. Flanders, D. 7: We want them exempt. The bill says they're exempt. I, (sic) I don't know where, (sic) I don't know where you're coming from. Regulated persons. Banking, insurance, and utilities companies. Where's, (sic) I don't know where, (sic) I don't know where the problem is. I haven't seen it yet.

Don Fonstien: I, (sic) I'm happy to take as much time as necessary to go over that with you, Senator Flanders, but, you want me to do it now? Or it might be more efficient to do it later.

Senator Robert B. Flanders, D. 7: We don't have a later. This is our last day.

Don Fonstien: Okay.

Senator Robert B. Flanders, D. 7: This is it.

Senator Russell E. Prescott, D. 19: Thank you for your testimony. Anybody else wish to speak on behalf of this bill? The amendment...

(Mumble from audience.)

Senator Russell E. Prescott, D. 19: I'm gonna close the hearing on House Bill 1429. Thank you all for attending.

Senator Prescott closed the public hearing on House Bill 1429 at 3:00 PM.

Respectfully submitted,

Jessica L. Cilley
Senate Secretary



Sen. D'Allesandro, Dist. 20
April 17, 2002
2002-3572s
05/10

Amendment to HB 1429

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to the scope of the consumer protection act and establishing a director of
4 administration in the office of the attorney general.

5

6 Amend the bill by replacing all after section 3 with the following:

7

8 4 Department of Justice; Law Office Administrator. RSA 21-M:3, VI is repealed and reenacted
9 to read as follows:

10 VI. The attorney general may appoint, subject to confirmation by the governor and council,
11 an unclassified director of administration for the office of attorney general, within the limits of the
12 appropriation made for the appointment, who shall serve for a 5-year term. The director of
13 administration may be removed only as provided by RSA 4:1.

14 5 Unclassified Officers; Position Added. Amend RSA 94:1-a, 1(b) by inserting in Grade GG the
15 following new position:

16 Grade	Agency	Position
17 GG	Department of justice	director of administration

18

19 6 Effective Date.

20 I. Sections 1-3 of this act shall take effect 60 days after its passage.

21 II. The remainder of this act shall take effect July 1, 2002.



2002-3572s

AMENDED ANALYSIS

This bill exempts certain regulated persons from the consumer protection act.

The bill also changes the position of law office administrator in the department of justice to the unclassified position of director of administration.

Memorandum

To: Representative John Hunt, Chair, House Commerce Committee

From: David Rienzo, Assistant Attorney General *DR*

Date: February 13, 2002

Re: Proposed amendment to HB1413:

Amend proposed RSA 358-A:3, I(a)(1) to read:

1. **The conduct complained of must have been committed in the course of trade or commerce which may only be engaged in subject to a license issued by a state regulatory board or office** ~~is required to conduct a specific activity;~~

Note: proposed additions to the bill's language are in bold, proposed deletions are struck through.

Dir's # 20/21 m

Fred Chantare

**Remarks before the Senate Executive Departments and Administration Committee
regarding HB1429, An Act Relative to the Scope of the Consumer Protection Act.**

April 17, 2002

David Rienzo, Assistant Attorney General

Good afternoon, Mr. Chairman, and members of the Committee. I am David Rienzo, and I am an assistant attorney general in the Consumer Protection and Antitrust Bureau, and I am here to explain why the Bureau supports adoption of HB1429 as amended by the House of Representatives.

The main purpose of this bill is to settle a longstanding confusion relative to the scope of NH RSA 358-A:3, the "exempt transactions" clause of the Consumer Protection Act ("the Act"), RSA 358-A. The Exempt Transactions clause has been the subject of three contradictory rulings by the New Hampshire Supreme Court. In 1987, in *Rousseau v. Eshelman* 129 N.H. 306 (1987), the Court held this provision exempted all "regulated industries." Then, in 1992, in *Gilmore v. Bradgate Associates*, 135 NH 234 (1992) the Court held that the exemption only covered "transactions otherwise permitted" by another statute or rule. Then in 2000, in *Averill v. Cox*, 145 N.H. 328 (2000) the Court again reversed itself and restated its previous interpretation that the exemption removes any industry which is subject to regulation from the jurisdiction of the Act.

How this clause is interpreted has a significant effect on the ability of the Consumer Protection Bureau to enforce the law, even as to non-exempt entities. The current interpretation actually increases the chances that the Bureau will be forced into litigation, if only to determine whether a business which is under scrutiny is exempt from the statute. Normally, we hope that a business which believes it is in some legal jeopardy will usually modify its behavior after engaging in discussion with this Bureau. It has been the Bureau's experience that this method of "constructive engagement," if you will, is an efficient and effective means of reducing the likelihood that consumers in New Hampshire will be the victims of unfair or deceptive acts or practices.

On the other hand, if the business questions the applicability of the Act, it may ignore the efforts of the Bureau. In that event, the Bureau will routinely issue a subpoena for records, documents, and testimony. The business may choose to seek to quash the subpoena, and we will be in court before any discussion about business practices has taken place. This is uneconomical of time and other scarce resources, and turns what would normally be an uncomplicated process into a full court proceeding. The current statute does not define a regulated industry, and instruction from the Supreme Court is vague at best. This results in uncertainty about the applicability of the Act, and provides a business an incentive to claim that it is exempt.

It should be noted that the Consumer Protection Act is often the only legal means available to a consumer who has been injured by the unfair or deceptive acts of a business to receive restitution. A blanket exemption for entire industries can effectively lock the

consumer out of court, and ensure that the industry operated without any form of accountability to consumers. While the industry may be accountable to its regulatory agency, it is the consumer who suffers the ultimate harm.

Some regulated entities believe that they are already subject to regulations which adequately protect consumers from injury due to fraud or unfair or deceptive acts. Sadly, the experience of the Bureau shows that often this is not true. Most regulatory bodies have the power to discipline their licensees for unfair or deceptive acts, but lack the authority to force the licensee to reimburse a consumer for his or her losses resulting from those acts. In such cases, the current blanket exemption from RSA 358-A leaves the injured consumer with no possible means of regaining lost money, and the reduced accountability may result in a reduced incentive for the business to avoid such practices in the future.

Under HB1429, the blanket exemption for regulated entities is changed so that the application of the Consumer Protection Act will then be based upon the action complained of. If the complained-of action is specifically permitted by law or regulation, it will be exempt from the Act. If the complained-of action is not expressly permitted, then liability under the Act may be found. At that point, the analysis will be one of whether the plaintiff has shown that the defendant has in fact violated RSA 358-A. If so, at the penalty phase of the hearing, the defendant will be able to claim regulated entity status, and thereby exempt itself from the possibility of being ordered to pay treble damages, although actual damages and attorney fees and costs may still be assessed.

This is desirable for several reasons. Among those are:

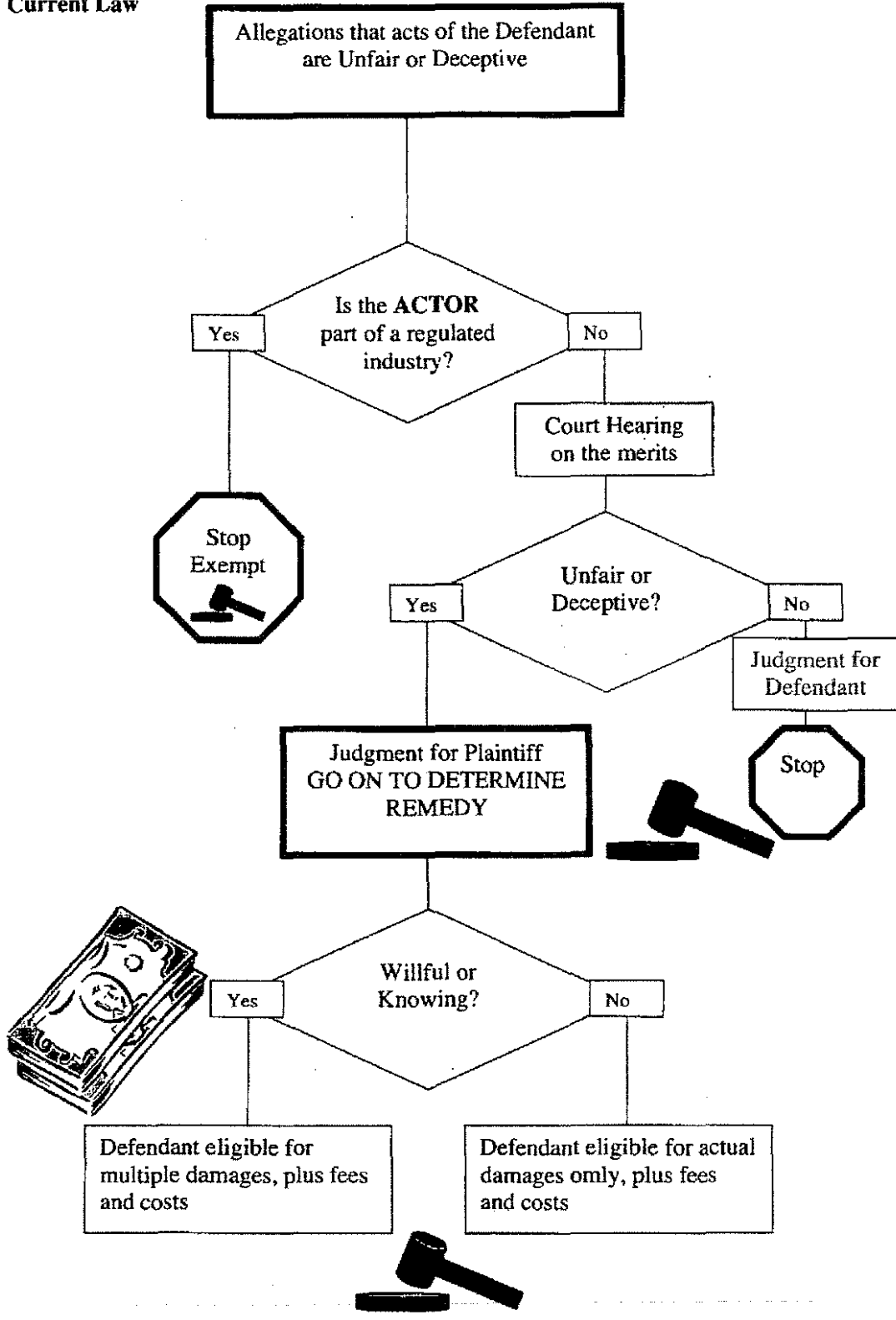
- The elimination of the claim of exemption at the outset of action by the Bureau;
- Preservation of the consumer's right to sue in case of fraud, deception, or unfair acts committed by a regulated entity;
- The amendment would encourage regulatory agencies to draft regulations which directly address unfair or deceptive acts or practices by their licensees
- Regulated industries would no longer need to fear liability for treble damages as well as sanctions by their regulating body.

HB1429 accomplishes these goals by the following means:

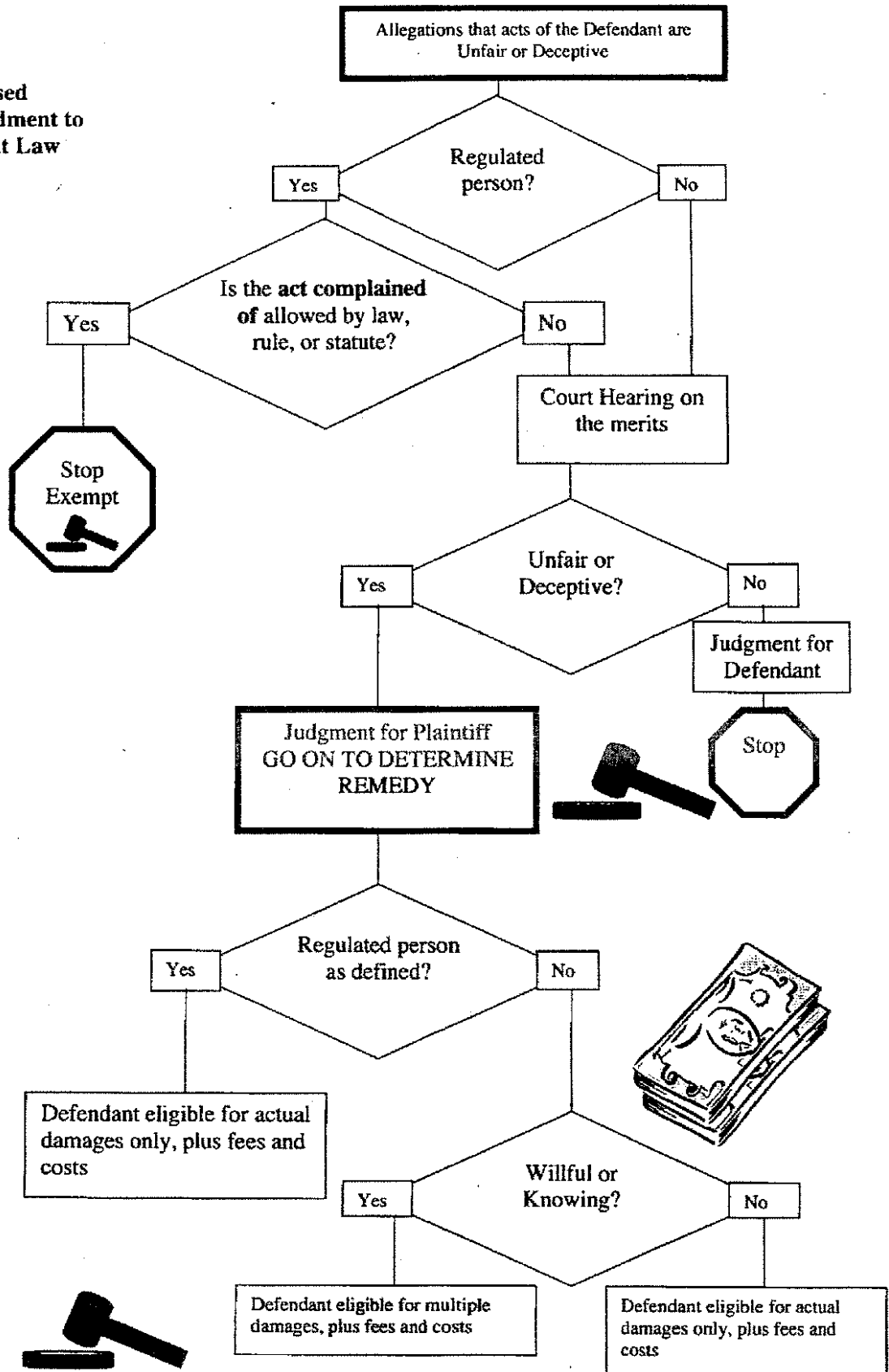
- Regulated industries are defined;
- Regulated industries remain subject to the terms of the Consumer Protection Act;
- Consumers are insured that their right of action against a violation of the Act by a regulated industry will be preserved;
- The Consumer Protection and Antitrust Bureau retains the authority to prosecute regulated industries for violations of the Act.

Therefore, the Consumer Protection and Antitrust Bureau strongly supports adoption of this bill as amended and passed by the New Hampshire House of Representatives. I will be happy to answer any questions you may have.

Current Law



**Proposed
Amendment to
current Law**



Draft Amendment to House Bill 1429

Amend the Bill by replacing all after section 1 with the following:

2 Consumer protection; exempt transactions; regulated persons. RSA 358-A:3,I is repealed and re-enacted to read as follows:

I. Trade or commerce by any person who is subject to laws, regulations, standards, orders or other action of a federal or state regulatory authority that regulates unfair or deceptive acts or practices in the conduct of such trade or commerce, and who is regularly examined for compliance with such laws, regulations, standards orders or other action by a federal or state regulatory authority or is subject to sanctions or remedial action by such authority for failure to comply with such laws, regulations, standards, orders or other action, such as banking, insurance, or a utility company.


3 Effective Date: This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This Bill:

- I. Prohibits pricing practices that impede competition under the consumer protection act.
- II. Narrows the "regulatory exemption" under current law to apply only to certain strictly regulated persons who are already subject to comparable supervision under other laws.

State of New Hampshire
Interdepartmental Communications


From Mark C. Thompson
Director of Administration

Date April 17, 2002

At (Office) Administration
Department of Justice

Subject Unclassified Position

To Senator Russell Prescott and Members of the Committee

Pursuant to your request, I understand that the creation of an unclassified Director of Administration position will eliminate my current classified position # 10327.

I have spent 32 years in service to the State of New Hampshire and understand the risks involved.

Comments of W. John Funk, counsel to the New Hampshire Bankers Association

I understand that the sponsors of this bill seek to make certain that consumers have remedies available against businesses that are regulated by state or federal regulatory agencies for unfair or deceptive practices if such remedies are not available under other statutory or regulatory schemes. In concept, I think this is a worthy objective. The problem is how to express this intent in a manner that does not cast a wider net than is necessary to solve the problem.

I am counsel to the New Hampshire Bankers Association which represents state and federally chartered banks in this State. As you are aware, banking is heavily regulated by federal and state regulatory agencies – probably more so than any other type of business with respect to consumer issues.

- There is an alphabet soup of federal laws and regulations that cover consumer loans, leases, mortgages, deposits and so on.
- There are additional consumer banking laws and regulations at the state level.
- These laws provide a variety of remedies for consumers.
- Banks are regularly examined for their compliance with these laws and regulations by federal and state regulatory agencies with broad regulatory authorities.

I state these facts as background because I am concerned that the language of the bill is too vague to exempt banks from its provisions.

- It will have the effect of subjecting banks to another regulatory authority in the form of the Attorney General in addition the state and federal banking agencies.
- It will also expose banks to new consumer claims under state law when other adequate remedies exist.

I am troubled by the proposed amendments to RSA 358-A:1 in Paragraph 2 of the bill.

- Paragraph 2 states that “conduct” in trade or commerce that is “expressly” permitted under any laws, rules, standards or regulations as promulgated or adopted by any regulatory board or officer acting under statutory authority of this state or of the United States.
- I am unclear as to the scope of what is intended by this language.

While banks are heavily regulated with respect to many of their business lines, it is uncommon for regulatory schemes to expressly permit specific conduct.

- Rather, they speak in general terms and allow the practice of banking to evolve. For example, our state law says that banks can engage in any type of secured or unsecured lending to consumers, but it doesn't say specifically how the bank can engage in that business. Is this “conduct” that is “expressly” permitted?

- Far more frequent than permissive laws or regulations are restrictions or limitations on activities. Thus, a law may say a bank can engage in variable rate lending, but restricts the activity by requiring disclosures and prohibiting certain conduct. Will activities that are not prohibited be deemed “expressly” permitted?

The effect of this confusion will be that consumers will be encouraged to bring suits against banks under the consumer protection act, even though other remedies exist under federal or state regulatory schemes, to increase leverage. The burden of proof will be on banks to show that there is some specific law or rule that expressly permits them to engage in the exact activity – a burden that will be impossible in many instances, even though the general conduct is permitted and regulated by a bank regulator. In my opinion, very little “conduct” will be found to be exempt.

Of equal concern is the second exemption found in Paragraph 3 of the bill. Assuming that a bank is not found to be exempt under Paragraph 2, then it may be exempt from the double or treble damages provisions of the consumer protection act if it satisfies four tests. Leaving alone for a moment that a federally chartered bank or out-of-state bank could never satisfy the tests (i.e., it refers to New Hampshire boards or officers only), I submit that it will be virtually impossible for a bank to qualify.

- The first test requires that a state regulatory board issue a license to the bank to conduct the specific activity. In this state, banks get a charter and a certificate of authority to engage in a banking business, not a specific activity. Thus, a question exists whether this test is met.
- Assuming that the charter and certificate are the equivalent of a license, the second test should not be a problem
- Nor should the third test be a problem because the state banking department has all of the listed powers.
- The fourth test requires a showing that there is a remedy under another regulatory scheme which affords consumers with protections that are equivalent or superior to the consumer protection act. The remedies under the federal regulations such as trust in lending (Z) or equal opportunity (B) are very specific, but they are different from the consumer protection act. How to prove they are equivalent or superior is difficult and one could argue that if they don't contain double or treble damages, they fail to meet the test.

Thus, it is likely that a bank will fail to satisfy the first and the fourth tests and will be subject to the full remedies of the consumer protection act.

Finally, the language of the bill is incomplete or inaccurate which will only add to the confusion (i.e., activity, licensing, standards and codes).

We ask that you expressly exempt banks or take steps to clarify the language to prevent it from being applicable to them.



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From: Joseph S. Haas <JosephSHaas@valleyvalley.com>

Reply-To: JosephSHaas@valleyvalley.com

To: prescott@forfamily.net, flandersrb@aol.com, gary F. ... sylvia.larsen@leg.state.nh.us, dallas@leg.state.nh.us

CC: pepper@ttlc.net, hkstaterrep@aol.com, mfcclark@...

Subject: HB 1429 Consumer Protection Act. (word: asses

Date: Wed, 17 Apr 2002 10:22:55 -0700 (PDT)

powered by everyone.net

Dear Members of the senate ED&A plus the Prime Sponsor, and co-sponsors:

Please see #2 of my post this morning over at <http://members4.boardhost.com/caire/msg/468.html> wherein you have got to stop being the wimps when the courts do violate R.S.A. Chapter 21:2 "Common Usage. Words and phrases shall be construed according to the common and approved usage of the language;..." (page 149 of the Title 1 STATE and ITS GOVERNMENT, 2000 edition) Source: Mass. Gen. St. 3:7. GS 1:2 (1967) GL 1:2 (1878) PS 2:2 (1891) PL 2:2 (1926) RL 7:2 (1942) (see page xiii).

here: <http://members4.boardhost.com/caire/msg/460.htm>

Bar Assoc. & Consumer Protection

Posted by Joseph S. Haas on 4/17/2002, 8:14 am

1. The Senate Judiciary is having an "EXECUTIVE SESSION" on HB 465 "relative to membership of attorneys in the New Hampshire Bar Association and lobbying by the Bar Association" in Room 122 L.O.B. starting at 8:30 a.m. today with two other House Bills (to go there and report back later);

2. At 2:15 o'clock p.m. today in Room 104 LGB in the Senate EXECUTIVE DEPARTMENTS & ADMINISTRATION (ED&A) Committee, there will be a Public Hearing on HB 1429 "relative to the scope of the consumer protection act." Sponsored by Rep. Marshall Quandt pepper@ttlc.net with six co-sponsors (4 with e-mails in the cc section below) who ought to detail... re: R.S.A. Chapter 355-A:3, (b) "if the court finds that the plaintiff's action were frivolous, the court SHALL give reasons therefor in writing and MAY ASSESS attorney's fees and costs." (emphasis ADDED... since an "assessment" is NOT a tax, and a tax is NOT a debt!)

- Ch...
- Arthur F. ...
- P. ...
- ...
- ...
- ...
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- ...
- ...
- ...

...this is written by me FOR this Committee because in one of my many cases in Grafton County Superior Court, I was "assess"ed \$30,000 reduction in a sale of real estate + \$10,000 in attorneys fees = \$40,000 that is clearly OVER the \$2,500 amount in Article 20, Part First & Bill of Rights to a trial by jury NEVER waived by me, but that the judges have determined WITHOUT the jury, to be a "taxation of costs" on their Form #... (19...) AND a debt, plus proceeded with a Sheriff's Sale against me that be also crooked as explained in one of my three (count them: 3) Article 32 Petitions to the GENERAL COURT via BOTH the House Speaker AND your Senate President, but still collecting dust! The point being that this Bill is OUT OF ORDER, and so to amend this Bill here to reflect from experience since a page of history is worth a volume of logic! Amend this AFTER with the right words that you will learn from BOTH my Petitions being processed AND the impeachments of these judges!!

Yours truly, Joseph S. Haas, P.O. Box 218, Ashland, N.H. 03217 cc: hkstaterrep@aol.com, mfcclark@aol.com, payljsp@... dallas@leg.state.nh.us; noting: of the (living hell) fire at Klemm's General Store earlier this morning, even though my direct was to the House Speaker, where many bills start in the House, so did Petitions in the past go to the House Criminal Justice Committee & State-Federal Relations Committee combined. Then next? as thieves of my rights! to face similar fires? See Zechariah 5:1-5. Woe worth the day! "Patriots Day" here in N.H. by Governor's proclamation, a real "patriot" being: 2a: "a person who loves his country and defends AND PROMOTES ITS INTERESTS" (emphasis Added, v.s. 4a: "armed mobs that CALL themselves ~s ~ Kenneth Roberts" from The Webster's Third New International Dictionary (c)1961 @ page 1656.

see ~ ~ ~ 460

Joe Haas

<http://members4.boardhost.com/caire/msg/468.html>

4/17/02

HB 1429

HB 1429
Rep. Fraser

This legislation comes before the House as a result of a study committee that ~~meet~~ ^{met} many times over the past summer. The basic purpose of this legislation is to clarify issues pertaining to consumer protection. The committee has recommended an increase in manpower at the Attorney General's Office in order to investigate and prosecute fraud. This issue was addressed in a companion bill (HB 1438). The committee's second recommendation is better coordination and communication between departments. Thirdly, it addressed in the bill the extent to which highly regulated industries such as a public utility company, banking or insurance should be subject to the consumer protection law. This bill, as amended, adds a new violation of the Consumer Protection Act for pricing practices that impede competition. It also narrows the scope of the Act's exemption for regulated trade or commerce from the Act. The amended bill will exempt only activities by regulated businesses or professions that are expressly permitted by governing laws, regulations or standards. The department of justice may enforce an activity that is not exempt and violates the Act. An injured individual in a private right of action may also recover actual damages. Further, the defendant may recover reasonable attorney's fees and costs if the court should determine that the lawsuit was frivolously brought.

JBA

MEMORANDUM

TO: Honorable C. Jeanne Shaheen, Governor
Honorable Gene Chandler, Speaker of the House
Honorable Arthur P. Klemm, Jr., President of the Senate
Honorable Karen O. Wadsworth, House Clerk
Honorable Gloria M. Randlett, Senate Clerk
Michael Yerl, State Librarian

FROM: Rep. Marshall E. Quandt, Chair

DATE: November 15, 2001

RE: Final Report on Chapter 12:1, Laws of 2001
~~0012:1~~, establishing a committee to study the consumer protection effort in
New Hampshire.

Pursuant to Chapter 0012:1, Laws of 2001, enclosed please find the report of the committee charged with studying the consumer protection effort in New Hampshire.

Please feel free to contact me with any questions or comments.

MEQ/jal

Cc: Study Committee Members
Pam Smarling, Committee Researcher

**CONSUMER PROTECTION IN NEW HAMPSHIRE
(HB 109, Chapter 12:1, Laws of 2001)**

STUDY COMMITTEE FINAL REPORT

November 15, 2001

Overview

There is mounting evidence that consumer fraud and abuse are increasing. There have been an increasing number of bills filed each year in the Legislature to address various aspects of this problem. Testimony from the Attorney General's office, and various state agencies and regulators confirm a rising tide of complaints and problems. New technologies are creating new avenues for abuse. The problems are increasing complex and difficult to uncover. There are indications that the existing Consumer Protection Statute (RSA 358A) may be inadequate to deal with these concerns, and has been weakened by recent court decisions.

History of RSA 358-A, the New Hampshire Consumer Protection Act

The New Hampshire Consumer Protection Act was adopted in the 1970 legislative session. Earlier attempts to adopt a Consumer Protection Act in New Hampshire had failed in 1967 and 1969. All three bills on this subject were very similar in scope and content. They were based on model legislation that was developed by the Committee of State Officials on Suggested state Legislation and published by the Council of State Governments (CSG). In 1967, two states, Hawaii and Washington had adopted similar versions of the model act. By 1969, it had been adopted by nine additional states (Arizona, Kansas, Maryland, Massachusetts, Missouri, New Mexico, Rhode Island, Texas and Vermont).

The Statute has been interpreted to contain a broad exemption for "regulated" industries. At the time this statute was adopted in New Hampshire, 42 of the 81 professions currently regulated by a board or agency of the state were regulated. Since 1970, 39 new professions have been added to the list of regulated entities.

Findings

The Study Committee has met on eight occasions and received testimony from the Attorney General, the head of the Consumer Protection Division of the AG's office, the Insurance Department, the Banking Department, consumer advocates and industry lobbyists. Testimony from these interested parties indicates the following:

- There is statistical evidence of a rising tide of complaints by consumers of abuse, fraud and misrepresentation.
- Resources to respond to complaints, investigate issues, and prosecute abuse are limited.

- New technologies and advanced marketing techniques make it increasingly difficult to monitor commercial practices and enforce existing statutes.
- Companies domiciled outside of New Hampshire are transacting a significant and increasing volume of retail commerce.
- The existing Consumer Protection Statute (RSA 358A) has been interpreted to contain a broad exemption for "regulated" industries. Recent court interpretations appear to have weakened the reach of the statute and the ability of the individual or the state to pursue effective remedy.

Conclusions

Based on evidence and testimony presented, the Committee has reached the following conclusions:

- The manner in which commerce is conducted, and the methods and avenues for marketing to consumers are constantly evolving.
- New technologies and marketing delivery systems enhance access to the consumer, but also provide new opportunities for fraud and abuse.
- The volume of complaints has increased in proportion with the growth in the underlying population of the state, and the growth in consumer marketing and spending.
- Senior citizens are an increasing percentage of the population and are uniquely vulnerable to postal and telemarketing fraud.
- State regulatory resources dedicated to deal with these issues have not grown proportionately with the scope and magnitude of the problem.
- Existing statutes to protect the consumer have not been updated to address emerging issues.
- Broad exemptions resulting from recent court decisions appear to limit the ability of the individual to pursue redress through the right of private action, or the ability of the Attorney General's office to pursue effective enforcement.

Recommendations

The Committee recommends consideration by the legislature of the following course of action:

1. A significant increase in the resources allocated to the Attorney General's office, Bureau of Consumer Protection, to provide adequate manpower to investigate and prosecute consumer fraud.

2. Improved coordination and communication between the various regulatory departments and authorities to better assess and define the scope and magnitude of the problem, and to coordinate effective remedy.
3. A careful review and analysis by the legislature of the scope and breadth of the "regulated industries" exemption of the Consumer Protection Statute to determine if adequate supervision and control of business activities of regulated entities exists to protect the consumer.
4. A clarification of statutory language to assure a right of private action for abuses in areas of business not actively regulated by state supervisory authorities.

Establishment of a dedicated fund within the office of the Attorney General for deposit of licensing fees and settlement awards to support the cost of increased staffing in the Bureau of Consumer Protection

Board	Profession Regulated	Statute	Type	Statutory Provisions:		
				<i>Fraudulent Acts Prohibited</i>	<i>Disciplinary Authority of Board</i>	<i>Continuing Education Required</i>
Acupuncture	Acupuncturist	328-G	L	<ul style="list-style-type: none"> Practicing fraud or deceit in procuring or attempting to procure a license Violation of ethical or professional standards 	<ul style="list-style-type: none"> Reprimand License suspension, restriction or revocation Administrative fine 	30 units every 2 years
Alcohol and Drug Abuse Professionals	Clinical Supervisor	330-C	L	<ul style="list-style-type: none"> Practicing fraud or deceit in procuring or attempting to procure a license False or misleading advertising Failing to maintain confidentiality of client info 	<ul style="list-style-type: none"> Censure Reprimand License suspension, restriction, revocation or non-renewal Probation Administrative fine 	48 hours in a 24 month period, 6 hours of which must be in clinical supervision
	Alcohol and Drug Counselor		L			48 hours in a 24 month period
<i>Allied Health Prof. Governing Boards</i>				328-F		
Athletic Trainer	Athletic Trainer	326-G	L	<ul style="list-style-type: none"> Knowingly provide false info in procuring a license or institutional privileges Dishonest or unprofessional conduct Deceptive advertising Failure to adhere to recognized ethical standards 	<ul style="list-style-type: none"> Reprimand License suspension, restriction or revocation Submit to care of a physician Required continuing education Practice under supervision Administrative fine 	Board required to establish by rule
Occupational Therapist	OT	326-C	L			12 hours of study every 2 years
	OT Assistant					
Physical Therapist	PT I	328-A	L			15 hour minimum per year
	PT II		20 hour minimum per year			
	PT Assistant		10 hour minimum per year			
Respiratory Care Practitioner	RCP	326-E	L			10 hours per year
Speech-Language Pathologist	S-L Pathologist	326-F	L	50 hours every 3 years		
				<i>Fraudulent Acts Prohibited</i>	<i>Disciplinary Authority of Board</i>	<i>Continuing Education Required</i>
Barbering, Cosmetology and Esthetics	Barber	313-A	L	<ul style="list-style-type: none"> Practicing fraud or deceit in procuring or attempting to procure a license 	<ul style="list-style-type: none"> Reprimand License suspension, restriction or revocation for up to 5 years Required continuing education Administrative fine 	Required only for instructors - 28 hours every 2 years
	Apprentice	313-A	R			
	Cosmetologist	313-A	L			
	Esthetician	313-A	L			
	Instructor	313-A	L			
	Manicurist	313-A	L			
Chiropractic Examiners	Chiropractor	316-A	L	<ul style="list-style-type: none"> Practicing fraud or deceit in procuring or attempting to procure a license 	<ul style="list-style-type: none"> Reprimand License suspension, restriction or revocation for up to 5 years Required continuing education Administrative fine 	20 hours every year
Dental Examiners	Dentists	317-A	L	<ul style="list-style-type: none"> Commission of a felony or any crime involving fraud in obtaining educational credentials, exam scores or a license Deceptive advertising 	<ul style="list-style-type: none"> Reprimand License suspension, restriction or revocation Submit to care of a physician Required continuing education Practice under supervision Administrative fine 	40 units every two years, with 30 units in clinical dental care subjects
	Hygienist	317-A	L			20 units every 2 years, with 15 units in clinical dental hygiene care
Licensed Dietitians	Dietitian	326-H	L	<ul style="list-style-type: none"> Obtained a license by fraudulent or deceitful means Engaged in dishonest or unethical conduct specified by the board by rule <p><i>326-H establishes the following as Class B misdemeanors:</i></p> <ul style="list-style-type: none"> Sell, fraudulently obtain or furnish a license Practice under a fraudulent license 	<ul style="list-style-type: none"> License suspension or revocation 	20 hours of continuing education in the previous 24 months
				<i>Fraudulent Acts Prohibited</i>	<i>Disciplinary Authority of Board</i>	<i>Continuing Education Required</i>
Funeral Directors and Embalmers	Funeral Director	325	L	<ul style="list-style-type: none"> Practice of fraud or deceit in procuring a license or attempting to procure a license Dishonest or unprofessional conduct Violation of nationally recognized ethical code or state ethical code 	<ul style="list-style-type: none"> Reprimand Fine Suspension, limiting or restricting license Revocation of certification Required continuing education Civil penalties up to \$2,000 per offense or \$200 per day 	Board required to establish by rule
	Embalmer	325	L			
Hearing Care Providers	Audiologist	137-F	L	<ul style="list-style-type: none"> Knowingly makes any false statement regarding license, application to health care provider or employer in report to board Unprofessional, dishonest, or unethical conduct <p><i>RSA 137-F:24 Disclosure to Customers</i></p> <p><i>RSA 137-F:25 Unsolicited Home Sales Prohibited</i></p> <p><i>RSA 137-F:27 Deceptive Advertising Prohibited</i></p>	<ul style="list-style-type: none"> Suspension or revocation of license Administrative fine 	20 hours of continuing education every 2 years
	Hearing Aid Dealer	137-F	L			
Midwifery Council	Midwife	326-D	C	<ul style="list-style-type: none"> Practice of fraud or deceit in procuring license 	<ul style="list-style-type: none"> Public or private reprimand Suspension, limitation or restricting of certificate Revocation of certificate Administrative fine 	Board required to establish by rule

L = Licensure; C = Certification; R = Registration

Source for continuing education hours: Licensed, Certified, and Registered Occupations in New Hampshire, October 1999, Department of Employment Security

Board	Profession Regulated	Statute	Type	Statutory Provisions:		
				<i>Fraudulent Acts Prohibited</i>	<i>Disciplinary Authority of Board</i>	<i>Continuing Education Required</i>
Medicine	Physician	329	L	<ul style="list-style-type: none"> Knowingly false information in license or hospital privilege application Deceptive or misleading advertising 	<ul style="list-style-type: none"> Reprimand Suspension, limitation or restriction of a license Revocation of a license Submit to care of a physician Required continuing education Practice under direction of a physician 	150 hours of continuing education every 3 years
	Physician Assistant	329	L			Administrative fine
Naturopathic Examiners	Naturopath	328-E	L	None specified (noncompliance with 328-E may lead to disciplinary measures)	<ul style="list-style-type: none"> Refused renewal Limitation, revocation or suspension of license 	Board required to establish by rule
Nursing	Licensed Practical Nurse	326-B	L	<ul style="list-style-type: none"> Fraud or deceit in procuring or attempting to procure a license Dishonest or unprofessional conduct 	<ul style="list-style-type: none"> Reprimand Administrative fine Suspension, limitation, restriction or probation of a license License revocation Required education or rehab Submit to care, counseling or treatment of a physician Practice under supervision Civil penalty up to \$1,000 or \$100 for each day 	Board required to establish by rule
	Registered Nurse	326-B	L			Board required to establish by rule
	ARNP	326-B	L			Board required to establish by rule
	Licensed Nursing Assistant	326-B	L			Board required to establish by rule
Nursing Home Examiners	Nursing Home Administrator	151-A	L	<ul style="list-style-type: none"> Guilty of fraud or deceit in practice or admission to practice 	<ul style="list-style-type: none"> License revocation or suspension Reprimand or censure Fine Conditions placed on license Otherwise disciplined 	40 hours every 2 years
Optometry	Optometrist	327	L	<ul style="list-style-type: none"> Practice of fraud or deceit in procuring or attempting to procure a license Unprofessional or dishonorable conduct 	<ul style="list-style-type: none"> Reprimand Suspension, limitation, or restriction of a license License revocation Required continuing education Administrative fine 	<ul style="list-style-type: none"> 15 hours every year for non-pharmaceutical license 150 hours every 3 years for pharmaceutical license
Pharmacy	Pharmacist	318	L	<ul style="list-style-type: none"> Practice of fraud or deceit in procuring or attempting to procure a license Unprofessional or dishonorable conduct Adherence to ethical standards 	<ul style="list-style-type: none"> Reprimand Suspension, limitation, restriction or probation of a license License revocation Required continuing education Administrative fine Submit to care, observation or treatment of a physician 	15 hours every year
Podiatry	Podiatrist	315	L	<ul style="list-style-type: none"> Practice of fraud or deceit in procuring or attempting to procure a license Unprofessional or dishonorable conduct Adherence to ethical standards 	<ul style="list-style-type: none"> Reprimand Suspension, limitation, or restriction of a license License revocation Required continuing education Care or treatment of a physician 	24 hours every 2 years
Psychology and Mental Health				<i>Fraudulent Acts Prohibited</i>	<i>Disciplinary Authority of Board</i>	<i>Continuing Education Required</i>
	Psychologist	330-A	L	<ul style="list-style-type: none"> Practice of fraud or deceit in procuring or attempting to procure a license Unprofessional or dishonorable conduct Adherence to ethical standards 	<ul style="list-style-type: none"> Reprimand Suspension, limitation, or restriction of a license License revocation Required continuing education Administrative fine 	60 hours of continuing education every 3 years plus 25 hours of collaboration every year
	Clinical Social Worker	330-A	L			
	Pastoral Psychotherapist	330-A	L			
	Mental Health Counselor	330-A	L			
Marriage and Family Therapist	330-A	L				

L = Licensure; C = Certification; R = Registration

Source for continuing education hours: Licensed, Certified, and Registered Occupations in New Hampshire, October 1999, Department of Employment Security

B. New Hampshire Regulated Professionals in the Non-Health Fields
Regulated by Boards

Board	Profession Regulated	Statute	Type	Statutory Provisions:		
				<i>Fraudulent Acts Prohibited</i>	<i>Disciplinary Authority of Board</i>	<i>Continuing Education Required</i>
Accountancy	Accountant	309-B	L	<ul style="list-style-type: none"> • Fraud or deceit in obtaining a certificate, permit or registration • Dishonesty, fraud or gross negligence in performance of services • Violation of any rule of professional conduct • Performance of any fraudulent act • False or misleading statement in applying for certificate, permit or registration 	<ul style="list-style-type: none"> • Reprimand or censure • Revocation, suspension, non-renewal of certificate, permit or registration • Limitation of scope of practice • Administrative fine • Place licensee on probation • Peer review • Required continuing education <p>Licensee may be required to pay for the cost of a disciplinary proceeding</p>	120 hours every 3 years with at least 20 hours each year
				<i>Fraudulent Acts Prohibited</i>	<i>Disciplinary Authority of Board</i>	<i>Continuing Education Required</i>
Auctioneer	Auctioneer	311-B	L	<ul style="list-style-type: none"> • Fraud or deceit in obtaining a certificate, permit or registration • Unprofessional or dishonorable conduct 	<ul style="list-style-type: none"> • Reprimand • Suspension, limitation, or restriction of a license • License revocation • Required continuing education 	None required
				<ul style="list-style-type: none"> • Fraud or deceit in obtaining a certificate, permit or registration • Unprofessional or dishonorable conduct 	<ul style="list-style-type: none"> • Reprimand • Suspension, limitation, or restriction of a license • License revocation • Required continuing education 	15 hour course on new electrical code every 3 years
Electrician	Electrician, Master	319-C	L			15 hour course on new electrical code every 3 years
	Electrician, Journeyman	319-C	L			None required
	Electrician Apprentice	319-C	ID card			
Interpreters for the Deaf and Hard of Hearing	Interpreters for the Deaf and Hard of Hearing	326-I	L	<ul style="list-style-type: none"> • Fraud or deceit in obtaining a certificate, permit or registration • Not adhering to a code of professional conduct 	<ul style="list-style-type: none"> • Public or private reprimand • Suspension, limitation, or restriction of license • Revocation of license • Requiring continuing education supervision, or treatment in the area the person is deficient • Removing an exemption for an unlicensed person under RSA 326-I:7, IV(a) 	Board required to establish by rule
				<i>Fraudulent Acts Prohibited</i>	<i>Disciplinary Authority of Board</i>	<i>Continuing Education Required</i>
Joint Board						
Engineer	Engineer	310-A	L	<ul style="list-style-type: none"> • Fraud or deceit in procuring or attempting to procure or renew a license • Unprofessional, unethical or dishonorable conduct • Violation of the rules of professional conduct • Knowingly making or signing any false statement in connection with the practice 	<ul style="list-style-type: none"> • Written reprimand • Suspension, refusal to renew, limitation, or restriction of a license • License revocation • Required continuing education • Required supervision • Civil penalties 	30 hours every 2 years
Architects	Architect	310-A	L	<ul style="list-style-type: none"> • Fraud or deceit in procuring or attempting to procure or renew a license • Unprofessional, unethical or dishonorable conduct 	Statute allows disciplinary action by the board but is not explicit on what actions may be taken, there are references to reinstatement after revocation	None required
Geologists	Geologist	310-A	L	<ul style="list-style-type: none"> • Fraud or deceit in procuring or attempting to procure or renew a license • Unprofessional, unethical or dishonorable conduct • Knowingly making or signing any false statement in connection with the practice 	<ul style="list-style-type: none"> • Reprimand • Suspension or refusal to renew license • License revocation • Required continuing education • Required supervision • Civil penalties 	24 hours every 2 years

L = Licensure; C = Certification; R = Registration

Source for continuing education hours: Licensed, Certified, and Registered Occupations in New Hampshire, October 1999, Department of Employment Security

Board	Profession Regulated	Statute	Type	Statutory Provisions:		
				<i>Fraudulent Acts Prohibited</i>	<i>Disciplinary Authority of Board</i>	<i>Continuing Education Required</i>
Land Surveyor	Land Surveyor	310-A	L	<ul style="list-style-type: none"> Fraud or deceit in procuring or attempting to procure or renew a license Unprofessional, unethical or dishonorable conduct 	<ul style="list-style-type: none"> Reprimand Suspension, limitation, or restriction of a license License revocation Required continuing education Administrative fine 	8 units every 2 years
Natural Scientist	Soil Scientist	310-A	L	<ul style="list-style-type: none"> Fraud or deceit in procuring or attempting to procure or renew a license Unprofessional, unethical or dishonorable conduct 	<ul style="list-style-type: none"> Reprimand Suspension, limitation, or restriction of a license License revocation Required continuing education Administrative fine 	5 units every 2 years
	Wetlands Scientist	310-A	L			5 units every 2 years
Forester	Forester	310-A	L	<ul style="list-style-type: none"> Fraud or deceit in procuring or attempting to procure or renew a license Unprofessional, unethical or dishonorable conduct 	<ul style="list-style-type: none"> Reprimand Suspension, limitation, or restriction of a license License revocation Required continuing education 	20 hours every 2 years
Plumber	Plumber, Master	329-A	L	<ul style="list-style-type: none"> Fraud or deceit in procuring or attempting to procure or renew a license Unprofessional, unethical or dishonorable conduct 	<ul style="list-style-type: none"> Reprimand Suspension, limitation, or restriction of a license License revocation Required continuing education 	2 hours per year
	Plumber, Journeyman	329-A	L			2 hours per year
				<i>Fraudulent Acts Prohibited</i>	<i>Disciplinary Authority of Board</i>	<i>Continuing Education Required</i>
Real Estate Appraiser	Real Estate Appraiser	310-B	C, L	<ul style="list-style-type: none"> Procuring or attempting to procure a license by knowingly making a false statement or through any form of fraud or misrepresentation An act involving dishonesty, fraud or misrepresentation 	<ul style="list-style-type: none"> License revocation or suspension Fine Required continuing education OR any combination of the above	14 hours per year
Real Estate Commission	Real Estate Broker	331-A	L	<ul style="list-style-type: none"> Fraud, misrepresentation or concealment in obtaining a license Printing, publishing, or distributing false statements to induce a person to act Knowingly committing or being a party to fraud, concealment, conspiracy, or trick Failing to promptly place trust funds in a proper trust account Acting for more than one party in a transaction without consent Accepting any undisclosed commission, rebate or profit False, misleading or deceptive advertising 	<ul style="list-style-type: none"> Suspend, revoke or deny a license Fine Required education in area relevant to section of law violated Commission may issue a cease and desist order 	9 hours every 2 years
	Real Estate Salesperson	331-A	L			9 hours every 2 years

C. New Hampshire Professionals Regulated Directly by State Agencies
 Commissioner responsible for regulation

Department; Regulator	Profession Regulated	Statute	Type	Statutory Provisions:		
Bank; Bank Commissioner	First Mortgage Banker	397-A	L	<ul style="list-style-type: none"> • False, misleading, or deceptive advertising – law specifies how interest and loan amounts must be advertised 	<ul style="list-style-type: none"> • Revocation, suspension or denial of a license • May issue a cease and desist order 	None required
	Second Mortgage Banker	398-A	L	Licenses are subject to additional requirements including laws relative to reporting, examinations, receipts and disclosure	<ul style="list-style-type: none"> • License revocation 	None required
Education	Education Administrator	186	C	Must submit to background investigation and criminal history records check Conviction of certain crimes make applicant ineligible	<ul style="list-style-type: none"> • Certification denial, suspension, revocation 	50 hours in a 3-year period
	Teacher	186	C			50 hours in a 3-year period
	Education Paraprofessional	186	C			Specific to school district requirements
Fish and Game; Executive Director	Hunting and Fishing Guide	215	L	Not specified in statute; violation of any rule or regulation constitutes a violation and could lead to revocation	<ul style="list-style-type: none"> • License revocation 	None required
Health and Human Services	Child Day Care Provider	170-E	L	<ul style="list-style-type: none"> • Furnishing or making any misleading or false statement or report to the department • Making material false statements in order to obtain or maintain a license • Advertises a service which is not authorized by any license held 	<ul style="list-style-type: none"> • License suspension, revocation, or nonrenewal 	All center-based workers must complete 6 hours every year
				<ul style="list-style-type: none"> • Made a materially false statement or concealed a material fact in obtaining a license • Found guilty of fraud or fraudulent practices • Used dishonest or misleading advertising • Violated ethical or professional standards 		
Health and Human Services; Commissioner	Electrologist	314	L	<ul style="list-style-type: none"> • Made a materially false statement or concealed a material fact in obtaining a license • Found guilty of fraud or fraudulent practices • Used dishonest or misleading advertising • Violated ethical or professional standards 	<ul style="list-style-type: none"> • Denial, suspension or revocation of license 	None
	First Responder	151-B	L	<ul style="list-style-type: none"> • Fraud in procuring license 		48 hours every 2 years
	EMT - Basic	151-B	L	<ul style="list-style-type: none"> • Knowingly making misleading, deceptive, untrue or fraudulent representations in practice of profession 		36 hours every 2 years
	EMT - Paramedic	151-B	L	<ul style="list-style-type: none"> • Unethical conduct 		24 hours every 2 years
Health and Human Services; Commissioner	Massage Therapist	328-B	L	<ul style="list-style-type: none"> • Knowingly makes any false statement regarding the application or license or in a report to the commissioner 	<ul style="list-style-type: none"> • Denial, suspension, or revocation of license • Administrative fine 	12 hours over a 2-year period
				<ul style="list-style-type: none"> • Made a material false statement or concealed a material fact at registration • Found guilty of fraud or fraudulent practices after prosecution by the AG • Used dishonest or misleading advertising 		
Health and Human Services; Commissioner	Optician	327-A	R	(statute requires adherence to standards of hygiene)	<ul style="list-style-type: none"> • License denial or revocation 	3 hours every year
Insurance; Commissioner	Insurance Adjuster	402-B	L	Not specified in statute	<ul style="list-style-type: none"> • License revocation or revocation • Administrative fine up to \$2,500 'for good cause shown' 	20 hours every 2 years

L = Licensure; C = Certification; R = Registration

Source for continuing education hours: Licensed, Certified, and Registered Occupations in New Hampshire, October 1999, Department of Employment Security

Department; Regulator	Profession Regulated	Statute	Type	Statutory Provisions:		
				<i>Fraudulent Acts Prohibited</i>	<i>Disciplinary Authority of Agency</i>	<i>Continuing Education Required</i>
Insurance; Commissioner	Insurance Agent	402	L	Laws address prohibited acts such as offering rebates, companies purchasing their own stock, and limitations on investments Class A felony: <ul style="list-style-type: none"> • Embezzlement, or willful misapplication of funds • Representing another person's property as property of the company • False entry in any book, report or statement • Deceiving officers or the commissioner 	<ul style="list-style-type: none"> • License revocation or revocation and/or fine up to \$2,500 for violations of the act 	None required
Insurance; Commissioner	Insurance Broker	405:32	L	Not specified in statute	<ul style="list-style-type: none"> • License revocation 'for good cause shown' 	None required
Insurance; Commissioner	Insurance Consultant	405:44-a	L	Not specified in statute	<ul style="list-style-type: none"> • License revocation or revocation and/or fine up to \$2,500 for violations of the act 'for good cause shown' 	None required
				<i>Fraudulent Acts Prohibited</i>	<i>Disciplinary Authority of Agency</i>	<i>Continuing Education Required</i>
Insurance; Commissioner	Insurance Producer	402-J	L	<ul style="list-style-type: none"> • Obtaining or attempting to obtain a license through misrepresentation or fraud • Improperly withholding, misappropriating or converting money • Intentionally misrepresenting the terms of an insurance contract • Using fraudulent, coercive or dishonest practices in the conduct of business 	<ul style="list-style-type: none"> • Probation • Suspension or revocation • Refusal to issue or renew • Administrative fine 	Required
Labor Department; Commissioner	Boiler Inspector	157-A	L	None specified	<ul style="list-style-type: none"> • License revocation for cause shown • Civil penalty not to exceed \$500 	None required
	Elevator Inspector	157-B	L			
	Elevator Mechanic	157-B	L			
Parimutuel Commission	Dog Trainer	284	L	None specified	<ul style="list-style-type: none"> • License revocation for cause shown 	None required
	Horse Trainer	284	L			
	Jockey	284	L			
	Jockey Agent	284	L			
Safety	Driver Education School Operator	263:44	L	None specified	<ul style="list-style-type: none"> • License revocation or suspension "for causes and violations" 	None required
State	Bail Bondsman	598-A	R	None specified	<ul style="list-style-type: none"> • Revocation of registration 	None required
State	Lobbyist	15	R	None specified	Penalty for violation of the chapter is a misdemeanor	None required
				<i>Fraudulent Acts Prohibited</i>	<i>Disciplinary Authority of Agency</i>	<i>Continuing Education Required</i>
Superior Court; Chief Justice	Court Reporter	331-B	C	<ul style="list-style-type: none"> • Practice of fraud or deceit in procuring or attempting to procure a certificate • Unprofessional or dishonorable conduct 	<ul style="list-style-type: none"> • Reprimand • Suspension, limitation or restriction of certificate • Revocation • Required continuing education 	None required
Supreme Court	Attorney	311		<ul style="list-style-type: none"> • Fraud, malpractice or contempt of court 	<ul style="list-style-type: none"> • Suspension from practice or removal from office 	12 hours of continuing legal education each year

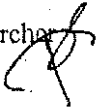
L = Licensure; C = Certification; R = Registration

Source for continuing education hours: Licensed, Certified, and Registered Occupations in New Hampshire, October 1999, Department of Employment Security



603-271-3600

HOUSE COMMITTEE RESEARCH OFFICE
New Hampshire House of Representatives
4th Floor, Legislative Office Building
Concord, New Hampshire 03301
TDD Access: Relay NH
1-800-735-2964

To: Rep. John B. Hunt, Chairman, House Commerce Committee
From: Pam Smarling, Committee Researcher
House Committee Research 
Date: February 13, 2002
RE: HB 1429, relative to the scope of the consumer protection act

You asked:

What activities are exempt from the Consumer Protection Acts in the other New England states?

RSA 358-A – New Hampshire Consumer Protection Act

The New Hampshire Consumer Protection Act makes it unlawful for any person to use any unfair method of competition or any deceptive act or practice in the conduct of any trade or commerce. The Act specifies what constitutes unlawful acts and outlines the penalties for violations. It also lists certain exempt transactions, including “[t]rade or commerce otherwise permitted under laws as administered by any regulatory board or officer acting under statutory authority of the this state or of the United States”. The Consumer Protection and Antitrust Bureau of the Department of Justice is responsible for enforcing the Consumer Protection Act.

New Hampshire Supreme Court Decisions

In the past 15 years, there have been three Supreme Court cases directly addressing the question of the exemption for regulated professions under the Consumer Protection Act. The Supreme Court has issued competing interpretations of this question. The most recent decision, Averill v. Cox (2000), reaffirms Rousseau I (1986) and overturns Gilmore (1992).

In brief, these rulings were as follows:

1. *Rousseau v. Eshleman* 519 A.2d 243, 128 NH 564 (S. Ct. 1986)

The majority ruled that lawyers are exempt from the Consumer Protection Act since they are regulated by the Professional Conduct Committee, which they interpreted to be a regulatory body. The minority felt that the commercial aspects of law (determination of price, billing, advertising) fall within the definition of "trade or commerce" in RSA 358-A:3, I and should be subject to regulation under the Consumer Protection Act.

2. *Gilmore v. Bradgate Associates* 604 A.2d 555, 135 NH 234 (S. Ct. 1992)

Only those transactions that are expressly permitted by a regulatory or officer are exempt from the Consumer Protection Act.

3. *Averill v. Cox* 761 A.2d 1083 (S. Ct. 2000) (attached)

The practice of law is exempt from the Consumer Protection Act because it is under the regulatory authority of the Professional Conduct Committee. The court further noted that the exemption applies since the regulation of lawyers is comprehensive (beyond simple licensing requirements), and protects consumers from deception, fraud, and unfair trade practices addressed in the Consumer Protection Act.

Exemptions from State Consumer Protection Acts

New Hampshire RSA 358-A:3, I exempts "trade or commerce otherwise permitted under laws as administered by any regulatory board or officer acting under statutory authority of the this state or of the United States". In contrast to this, the exemption language in the consumer protection laws of the other New England states exempt "transactions or actions permitted under laws administered by a state regulatory board". The scope of this exemption has been a key issue in the New Hampshire cases. If a regulatory body specifically approves a practice, the exemption applies. Case law in other states has indicated that it is not enough for a state insurance law, for example, to permit the sale of a certain annuity if that state law does not permit the deceptive sale of the annuity.¹

Some consumer protection laws adopted in other states include exemptions for specific industries. In Louisiana the "actions or transactions subject to the jurisdiction of the Louisiana Public Service Commission or other public utility regulatory body, the commissioner of financial institutions, the insurance commissioner, the financial institutions and insurance regulators of other states, or federal banking regulators who possess authority to regulate unfair or deceptive trade practices". In Nebraska the

¹ Unfair and Deceptive Acts and Practices, National Consumer Law Center, Boston, MA, 1997

“actions or transactions otherwise permitted, prohibited, or regulated under laws administered by the Director of Insurance, the Public Service Commission, the Federal Energy Regulatory Commission, or any other regulatory body or officer acting under statutory authority of this state or the United States.”

Texas law prohibits false, misleading, or deceptive acts or practices in the conduct of any trade or commerce. However, the law exempts services that involve the use of professional judgment. This exemption reads as follows:

“a claim for damages based on the rendering of a professional service, the essence of which is the providing of advice, judgment, opinion, or similar professional skill (is exempt). This exemption does not apply to:

- (1) an express misrepresentation of a material fact that cannot be characterized as advice, judgment, or opinion;
- (2) a failure to disclose information in violation of Section 17.46(b)(23);
- (3) an unconscionable action or course of action that cannot be characterized as advice, judgment, or opinion;
- (4) breach of an express warranty that cannot be characterized as advice, judgment, or opinion; or
- (5) a violation of Section 17.46(b)(26).”

Exemptions in Other States

Connecticut (Conn. Gen. Stat. Ann. §42-110b and 110c, 2001)

Prohibits: unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce

Exempts: (1) Transactions or actions otherwise permitted under law as administered by any regulatory board or officer acting under statutory authority of the state or of the United States; or

(2) acts done by the publisher, owner, agent or employee of a newspaper, periodical or radio or television station in the publication or dissemination of an advertisement, where the publisher, owner, agent or employee did not have knowledge of the false, misleading, unfair or deceptive character of the advertisement, and did not have direct financial interest in the sale or distribution of the advertised product or service.

Maine

Unfair Trade Practices Act, Maine RSA 5 § 207 and 208

Prohibits: unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce

Exempts: transactions or actions otherwise permitted under laws as administered by any regulatory board or officer acting under statutory authority of the State or of the United States

Uniform Deceptive Trade Practices Act, Maine RSA 3 § 1212 and 1214

Prohibits: deceptive trade practices (these are defined in statute)

Exempts: conduct in compliance with the orders or rules of, or a statute administered by, a federal, state or local governmental agency

publishers, broadcasters, printers or other persons engaged in the dissemination of information or reproduction of printed or pictorial matter who publish, broadcast or reproduce material without knowledge of its deceptive character

Massachusetts (Mass. Gen. Laws Ann. 93A §2 and 3)

Prohibits: unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce

Exempts: transactions or actions otherwise permitted under laws as administered by any regulatory board or officer acting under statutory authority of the commonwealth or of the United States.

the burden of proving exemptions from the provisions of this chapter shall be upon the person claiming the exemptions

Rhode Island (Rhode Island Gen. Laws §6-13.1-2 and 4)

Prohibits: unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce

Exempts: actions or transactions permitted under laws administered by the department of business regulation or other regulatory body or officer acting under statutory authority of this state or the United States

Vermont (Vermont Stat. Ann. 9 § 2452 and 2453)

Prohibits: unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce

Exempts: the owner or publisher of a newspaper, magazine, publication or printed matter wherein an advertisement or offer to sell appears, or to the owner or operator of a radio or television station which disseminates an advertisement or offer to sell, when the owner, publisher or operator has no knowledge of the fraudulent intent, design or purpose of the advertiser or operator

Louisiana (La. Rev. Stat. Ann §51:1405 and 1406)

Prohibits: unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce

Exempts: (1) Actions or transactions subject to the jurisdiction of the Louisiana Public Service Commission or other public utility regulatory body, the commissioner of financial institutions, the insurance commissioner, the financial institutions and insurance regulators of other states, or federal banking regulators who possess authority to regulate unfair or deceptive trade practices.

(2) Acts done by the publisher, owner, agent or employee of a newspaper, periodical or radio or television station or other advertising medium in the publication or dissemination of an advertisement when the publisher, owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement, did not prepare the advertisement and did not have any direct financial interest in the sale or distribution of the advertised product or service.

(3) No seller of any product or service who disseminates any advertisement or promotional material in this state shall be liable under this chapter if he receives the advertisement or promotional material from a manufacturer, packer, distributor or other seller from whom he has purchased the product or service unless he refused on the request of the attorney general, or director, to provide the name and address of the manufacturer, packer, distributor or other seller from whom he has purchased the product or service and said seller also agrees to enter into an assurance of voluntary compliance as prescribed by the chapter from disseminating any such advertisement or promotional material thereafter. This exemption does not in any way limit the right of action any consumer may have under this chapter.

(4) Any conduct which complies with section 5(a)(1) of the Federal Trade Commission Act [15 U.S.C., 45(a)(1)], as from time to time amended, any rule or regulation promulgated thereunder and any finally adjudicated court decision interpreting the provisions of said Act, rules and regulations.

Nebraska (Neb. Rev. Stat. Ann. §59-1602 and 1617)

Prohibits: unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce

any contract, combination, in the form of trust or otherwise, or conspiracy in restraint of trade or commerce

monopolizing, or attempts to monopolize or combine or conspire with any other person or persons to monopolize any part of trade or commerce.

leasing or selling or contracting for sale of goods, wares, merchandise, machinery, supplies, or other commodities, or services, whether patented or unpatented, for use, consumption, enjoyment, or resale, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodity or services of a competitor of the lessor or seller, when the effect of such lease, sale, or contract for such sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

the direct or indirect acquisition by a corporation of the whole or any part of the stock or assets of another corporation when the effect of such acquisition may be to substantially lessen competition or tend to create a monopoly in any line of commerce

Exempts: actions or transactions otherwise permitted, prohibited, or regulated under laws administered by the Director of Insurance, the Public Service Commission, the Federal Energy Regulatory Commission, or any other regulatory body or officer acting under statutory authority of this state or the United States

any actions or transactions on the part of any municipality or group of municipalities while engaged in regulating natural gas rates pursuant to the Municipal Natural Gas Regulation Act or section 16-679 or 17-528.02 or as otherwise permitted by law

any actions or transactions on the part of any public power and irrigation district, public power district, electric membership association, or joint authority created pursuant to the Joint Public Power Authority Act or of any agency created pursuant to the Municipal Cooperative Financing Act, cooperative, or municipality engaged in furnishing electrical service to customers at retail or wholesale if such actions or transactions are otherwise permitted by law.

actions and transactions prohibited or regulated under the laws administered by the Director of Insurance shall be subject to section 59- 1602 and all statutes which provide for the implementation and enforcement of section 59-1602.. Actions and transactions prohibited or regulated under the laws administered by the Board of Funeral Directing and Embalming or administered by the Department of Agriculture and actions and transactions relating to loan brokers which are prohibited or regulated pursuant to sections 45-189 to 45-191.11 and administered by the Department of Banking and Finance shall be subject to the Consumer Protection Act.

Texas (Vernon's Texas Statutes §17.46 and 17.49)

Prohibits: false, misleading, or deceptive acts or practices in the conduct of any trade or commerce

Exempts: (a) Nothing in this subchapter shall apply to the owner or employees of a regularly published newspaper, magazine, or telephone directory, or broadcast station, or billboard, wherein any advertisement in violation of this subchapter is published or disseminated, unless it is established that the owner or employees of the advertising medium have knowledge of the false, deceptive, or misleading acts or practices declared to be unlawful by this subchapter, or had a direct or substantial financial interest in the sale or distribution of the unlawfully advertised good or service. Financial interest as used in this section relates to an expectation which would be the direct result of such advertisement.

(b) Nothing in this subchapter shall apply to acts or practices authorized under specific rules or regulations promulgated by the Federal Trade Commission under Section 5(a)(1) of the Federal Trade Commission Act [15 U.S.C.A. 45(a)(1)]. The provisions of this subchapter do apply to any act or practice prohibited or not specifically authorized by a rule or regulation of the Federal Trade Commission. An act or practice is not specifically authorized if no rule or regulation has been issued on the act or practice.

(c) Nothing in this subchapter shall apply to a claim for damages based on the rendering of a professional service, the essence of which is the providing of advice, judgment, opinion, or similar professional skill. This exemption does not apply to:

- (1) an express misrepresentation of a material fact that cannot be characterized as advice, judgment, or opinion;
- (2) a failure to disclose information in violation of Section 17.46(b)(23);
- (3) an unconscionable action or course of action that cannot be characterized as advice, judgment, or opinion;
- (4) breach of an express warranty that cannot be characterized as advice, judgment, or opinion; or

(5) a violation of Section 17.46(b)(26). [(5) effective June 1, 2002]

(d) Subsection (c) applies to a cause of action brought against the person who provided the professional service and a cause of action brought against any entity that could be found to be vicariously liable for the person's conduct.

(e) Except as specifically provided by Subsections (b) and (h), Section 17.50, nothing in this subchapter shall apply to a cause of action for bodily injury or death or for the infliction of mental anguish.

(f) Nothing in the subchapter shall apply to a claim arising out of a written contract if:

(1) the contract relates to a transaction, a project, or a set of transactions related to the same project involving total consideration by the consumer of more than \$100,000;

(2) in negotiating the contract the consumer is represented by legal counsel who is not directly or indirectly identified, suggested, or selected by the defendant or an agent of the defendant; and

(3) the contract does not involve the consumer's residence.

If I can provide further information on this, please let me know.

Senate Journal

HB 1388, relative to respiratory care. Executive Departments and Administration Committee. Vote 4-0. Ought to pass, Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: I rise to recommend on behalf of the Executive Departments and Administration Committee that HB 1388 be voted ought to pass. House Bill 1388 replaces the current respiratory care practice act, which hasn't been updated in over ten years. This bill reflects the changes in education, technology and training requirements of respiratory care practitioners. It also clarifies the definitions of diagnostic and therapeutic medications, identifies the criteria for licensure and the examination process and sets forth the rights of the consumer and public safety. For these reasons, the committee recommends this bill ought to pass. Thank you Mr. President.

Adopted.

Ordered to third reading.

HB 1429, relative to the scope of the consumer protection act. Executive Departments and Administration Committee. Vote 3-0. Interim Study, Senator Flanders for the committee.

SENATOR FLANDERS: What happened is we had a very difficult, long hearing yesterday afternoon that became very confusing. Angers flew and it was one of the worse hearings that I have been through. We did not salvage it. We were not able to salvage this bill that protected the consumer protection act. What we are going to try to do, is we are hoping that you will vote down interim study and vote ought to pass so that we can salvage one portion of this bill, which everyone agrees to, so I ask that you please vote down interim study and vote ought to pass.

Motion failed.

Senator Flanders moved to ought to pass.

SENATOR FLANDERS: Basically again, as I said, a very difficult hearing. We thought...If I may just take a minute, Mr. President. There was something that I saw yesterday that I was very disturbed at and I want to explain this so that if the people that caused this are in this balcony. I want them to pay attention. This is a bill that came out of study and very, very, very difficult and long hours of work went into it. This bill was heard in the House on February 5 and exactly the same wording is here today. Nobody went there and nobody made any changes. What we heard yesterday is all of the big companies coming and saying that this was a terrible bill, the world is going to come to an end if you pass this. It was okay on February 5, but yesterday afternoon it became so confusing that we had to refer it to interim study. So I ask you to please vote ought to pass so that I can salvage...if you have the bill in front of you, line 1-6 with an amendment. Thank you.

SENATOR HOLLINGWORTH: Senator Flanders, do we leave the consumer protection in there or is that taken out?

SENATOR FLANDERS: I have to take it out. I am sorry. I am very upset that we have to take it out. We are just leaving one line... I believe that the amendment is line 1-6. The second part of the amendment, I am sorry that I don't have it in front of me. There is a position in the attorney generals' office that they want to go from unclassified to classified. That will also be in the amendment.

SENATOR HOLLINGWORTH: This is out of my usual territory so I am reluctant because I was not involved in the committee debate and this was just brought to my attention yesterday. It seems that the attorney general's

office really needs this piece of legislation. What they told me was that right now there is conflicting statutes that make it seem that if you are regulated, you don't have to come under the Consumer Protection Act at all, and that is not true and hasn't been true. There was some court rulings and actually it wasn't conflicting statutes, it was court rulings that made this very complicated, so what they are attempting to do is define, and here is what they say, "House Bill 1429 defines the following: Defines regulatory persons. Ensures that these regulatory persons are subject to the provisions of RSA 358-A which outlaws unfair acts of practices in the courses of trade or commerce. Ensures that private citizens have the right to sue against a citizen being injured due to a violation of RSA 358-A but should the defendant be a regulatory person, the bill exempts the defined regulatory person from the threat of triple damages. Ensures that the consumer protection anti-trust bureau at the attorney general's office has the authority to enforce RSA 358-A regardless of who the opposing party may be. In the event of a party being accused of a consumer violation accruable to RSA 358-A will no longer depend on whether the accused is a member of regulatory industry, rather the focus will be on the act that the person is accused of committing. Why it is needed...the regulatory agency can discipline their licensees but cannot order offending licensee to pay retribution to the ensured consumer. House Bill 1429 allows the injured consumer to go to court to obtain retribution under current law, if the consumer is harmed by a regulatory person, the consumer has no access to the courts and RSA 358-A allows that to happen." I wish that I had been informed sooner, because I am totally unprepared. I had a very busy schedule as most of you did yesterday and this came on my desk late. It does seem to me that the attorney general's office feels very strongly that they need this. In fact, they said that because of those laws, that people won't even come in and discuss whether in fact there is a problem. I am sorry, I would like the bill passed as it was presented to the committee.

Recess.

Out of Recess.

The question is on the motion of ought to pass.

A roll call was requested by Senator Barnes.

Seconded by Senator Boyce.

The following Senators voted Yes: Burns, Gordon, Johnson, Boyce, Below, McCarley, Flanders, Disnard, Roberge, Eaton, Fernald, O'Hearn, Pignatelli, Francoeur, Larsen, Gatsas, Barnes, O'Neil, Prescott, D'Allesandro, Wheeler, Klemm, Hollingworth, Cohen.

The following Senators voted No:

Yeas: 24 - Nays: 0

Adopted.

Senator Flanders moved to have **HB 1429**, relative to the scope of the consumer protection act, laid on the table.

Adopted.

LAI D ON THE TABLE

HB 1429, relative to the scope of the consumer protection act.

HB 213,-FN establishing a study committee on education property tax hardship relief, relative to appraisals of property for ad valorem tax purposes, and making an operating budget appropriation for hardship grants nonlapsing. Finance Committee. Vote 4-0. Ought to pass with amendment, Senator Barnes for the committee.

technology curriculum. Now, I don't know anywhere that a curriculum ever falls under the definition of a capital expenditure. So, my concerns with the bill really had to do with reading it more carefully. I have some genuine drafting questions about the way the bill is written. I think, I certainly know a little bit about technology curriculums, I know a little bit about technology schools. I know that my vocational director has just learned of this bill today and assumed that students would be coming to this program in the 11th and 12th grade, and it is actually a four-year program, and he was not in support of it based on that. So, all I am trying to say, I am not suggesting and, to Senator Flanders these questions haven't come up. I am sorry I didn't have them earlier, but I felt a need to get them on the floor because I think there are some concerns. The way I read this bill is \$250,000 out of the general fund.

SENATOR BOYCE: Maybe I need to ask, was there a committee amendment on this bill? Maybe that is where the problem is. I am sure that we would have addressed it in the Finance Committee. I was wondering why it was general fund money?

SENATOR MCCARLEY: Thank you, Senator Boyce. I would have asked the Chair, but he hadn't spoken. Thank you for not clearing up my situation.

SENATOR BOYCE: I had forgotten what happened when we put it on the table. **TAPE CHANGE**

SENATOR MCCARLEY: Where might the amendment be?

SENATOR KLEMM (In the Chair): The amendment out of Finance was a capital appropriation.

HB 1231, implementing a pre-engineering technology curriculum in the public high schools in the state.

Question is on the adoption of the committee amendment (#3491).

Amendment adopted.

Ordered to third reading.

Recess.

Senator Burns in the Chair.

TAKEN OFF THE TABLE

Senator Flanders moved to have **HB 1429**, relative to the scope of the consumer protection act, taken off the table.

Adopted.

HB 1429, relative to the scope of the consumer protection act.

Senator Flanders offered a floor amendment.

2002-3626s

05/09

Floor Amendment to HB 1429

Amend the title of the bill by replacing it with the following:

AN ACT relative to the scope of the consumer protection act and relative to the appointment of a director of administration for the office of attorney general.

Amend the bill by replacing all after section 1 with the following:

2 Consumer Protection; Exempt Transactions; Regulated Persons. RSA 358-A:3, 1 is repealed and reenacted to read as follows:

I. Trade or commerce by any person who is subject to laws, regulations, standards, orders, or other action of a federal or state regulatory authority that regulates unfair or deceptive acts or practices in the conduct of such trade or commerce, and who is regularly examined for compliance with such laws, regulations, standards, orders, or other action by a federal or state regulatory authority or is subject to sanctions or remedial action by such authority, including without limitation restitution, reparation, or damages which may be ordered by such authority or may otherwise be available to the injured person by statute or regulation, for failure to comply with such laws, regulations, standards, orders, or other action, such as a banking, insurance, or utility company.

3 Department of Justice; Director of Administration. RSA 21-M:3, VI is repealed and reenacted to read as follows:

VI. The attorney general may appoint, subject to confirmation by the governor and council, an unclassified director of administration for the office of attorney general, within the limits of the appropriation made for the appointment, who shall serve for a 5-year term. The director of administration may be removed only as provided by RSA 4:1.

4 Effective Date. This act shall take effect 60 days after its passage.

2002-3626s

AMENDED ANALYSIS

This bill exempts certain regulated persons from the consumer protection act. The bill also provides for the appointment of a director of administration for the office of the attorney general.

Senator Boyce moved to have **HB 1429**, relative to the scope of the consumer protection act, laid on the table.

Adopted.

LAIID ON THE TABLE

HB 1429, relative to the scope of the consumer protection act.

HB 386, relative to the relocation of the principal residence of a child. Judiciary Committee. Vote 2-0. Ought to pass, Senator Roberge for the committee.

SENATOR ROBERGE: House Bill 386 is relative to the relocation of the principal residence of the child. It is not uncommon for the custodial parent to relocate. This puts a high burden on the non-custodial parent to prove that the move has the "likelihood of causing substantial harm to the child." Testimony received at the hearing indicated that several courts are ruling, using different standards in these cases. House Bill 386 is in order to codify the process to be followed in these relocation cases. The provisions of this bill lower the burden of proof from the likelihood of harm to the best interests of the child standard. The Judiciary Committee recommends ought to pass on HB 386 and asks for your support.

SENATOR BOYCE: I am just trying to understand exactly where and how this applies. Does this apply to, if the non-custodial parent was not in the state, was living somewhere else, would this require that the custodial parent give notice to that other parent out of the state or out of the country even before they could be allowed to move? Is that what this is saying?

SENATOR ROBERGE: We could ask Senator Gordon, but my understanding is that they would have to go back to court anyway and the court would make a decision on the reasonableness of the move, if it wasn't a spite move or something like that, and the custodial parent wasn't just moving to give the non-custodial parent a hard time.

SENATOR GORDON: I think that there was discussion in regard to the fact that this was model legislation. It came out of ALEC, if I am not mistaken, and if I remember the testimony correctly. That it was being proposed among different states. Frankly, I don't know to what extent other states have adopted it, either in the form it was presented to us or in other forms.

Senator Francoeur moved to have **HB 1249**, adopting the model Drug Dealer Liability Act, laid on the table.

Adopted.

LAI D ON THE TABLE

HB 1249, adopting the model Drug Dealer Liability Act.

TAKEN OFF THE TABLE

Senator Flanders moved to have **HB 1429**, relative to the scope of the consumer protection act, taken off the table.

Adopted.

HB 1429, relative to the scope of the consumer protection act.

SENATOR BARNES: Senator Flanders, why did this go on the table?

SENATOR FLANDERS: This came out of committee with a report to go to study. While I was attempting to get an amendment made, we put it on the table. In the process, the President continued the proceedings of that day until today. So, as a result of that being on the table, cooler minds got together and spent about four to five hours and have come up with an amendment for consumer protection that I feel satisfies everybody. So, I am adding an amendment to the bill.

SENATOR BARNES: Thank you very much.

SENATOR FLANDERS: Thank you.

Senator Flanders offered a floor amendment.

SENATOR FLANDERS: What happened, as I explained to Senator Barnes, is that we had meetings at Executive Departments and Administration last week that did not go very well at all in that it was a very complicated issue and cooler heads did not prevail at that time and that is why we decided to come out with interim study. As a result of being put on the table and the four or five days that we had, I am pleased to report that the various parties that were interested in the bill, including the Consumer Protection Bureau of the Attorney General's Office, has successfully negotiated a compromise which will strengthen consumer protection efforts in New Hampshire. At the same time, we can avoid duplicate regulations of the truly regulated industries. This bill is the result of a study committee that Senator D'Allesandro and I served on during the summer. One of our goals was to prevent businesses from inappropriately claiming that they are regulated industries, when in fact they operate under a very weak system of maybe just simple licensing. Historically, businesses artificially characterized themselves as regulated industries in an attempt to fall within the scope of an exemption in the Consumer Protection Act. The floor amendment enhances consumer protection by making it clear that the exception applies only to the truly regulated industries such as a bank, insurance, utility companies, and it also applies to rural or electric cooperatives. These people are already subject to comprehensive consumer pro-

tection regulation and, under this floor amendment, the Consumer Protection Act will apply to those businesses operated under the weak system, or licensing system, which takes adequate consumer protection and this is a good result. The floor amendment also includes an amendment offered by Senator D'Allesandro during the Senate hearing that changes the position of law office administrator in the Attorney General's Office from a classified to an unclassified. Having worked hard on this study committee during the summer and on this bill, that the people worked on this weekend, I am pleased that we are able to enact meaningful legislation that will further protect the New Hampshire customers and we appreciate your support on ought to pass. Thank you very much.

SENATOR BARNES: Senator Flanders, you talked about a five hour meeting with cooler heads prevailing. Were any of the sponsors other than yourself at that five hour cool-head meeting?

SENATOR FLANDERS: As a matter of fact, I was not there. I was not one of the cool-heads. But, some of the sponsors were there. Yes.

SENATOR BARNES: Some of the sponsors on this legislation were there?

SENATOR FLANDERS: Yes.

SENATOR BARNES: Thank you very much.

SENATOR JOHNSON: In looking at this amendment and being a member of the New Hampshire Electric Co-op, does the exemption laid out in the amendment cover sales of energy by the New Hampshire Electric Co-op?

SENATOR FLANDERS: Yes, I believe it does. Yes, sir.

SENATOR JOHNSON: Thank you.

SENATOR FRANCOEUR: I am the one that brought up a lot of the questions in committee with Senator Flanders and I think that was why we originally came out with the report we did. There was a large expansion of court authority under the previous Christmas tree bill that we had and Senator Flanders, after speaking with many of the other Senate members and some legal staff, took that section out. I fully support the amendment that he has before us.

SENATOR BOYCE: Senator Francoeur, one of the things that was in the original bill that I don't see in here is that it said that "a prevailing plaintiff shall be awarded attorneys' fees and costs". I am curious why that was left out, because what we are looking at here is probably somebody with quite an adequate capability of hiring an attorney to defend themselves, but the plaintiff generally has very little. If the claim was say, for \$10,000 and it was going to cost \$5 or \$6 or \$7,000 to take that to court and the plaintiff knew that they weren't necessarily going to get their money back, even if they won, why would anybody take a large company to court for \$10,000 when they knew that they might not get their attorneys' fees back, whereas in the original bill it said they would, if they prevailed, they would get their attorneys' fees so that they would not be paying more than they won in the case?

SENATOR FRANCOEUR: I would be glad to answer that. I think at one point in time, Senator, we both were on the same agreement. But, I think, from being in the Senate and hearing the discussion over the last six years that I have been here, that I know when you get into court and you get there and somebody has got a lot of money and you are fighting with them, that the person that is going to usually prevail is going to

be the person with the most money in a lot of situations because, by the time they drive you through all the process, all the questions that they are going to ask, all the depositions and all that stuff, that you are never going to prevail. I used to be under the impression that I used to think well, if you are right, you are right and you should get it. I will tell you, the longer I have been here and the more I have listened, that I don't believe that that is the appropriate place, to put it in statute. The current rules in the court system are that it is at the discretion of the judge. So, if he thinks pretty much that it is blatant that somebody is really just playing games and stuff, it is his discretion that does it. But, if you do that, you have got to put it in there for everybody and I guarantee you, the guy with the most money is just going to keep on going because, at the end, you are going to be paying him.

SENATOR BOYCE: Thank you.

Amendment adopted.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Francoeur moved to have **HB 1249**, adopting the model Drug Dealer Liability Act, taken off the table.

Adopted.

HB 1249, adopting the model Drug Dealer Liability Act.

Question is on the committee amendment (#3563).

Recess.

Out of Recess.

SENATOR MCCARLEY: Is the committee amendment that we are voting on the amendment that turns this bill into a study committee? This isn't even a tricky parliamentary inquiry.

SENATOR BURNS: Yes, it is.

SENATOR McCarley: OK. Thank you.

Question is on the committee amendment.

A roll call was requested by Senator Francoeur.

Seconded by Senator Boyce.

The following Senators voted Yes: Burns, Gordon, Below, McCarley, Flanders, Fernald, O'Hearn, Pignatelli, D'Allesandro, Wheeler, Klemm, Hollingworth, Cohen.

The following Senators voted No: Johnson, Boyce, Disnard, Roberge, Eaton, Francoeur, Gatsas, Barnes, O'Neil, Prescott.

Yeas: 13 - Nays: 10

Amendment adopted.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Wheeler moved to have **HB 589**, relative to eligibility for unemployment benefits for part-time workers, taken off the table.

Adopted.

HB 589, relative to eligibility for unemployment benefits for part-time workers.

CHAPTER 118

HB 1437-FN-A - FINAL VERSION

6mar02...2776h

2002 SESSION

02-2414

05/10

HOUSE BILL ***1437-FN-A***

AN ACT relative to increasing the staff in the consumer protection and antitrust bureau of the department of justice.

SPONSORS: Rep. Marshall Quandt, Rock 20; Rep. Langley, Rock 24; Rep. Spiess, Hills 14; Rep. Marshall, Graf 2; Rep. Keye, Hills 30; Sen. D'Allesandro, Dist 20; Sen. Flanders, Dist 7; Sen. O'Neil, Dist 18

COMMITTEE: Commerce

AMENDED ANALYSIS

This bill allows for the addition of 3 attorneys, 2 paralegals, and one legal secretary to the staff in the department of justice, consumer protection and antitrust bureau.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

6mar02...2776h

02-2414

05/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Two

AN ACT relative to increasing the staff in the consumer protection and antitrust bureau of the department of justice.

Be it Enacted by the Senate and House of Representatives in General Court convened:

118:1 Department of Justice; Consumer Protection and Antitrust Bureau Staff Increased. In order to
<http://www.gencourt.state.nh.us/legislation/2002/HB1437.html> 3/15/2010

facilitate the state's participation in antitrust and multi-state actions, consumer outreach and education, and the enforcement of the laws of the state relating to consumer protection, the attorney general may appoint 3 assistant attorneys general, and may establish positions for and employ 2 paralegals and one legal secretary in the department of justice, consumer protection and antitrust bureau.

118:2 Effective Date. This act shall take effect July 1, 2003.

(Approved: May 3, 2002)

(Effective Date: July 1, 2003)

**Bill as
Introduced**

HB 1437-FN-A - AS INTRODUCED

2002 SESSION

02-2414
05/10

HOUSE BILL **1437-FN-A**

AN ACT relative to increasing the staff in the consumer protection and antitrust bureau of the department of justice and making an appropriation therefor.

SPONSORS: Rep. Marshall Quandt, Rock 20; Rep. Langley, Rock 24; Rep. Spiess, Hills 14; Rep. Marshall, Graf 2; Rep. Keye, Hills 30; Sen. D'Allesandro, Dist 20; Sen. Flanders, Dist 7; Sen. O'Neil, Dist 18

COMMITTEE: Commerce

ANALYSIS

This bill makes an appropriation for the addition of 3 attorneys, 2 paralegals, and one legal secretary to the staff in the department of justice, consumer protection and antitrust bureau.

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears ~~(in brackets and struck through.)~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Two

AN ACT relative to increasing the staff in the consumer protection and antitrust bureau of
the department of justice and making an appropriation therefor.

Be it Enacted by the Senate and House of Representatives in General Court convened:

- 1 1 Department of Justice; Consumer Protection and Antitrust Bureau Staff Increased. In order
2 to facilitate the state's participation in antitrust and multi-state actions, consumer outreach and
3 education, and the enforcement of the laws of the state relating to consumer protection, the attorney
4 general may appoint 3 assistant attorneys general, and may establish positions for and employ
5 2 paralegals and one legal secretary in the department of justice, consumer protection and antitrust
6 bureau.
- 7 2 Appropriation. The sum of \$ 375,000 for the fiscal year ending June 30, 2003, is hereby
8 appropriated to the department of justice for funding additional staff positions within the consumer
9 protection and antitrust bureau as provided in section 1 of this act. The governor is authorized to
10 draw a warrant for said sum out of any money in the treasury not otherwise appropriated.
- 11 3 Effective Date. This act shall take effect July 1, 2002.

LBAO
02-2414
1/17/02

HB 1437-FN-A - FISCAL NOTE

AN ACT relative to increasing the staff in the consumer protection and antitrust bureau of the department of justice and making an appropriation therefor.

FISCAL IMPACT:

The Department of Justices states this bill will increase state general fund expenditures by \$375,000 in FY 2003, \$393,750 in FY 2004, \$413,438 in FY 2005, and \$434,109 in FY 2006.

This bill appropriates \$375,000 from the state general fund to the Department of Justice for the fiscal year ending June 30, 2003.

METHODOLOGY:

This bill allows the Department to appoint three assistant attorney generals and establish positions for two paralegals and one legal secretary in the Department's Consumer Protection and Antitrust Bureau. This bill also appropriates \$375,000 for funding the additional staff positions in FY 2003. Salary and benefit calculations assume salaries for the assistant attorney generals are established pursuant to RSA 94:1-c, and the positions are exempt from annual steps under RSA 94:3. In addition, salary and benefit costs for the two paralegal II positions at labor grade 19, and legal secretary position at labor grade 13 are estimated, assuming the half year impact of a 2% salary increase effective December 27, 2002, and annual steps thereafter.

The costs are as follows:

	<u>FY 2003</u>	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY2006</u>
Assistant Attorney General (3 @ \$56,800)	\$170,400	\$170,400	\$170,400	\$170,400
Paralegal II (2 @ LG19)	57,740	60,762	63,453	66,105
Legal Secretary (LG13)	22,591	23,790	24,726	25,721
Benefits @ 26.5%	<u>66,444</u>	<u>67,562</u>	<u>68,523</u>	<u>69,490</u>
Total Salary & Benefits	\$317,175	\$322,514	\$327,102	\$331,716

The appropriation language in this bill addresses only the funding for the positions, and does not specifically authorize any additional associated costs including, but not limited to, current expense, equipment, travel, and litigation.

The Department assumes the balance of the appropriation and estimated future impact will include these associated additional costs, and estimates annual increases of 5%.

House Committee

HOUSE COMMITTEE ON COMMERCE

PUBLIC HEARING ON HB 1437-FN-A

BILL TITLE: relative to increasing the staff in the consumer protection and antitrust bureau of the department of justice and making an appropriation therefor.

DATE: February 5, 2002

LOB ROOM: 302 **Time Public Hearing Called to Order:** 3:10 pm

Time Adjourned: 3:35 pm

(please circle if present)

Committee Members: Reps. Hunt, Fraser, Francis, Tsiros, Belanger, Avery, Kenney, Langley, DiFrucia, Marshall, Marshall Quandt, D. Flanders, Spiess, M. Clark, Crosby, T. Reardon, Taylor, Key, Batchelder and Slack.

Bill Sponsors: Reps. M. Quandt, Langley, Spiess, Marshall, Key and Sens. D'Allesandro, Flanders and O'Neil

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Marshall Quandt, sponsor – Introduced the bill and noted that the Consumer Protection Bureau (CPB) has very limited staffing to handle consumer demand of nearly 40,000 phone calls.

Kristin Spath, Attorney General's Office, Consumer Protection Division – Need the staffing as proposed to be able to cover the basic range of Consumer Protection Bureau responsibilities. These include registering various organizations and many other things such as mediation of disputes. They have 13 volunteers who supplement staff in selected areas. Calls: 38,000; Mediate: 2000; Written: 7500. They also participate in multi-state actions, mostly by volunteer staff time. Positions needed: anti-trust/multi-state +1 attorney; CSR Protocol and Public Relations +1 Attorney; Website and Marketing & Compliance =1 attorney. Total need for 3 attorneys. Visibility is important to better enforcement.

Q: Rep. Robert Batchelder – Are any activities self-funding?

A: Yes, various penalties. Another bill provides for fees and penalties, e.g. for registration (of health clubs) or for failure to register.

Jonathan Baird, NH Legal Assistance – Supports the bill. Beefing up the CPB would be very helpful to his constituency. Consumer needs go largely unapprised in this state, and this would help.

Ed O'Brien, CPB volunteer – This requested increase would more than pay for itself in the multi-state area. He participated privately in three cases, which the CPB didn't have the staff to join.

Peter Wright, Franklin Pierce Law Center – Franklin Pierce Law Center supports the bill. It is in the best interest of honest businesses to have strong consumer protection to weed out those who would drag down the reputation of others, and compete by offering unreliable services.

Respectfully Submitted:

A handwritten signature in cursive script that reads "Gene B. Marshall".

Gene B. Marshall, Clerk

Remarks before the House Commerce Committee regarding HB 1429,
An Act Relative to the Scope of the Consumer Protection Act.

February 5, 2002

David Rienzo, Assistant Attorney General.

Good afternoon Mr. Chairman and members of the Committee. My name is David Rienzo, and I am an assistant attorney general in the Consumer Protection and Antitrust Bureau of the Department of Justice, and I appreciate this opportunity to describe for you the reasons the Bureau supports adoption of HB 1429 ("the Bill").

This bill is in four parts, and amends NH RSA 358-A, the Consumer Protection Act ("the Act"). I shall discuss each part in order.

Part one of the Bill would add a new provision to RSA 358-A:2, that section of the Act which sets out a non-exclusive list of prohibited acts. This provision is, on its face and by its plain language, antimonopoly and procompetitive. These are values the Bureau believes should be promoted by the State and therefore the Bureau supports this provision.

The second and third parts of the Bill seek to eliminate a longstanding confusion related to the exemption language contained in RSA 358-A:3, I. As I have discussed before this Committee before, this section has been the subject of three contradictory interpretations by the New Hampshire Supreme Court. In 1987, in *Rousseau v. Eshelman* 129 N.H. 306 (1987), the Court held this provision exempted all "regulated industries." Then, in 1992, in *Gilmore v. Bradgate Associates*, 135 NH 234 (1992) the Court held that the exemption only covered "transactions otherwise permitted" by another statute or rule. Then in 2000, in *Averill v. Cox*, 145 N.H. 328 (2000) the Court again reversed itself and restated its exemption as previously set out in *Rousseau*.

The Bureau believes the broad exemption enunciated by the Court in *Rousseau* and then again in *Averill* creates a significant impediment to our mission of protecting consumers. This is due to the uncertainty of whether any business the Bureau may be investigating is exempt from RSA 358-A due to the Court's broad interpretation of the exemption provision of RSA 358-A:3.

Accordingly, I will discuss the second and third sections of the Bill in this light.

The second section of the Bill looks directly at this historical confusion. Because the confusion seems to stem from the current language of the statute, specifically the statute's declaration that "trade or commerce otherwise permitted" is exempt, the Bill amends that language to hold "Conduct in trade or commerce expressly permitted" by statute or regulation would be entirely exempt from 358-A. It is the Bureau's opinion that this is a significant improvement in the statute, and would eliminate much of the confusion that currently surrounds the present exemption language by forcing the analysis to focus on

the individual acts alleged rather than whether the actor is a member of a regulated industry. Furthermore, an effect this language would have, and that the Bureau believes is important, is that as amended, the Act would specifically give the state legislature and state regulatory agencies the express power to decide exactly what acts are permitted, and what acts are "unfair or deceptive."

This provision of the Bill would be of great help to the Bureau because when a complaint alleging an unfair or deceptive act is received, and the complaint is against a member of an industry which is covered by specific laws or rules, the Bureau would be able to determine whether the acts alleged are permitted by those rules or regulations. If so, they would be wholly exempt from the Consumer Protection Act, and the Bureau would be unable to take any action. If, however, the acts alleged are not specifically permitted by the regulating agency because they are disallowed, or because the statutes and regulations are silent regarding the acts, the Bureau would have the ability to analyze them under the standards of RSA 358-A. This would reduce confusion relating to the jurisdiction of RSA 358-A, and allow the Bureau to concentrate more of its time on its core mission of protecting consumers.

The third part of the Bill is related to the second, and the Bureau also supports this proposed language. The third section of the Bill adds a new subsection to the Act which provides a framework for the identification of regulated industries and then protects industries so identified from exposure to double or treble damages under RSA 358-A:10, I.

If this proposed amendment is adopted, whenever in the future a complaint is made, the following two-part analysis would be required:

- 1) Is the actor operating as a member of a regulated industry?
- 2) If so, are the acts alleged expressly permitted by any controlling statute or regulation?

If the answers to both 1 and 2 are yes, then the acts alleged would be wholly exempt from RSA 358-A.

If the actor was operating as a member of a regulated industry but the acts alleged are not expressly permitted, (the answer to question 1 is yes, and the answer to question 2 is no), the actor would be subject to RSA 358-A, but would not be exposed to an order to pay double or treble damages. The actor could still be subject to action by its regulatory agency under its own enforcement powers, but as we have heard before, regulatory agencies cannot provide relief for the injured consumer. At best, the regulatory agency can prevent future harm by the use of cease and desist orders, and they can punish bad behavior through administrative fines and other sanctions, but they cannot get the injured consumer his or her money back. This amendment guarantees the consumer a means of securing restitution.

If on the other hand, the actor is not a regulated industry, the entire Consumer Protection Act would apply, and the actor would be liable for an order to pay up to treble damages.

The fourth section of the Bill amends RSA 358-A:10, I to conform with the new requirements set out in the third section of the Bill.

In short, the effects of the second, third, and fourth sections of the Bill would be to return the exemption provisions of the Consumer Protection Act to the status they had from 1992 to the end of 2000, with the added effect of protecting qualified regulated industries from the possibility of having to pay multiple damages for violations of the Act.

As I stated at the beginning of these remarks, the Bureau believes this Bill will provide some much needed clarity in interpretation of the Consumer Protection Act, and will thus significantly streamline the enforcement process. Therefore the Consumer Protection and Antitrust Bureau of the New Hampshire Attorney General's Office strongly supports this legislation.

Thank you again for the opportunity to address the Committee, and I will be glad to respond to any questions you may have.

Comments of W. John Funk, counsel to the New Hampshire Bankers Association

I understand that the sponsors of this bill seek to make certain that consumers have remedies available against businesses that are regulated by state or federal regulatory agencies for unfair or deceptive practices if such remedies are not available under other statutory or regulatory schemes. In concept, I think this is a worthy objective. The problem is how to express this intent in a manner that does not cast a wider net than is necessary to solve the problem.

I am counsel to the New Hampshire Bankers Association which represents state and federally chartered banks in this State. As you are aware, banking is heavily regulated by federal and state regulatory agencies – probably more so than any other type of business with respect to consumer issues.

- There is an alphabet soup of federal laws and regulations that cover consumer loans, leases, mortgages, deposits and so on.
- There are additional consumer banking laws and regulations at the state level.
- These laws provide a variety of remedies for consumers.
- Banks are regularly examined for their compliance with these laws and regulations by federal and state regulatory agencies with broad regulatory authorities.

I state these facts as background because I am concerned that the language of the bill is too vague to exempt banks from its provisions.

- It will have the effect of subjecting banks to another regulatory authority in the form of the Attorney General in addition the state and federal banking agencies.
- It will also expose banks to new consumer claims under state law when other adequate remedies exist.

I am troubled by the proposed amendments to RSA 358-A:1 in Paragraph 2 of the bill.

- Paragraph 2 states that “conduct” in trade or commerce that is “expressly” permitted under any laws, rules, standards or regulations as promulgated or adopted by any regulatory board or officer acting under statutory authority of this state or of the United States.
- I am unclear as to the scope of what is intended by this language.

While banks are heavily regulated with respect to many of their business lines, it is uncommon for regulatory schemes to expressly permit specific conduct.

- Rather, they speak in general terms and allow the practice of banking to evolve. For example, our state law says that banks can engage in any type of secured or unsecured lending to consumers, but it doesn't say specifically how the bank can engage in that business. Is this “conduct” that is “expressly” permitted?

- Far more frequent than permissive laws or regulations are restrictions or limitations on activities. Thus, a law may say a bank can engage in variable rate lending, but restricts the activity by requiring disclosures and prohibiting certain conduct. Will activities that are not prohibited by deemed “expressly” permitted?

The effect of this confusion will be that consumers will be encouraged to bring suits against banks under the consumer protection act, even though other remedies exist under federal or state regulatory schemes, to increase leverage. The burden of proof will be on banks to show that there is some specific law or rule that expressly permits them to engage in the exact activity – a burden that will be impossible in many instances, even though the general conduct is permitted and regulated by a bank regulator. In my opinion, very little “conduct” will be found to be exempt.

Of equal concern is the second exemption found in Paragraph 3 of the bill. Assuming that a bank is not found to be exempt under Paragraph 2, then it may be exempt from the double or treble damages provisions of the consumer protection act if it satisfies four tests. Leaving alone for a moment that a federally chartered bank or out-of-state bank could never satisfy the tests (i.e., it refers to New Hampshire boards or officers only), I submit that it will be virtually impossible for a bank to qualify.

- The first test requires that a state regulatory board issue a license to the bank to conduct the specific activity. In this state, banks get a charter and a certificate of authority to engage in a banking business, not a specific activity. Thus, a question exists whether this test is met.
- Assuming that the charter and certificate are the equivalent of a license, the second test should not be a problem
- Nor should the third test be a problem because the state banking department has all of the listed powers.
- The fourth test requires a showing that there is a remedy under another regulatory scheme which affords consumers with protections that are equivalent or superior to the consumer protection act. The remedies under the federal regulations such as trust in lending (Z) or equal opportunity (B) are very specific, but they are different from the consumer protection act. How to prove they are equivalent or superior is difficult and one could argue that if they don't contain double or treble damages, they fail to meet the test.

Thus, it is likely that a bank will fail to satisfy the first and the fourth tests and will be subject to the full remedies of the consumer protection act.

Finally, the language of the bill is incomplete or inaccurate which will only add to the confusion (i.e., activity, licensing, standards and codes).

We ask that you expressly exempt banks or take steps to clarify the language to prevent it from being applicable to them.

MEMORANDUM

TO: Honorable C. Jeanne Shaheen, Governor
Honorable Gene Chandler, Speaker of the House
Honorable Arthur P. Klemm, Jr., President of the Senate
Honorable Karen O. Wadsworth, House Clerk
Honorable Gloria M. Randlett, Senate Clerk
Michael York, State Librarian

FROM: Rep. Marshall E. Quandt, Chair

DATE: November 15, 2001

RE: Final Report on Chapter 12:1, Laws of 2001
~~SB 109~~, establishing a committee to study the consumer protection effort in
New Hampshire.

Pursuant to Chapter 0012:1, Laws of 2001, enclosed please find the report of the committee charged with studying the consumer protection effort in New Hampshire.

Please feel free to contact me with any questions or comments.

MEQ/jal

Cc: Study Committee Members
Pam Smarling, Committee Researcher

CONSUMER PROTECTION IN NEW HAMPSHIRE
(HB 109, Chapter 12:1, Laws of 2001)

STUDY COMMITTEE FINAL REPORT

November 15, 2001

Overview

There is mounting evidence that consumer fraud and abuse are increasing. There have been an increasing number of bills filed each year in the Legislature to address various aspects of this problem. Testimony from the Attorney General's office, and various state agencies and regulators confirm a rising tide of complaints and problems. New technologies are creating new avenues for abuse. The problems are increasing complex and difficult to uncover. There are indications that the existing Consumer Protection Statute (RSA 358A) may be inadequate to deal with these concerns, and has been weakened by recent court decisions.

History of RSA 358-A, the New Hampshire Consumer Protection Act

The New Hampshire Consumer Protection Act was adopted in the 1970 legislative session. Earlier attempts to adopt a Consumer Protection Act in New Hampshire had failed in 1967 and 1969. All three bills on this subject were very similar in scope and content. They were based on model legislation that was developed by the Committee of State Officials on Suggested state Legislation and published by the Council of State Governments (CSG). In 1967, two states, Hawaii and Washington had adopted similar versions of the model act. By 1969, it had been adopted by nine additional states (Arizona, Kansas, Maryland, Massachusetts, Missouri, New Mexico, Rhode Island, Texas and Vermont).

The Statute has been interpreted to contain a broad exemption for "regulated" industries. At the time this statute was adopted in New Hampshire, 42 of the 81 professions currently regulated by a board or agency of the state were regulated. Since 1970, 39 new professions have been added to the list of regulated entities.

Findings

The Study Committee has met on eight occasions and received testimony from the Attorney General, the head of the Consumer Protection Division of the AG's office, the Insurance Department, the Banking Department, consumer advocates and industry lobbyists. Testimony from these interested parties indicates the following:

- There is statistical evidence of a rising tide of complaints by consumers of abuse, fraud and misrepresentation.
 - Resources to respond to complaints, investigate issues, and prosecute abuse are limited.
-

- New technologies and advanced marketing techniques make it increasingly difficult to monitor commercial practices and enforce existing statutes.
- Companies domiciled outside of New Hampshire are transacting a significant and increasing volume of retail commerce.
- The existing Consumer Protection Statute (RSA 358A) has been interpreted to contain a broad exemption for “regulated” industries. Recent court interpretations appear to have weakened the reach of the statute and the ability of the individual or the state to pursue effective remedy.

Conclusions

Based on evidence and testimony presented, the Committee has reached the following conclusions:

- The manner in which commerce is conducted, and the methods and avenues for marketing to consumers are constantly evolving.
- New technologies and marketing delivery systems enhance access to the consumer, but also provide new opportunities for fraud and abuse.
- The volume of complaints has increased in proportion with the growth in the underlying population of the state, and the growth in consumer marketing and spending.
- Senior citizens are an increasing percentage of the population and are uniquely vulnerable to postal and telemarketing fraud.
- State regulatory resources dedicated to deal with these issues have not grown proportionately with the scope and magnitude of the problem.
- Existing statutes to protect the consumer have not been updated to address emerging issues.
- Broad exemptions resulting from recent court decisions appear to limit the ability of the individual to pursue redress through the right of private action, or the ability of the Attorney General’s office to pursue effective enforcement.

Recommendations

The Committee recommends consideration by the legislature of the following course of action:

1. A significant increase in the resources allocated to the Attorney General’s office, Bureau of Consumer Protection, to provide adequate manpower to investigate and prosecute consumer fraud.

2. Improved coordination and communication between the various regulatory departments and authorities to better assess and define the scope and magnitude of the problem, and to coordinate effective remedy.
3. A careful review and analysis by the legislature of the scope and breadth of the "regulated industries" exemption of the Consumer Protection Statute to determine if adequate supervision and control of business activities of regulated entities exists to protect the consumer.
4. A clarification of statutory language to assure a right of private action for abuses in areas of business not actively regulated by state supervisory authorities.

Establishment of a dedicated fund within the office of the Attorney General for deposit of licensing fees and settlement awards to support the cost of increased staffing in the Bureau of Consumer Protection

House Journal

HB 1437-FN-A, relative to increasing the staff in the consumer protection and antitrust bureau of the department of justice and making an appropriation therefor. **OUGHT TO PASS**

Rep. Marshall E. Quandt for Commerce: The bill makes an appropriation for the addition of three attorneys, two paralegals and a legal secretary for the consumer protection and anti-trust division. It is expected to have a strong financial benefit to bring in settlement money from multi-state actions that the Attorney General's Office will now be able to participate in. Vote 13-0.

Adopted.

Referred to Finance.

SPECIAL ORDER

HB 1303-FN, prohibiting the wearing of certain facial coverings. **INEXPEDIENT TO LEGISLATE**
Rep. Stephen H. Nedeau for Criminal Justice and Public Safety: This bill would have amended RSA 631:4 (criminal threatening) to include a new section (f). This new section would make it a crime to wear "a mask, hood, or other device intended to conceal the wearer's identity with the intent to terrorize another." The committee felt that this was unnecessary since the wearing of a mask, hood or other device was immaterial. All of the acts listed in criminal threatening are crimes whether or not a mask is worn. The new section (f) would be overly broad and could be applied to a Halloween mask. The bill would also enhance the penalty for criminal threatening to make the wearing of a "mask, hood, or other device", a class B felony. This would apply to the offenses listed in subparagraphs I (a) through I (d). This would make it a class B felony to place "any object or graffiti on the property of another." It was the vote of the committee that such an expansion of RSA 631:4 is not appropriate. Vote 13-0.

Adopted.

REGULAR CALENDAR (CONT'D.)

HB 1151, establishing a commission to examine the status of public school curriculum requirements in civic education. **OUGHT TO PASS WITH AMENDMENT**

Rep. Charles E. Sova for Education: The majority of the committee felt that the commission established by this bill, especially with its expanded role as contained in the amendment, can make positive recommendations for the development of civics programs in both the educational system and society in general. Vote 10-7.

Amendment (2184h)

Amend the title of the bill by replacing it with the following:

AN ACT establishing a commission to examine and assess the status of civic education in New Hampshire.

Amend the bill by replacing all after the enacting clause with the following:

1 Purpose. The general court recognizes that an active and informed citizenry is the foundation for preserving personal liberty and democratic society under a republican form of government, and wishes to explore and improve the means by which the state seeks to promote civic understanding and engagement among its residents. The general court also recognizes that developing and maintaining an informed and engaged citizenry ultimately requires educating youth at both the primary and secondary levels in the principles, organization, and operation of federal, state, and local government. Moreover, the general court is concerned by New Hampshire department of education data indicating that 35 percent of 6th graders and 45 percent of 10th graders scored at the novice level in civics and government examinations, as well as the implications such data may have for democratic governance and civil society in future years. The general court therefore establishes a commission to examine and assess the status of civic education in New Hampshire.

2 Commission Established. There is established a commission to examine and assess the status of civic education in New Hampshire.

3 Membership and Compensation.

I. The members of the commission shall be as follows:

- (a) Two members of the house of representatives, appointed by the speaker of the house.
- (b) Two members of the senate, appointed by the president of the senate.
- (c) The commissioner of the department of education, or designee.
- (d) The secretary of state, or designee.
- (e) One primary school educator and one secondary school educator, appointed by the commissioner of the department of education.
- (f) A representative from the university system of New Hampshire, appointed by the chancellor of the university system of New Hampshire.

House Committee

HB 1437

MINUTES
HOUSE FINANCE COMMITTEE
EXECUTIVE SESSION - February 19, 2002
Room 209, Legislative Office Building

Rep. Stone, chairman, opened the division executive session at 9:15 a.m.

Members Present: Chm. Stone, Reps. Holbrook, Wheeler, Blanchard, Coes and Mitchell.

****HB 556-FN-A, making certain appropriations to the department of cultural resources and the department of safety.**

Michael Kane, LBA, explained amendment 2002-2659h. Rep. Wheeler moved to adopt the amendment, Rep. Coes seconded this motion. Vote 6-0. Rep. Wheeler moved to report OTPA and Rep. Coes seconded this motion. Roll Call vote 6-0.

****HB 1409-FN-A-L, relative to payment of autopsy expenses and making an appropriation therefor.**

Jeff Pattison, LBA, explained the path through Fiscal Committee and detailed the authority by statute. Steve Judge, A.G.'s Office, explained that the legislature let counties off the hook for payment unless they specifically request it. Two amendments will be prepared for review and recommendations this afternoon. 1:00 p.m. (Rep. Anderson now present). Amendments 2002-2734h and 2002-2733h both were submitted. Rep. Wheeler moved to adopt amendment 2734h. Rep. Blanchard seconded this motion. Roll Call vote 6-1. Rep. Wheeler moved to report OTPA (2002-2734h), Rep. Blanchard seconded this motion. Roll Call vote 6-1.

****HB 1279-FN-A, making an appropriation for the purchase of equipment to record committee sessions.**

Rep. Stone explained why ITL was warranted and thus moved to report ITL. Rep. Coes seconded this motion. Roll Call vote 6-0.

****HB 672, (New Title) relative to insurance coverage for mental and nervous conditions and for treatment for chemical dependency.**

John Hunt, Chairman for the Commerce Committee, urges support because of the precedent it might set and the number of bills that would ultimately have to come before finance. Alex Feldvebel, Insurance Department, submitted an amendment which added specifics in terms of maximum amount of dollars or numbers of days or visits as a guideline to the Insurance Department for acceptance. Rep. Moore spoke to clarify the confusion regarding the width and breadth of the bill - full parody versus a limited approach. Tom Fox, Medical Director of Alcohol and Substance Abuse, clarified where the payment would be made. Health and Human Services versus Insurance. No action was taken. Recessed until later in the afternoon. Rep. Anderson joins the session. Afternoon Session: Continuation of HB 672: Amendment 2002-2664 moved by Rep. Wheeler, seconded by Rep. Blanchard. Motion passed 7-0. Rep. Blanchard moved to report OTPA. Seconded by Rep. Coes. Roll Call vote 3-4. Rep. Wheeler moved to report ITL, seconded by Rep. Stone. Roll Call vote 4-3.

****HB 557-FN-A, (New Title) relative to victims' assistance programs and the victims' assistance fund.**

Rep. Bill Knowles, Criminal Justice and Public Safety, described the bill and explained how the victims assistance fund functioned. Funds are increasing and the perpetrators are paying for victims. Linda Griebish from NH Coalition against Sexual Violence discussed increase in demand as well as an increase in cost. A benefit from having both issues under one roof. She further explained the relationship between source of funding and these expenditures. Sandra Matheson, Director of State Victims Assistance in the Attorney Generals Office. Recess until tomorrow for updated paper.

****HB 1302-FN, (New Title) relative to the purchase of certain prior service credit by members of the retirement system, relative to legislative review of retirement fund investment practices, and relative to the payment of medical benefits costs for retired state employees.**

Rep. Dyer of Executive Departments & Administration explained the purchase of past years of service and the housekeeping aspects of the bill. Replace every five years reporting system to the "prudent man" investor. Rep. Wheeler moved to report OTP, Rep. Holbrook seconded the motion. Roll Call vote 6-0 (Rep. Blanchard was out of the room & Rep. Johnson passed because he's in the system)

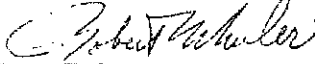
****HB 1437-FN-A, relative to increasing the staff in the consumer protection and antitrust bureau of the department of justice and making an appropriation therefor.**

Kristen Spath from Attorney General's Office (Consumer Protection Bureau) this bill is a result of a study committee. She described the mediation process and a variety of other services provided by her unit. Readers' Digest and Publishers Clearing House have recovered hundreds of thousands of dollars for consumers but are limited by resources. They would not have had the resources to help these consumers alone. But by relying on other States resources they were enabled to help these consumers. Recessed until 9:00 a.m. Wednesday, February 20th— awaiting comments from the sponsors.

****SB 201-FN, (New Title) relative to the job training program for economic growth.**

Commissioner Ratoff, Job Training Program, was called the "Challenge Grant". 4/10 of 1% administration fee will become the source of funding the new training. However three issues had to be dealt with. 1) Committee – is now formed by commissioners, 2) Grant Cap – now have \$1 million no need for \$25,000 cap, 3) Manufacturing – small businesses are the recipients without emphasis on manufacturing. Rep. Coes moved to report OTP, Rep. Anderson seconded this motion. Roll Call vote 8-0.

Respectfully submitted:


Rep. Robert L. Wheeler
Division I Clerk

MINUTES
HOUSE FINANCE COMMITTEE
EXECUTIVE SESSION – February 20, 2002
Room 209, Legislative Office Building

Rep. Stone, chairman, opened the division executive session at 9:00a.m.

Members Present: Chm. Stone, Reps. Holbrook, Anderson, Wheeler, Blanchard, Coes and Mitchell.

****HB 1437-FN-A, relative to increasing the staff in the consumer protection and antitrust bureau of the department of justice and making an appropriation therefor.**

Rep. Marshall Quandt, prime sponsor, Commerce Committee, explained the purpose of the bill – increasing consumer protection in the Attorney General's Office. Discussion took place regarding companion bill HB 1438. **Rep. Blanchard** moved to report Amendment 2002-2776h, **Rep. Coes** seconded that motion. Vote 6-0. **Rep. Blanchard** moved to report OTPA, **Rep. Coes** seconded the motion. Roll Call vote 6-0.

****HB 557-FN-A, (New Title) relative to victims' assistance programs and the victims' assistance fund.**

Jeff Pattison, LBA, explained the fiscal note and amendment. **Rep. Wheeler** moved to report OTPA, **Rep. Coes** seconded the motion. The amendment to be drafted by **Jeff Pattison** and returned to Division I prior to presentation to the Full Committee. The portion of fine dollars that formerly went to the Court Modernization Fund now is received by the Victim's Assistance Fund. With the projected flow from revenue and the establishment of the \$1 million cap, victims of sexual assault may be added and the General Fund should expect to receive about \$150,000. Roll Call vote 7-0, OPTA.

Respectfully submitted:



Rep. Robert L. Wheeler
Division I Clerk

House Journal

2 Contract Funding. Any contract for special education advocacy services entered into pursuant to this act shall provide for the minimum equivalent of 2 full-time special education advocates and shall cover incidental overhead and administrative costs not to exceed \$105,000 for the fiscal year ending June 30, 2003 and \$105,000 for the fiscal year ending June 30, 2004.

3 Department of Education: Special Education Funds. Any funding for special education advocacy services pursuant to this act shall be provided from special education funds appropriated to the department of education.

4 Effective Date. This act shall take effect 60 days after its passage.

HB 1302-FN, relative to the purchase of certain prior service credit by members of the retirement system, relative to legislative review of retirement fund investment practices, and relative to the payment of medical benefits costs for retired state employees. **OUGHT TO PASS**

Rep. Robert L. Wheeler for Finance: This bill allows for purchase of some but not necessarily all of a participant's past service, removes requirements of legislative review that have been updated by the system and changes a date of payment to accommodate the accounting system without any negative implication on the general fund. Vote 20-0.

HB 1324-FN, requiring that budget requests made by the state government be limited by inflationary and population growth indices. **REFER FOR INTERIM STUDY**

Rep. Elizabeth S. Hager for Finance: This bill set maximum guidelines for departmental biennial budget requests. Up to a two year increase in the total percentages of CPI and population would be the cap for growth. Special circumstances and legislative mandates could cause the caps to be exceeded. Five other states now use the total of CPI and population growth to cap increases. There were too many questions as to how to apply these growth factors to pass the bill now. Material from the other states has been insufficient in setting benchmarks, thus the recommendation of interim study. Vote 20-0.

HB 1409-FN-A-L, relative to payment of autopsy expenses and making an appropriation therefor. **OUGHT TO PASS WITH AMENDMENT**

Rep. Robert L. Wheeler for Finance: The Committee felt that since there was no money for this appropriation and the Attorney General has gone to the fiscal committee to resolve financial difficulties in this area the last two times they occurred, that solution should continue. The amendment removes the appropriation and leaves the policy intact. Autopsy expenses will be competing for dollars in the next biennial budget. Vote 18-1.

Amendment (2734h)

Amend the title of the bill by replacing it with the following:

AN ACT relative to payment of autopsy expenses.

Amend the bill by replacing all after section 2 with the following:

3 Effective Date. This act shall take effect July 1, 2003.

AMENDED ANALYSIS

This bill changes the procedures for payment of autopsy expenses by the state and by counties.

HB 1437-FN-A, relative to increasing the staff in the consumer protection and antitrust bureau of the department of justice and making an appropriation therefor. **OUGHT TO PASS WITH AMENDMENT**

Rep. MaryAnn N. Blanchard for Finance: This bill, as amended, creates positions in the Consumer Protection and Antitrust Bureau of the A.G.'s office. It further removes the appropriation and changes the effective date to July 2003. It is expected that funding these positions will be part of the next budget preparation for the A.G.'s office. The need for financial support for this Bureau was clearly demonstrated in a study by the Commerce Committee regarding the changing nature and amount of consumer fraud. Vote 18-0.

Amendment (2776h)

Amend the title of the bill by replacing it with the following:

AN ACT relative to increasing the staff in the consumer protection and antitrust bureau of the department of justice.

Amend the bill by replacing all after section 1 with the following:

2 Effective Date. This act shall take effect July 1, 2003.

AMENDED ANALYSIS

This bill allows for the addition of 3 attorneys, 2 paralegals, and one legal secretary to the staff in the department of justice, consumer protection and antitrust bureau.

Senate Committee

Date: 4/3/02
Time: 3:05 P.M.
Room: 104,LOB

The Senate Committee on Executive Departments and Administration held a hearing on the following:

HB 1437-FN-A (New Title) relative to increasing the staff in the consumer protection and antitrust bureau of the department of justice.

Members of Committee present: Senator Russell E. Prescott, D. 19
Senator Robert B. Flanders, D. 7
Senator Gary R. Francoeur, D. 14

The Chair, Senator Russell Prescott, opened the hearing by calling on the prime sponsor, Representative Marshall Quandt.

Rep. Quandt: Thank you very much Mr. Chairman, honorable members of the Committee. I do have a last minute Amendment that has been requested by the Attorney General's office that I would like to pass around (See **Attachment #1**). Actually, Assistant Attorney General Steve Judge will address that Amendment. I believe it is pretty much germane to... You know along time ago back when I was in Sunday school, the one thing that the Minister taught me was, Quandt, shut up, count your blessings and go away quietly.

Mr. Chairman, this Bill is one of three Bills that came out of a very in-depth, intense Study Committee that took place over the summer and we probably met ten or twelve times dealing with consumer protection issues. The Committee was comprised, naturally, of Senators and State Reps. Some of the things that we found and this was the first time the State of New Hampshire, in an organized manner, actually took a look at the consumer protection effort in the state of New Hampshire.

I think that they have been with us somewhere in the vicinity of over 20 years and they have had increased staff, decreased staff, whatever. But, one

of the things that we found which was quite amazing was the number of staff they have and the number of complaints they deal with. They run the Consumer Protection Division of the Attorney General's Office, if my understanding is correct, with approximately two and a half lawyers and thirteen volunteers to handle in the vicinity of 20,000 written and verbal and telephonic complaints a year.

How they are able to do the job that they are doing right now, absolutely amazes me; how they are able to bring in a few hundred thousand dollars a year that the State of New Hampshire (inaudible) because of settlement, amazes me. Out of their two and a half lawyers, one of them is detailed for the Anti-Trust Division, which is becoming more and more prevalent in New Hampshire. We did a Study Committee on a hospital business practices which Mr. Chairman, you were a member of and the Study Committee reported, basically, I can't say direct, but in the strongest words possible, requested the Anti-Trust Division or the Consumer Protection Division to investigate some very serious complaints that were brought before the Committee.

What we are asking for here is three lawyers, 2 paralegals and a secretary. There was some frustration with dealing with the Committee and dealing with increasing the staff of the Consumer Protection Division because some of the lobbyists representing various interests said, you give them more staff they are going to go out and do their job and they may do sting operations. Well, if you go from two and a half attorney to five or five and a half attorneys handling 20,00 complaints, you are still not going to be having a lot of time to go out and do sting operations; you are only going to be able to respond to issues a little bit better than they are responding to now.

We heard some testimony from the Attorney General's Office that some configuration of the assignment of staff, which I don't think we should get into, we know they need the staff, we would like to see them get the staff but we shouldn't tell them how to use them. But one of the issues that they brought up was education, that in the long run should reduce the number of complaints because people will know the do's and don'ts; we had to learn the hard way and boy I will tell you that I still have some lumps and bumps on buying my first cars and doing things like that.

We have issues such as lease and rental agreements, buying cars, any kind of credit issues. Education tells people what to look for and not look for. That is just some of it, we have Assistant Attorney General Kris Spath here that can talk about the technical issues and probably be more exact on the numbers. The reason this Bill came in the way it did is this Bill being a product of a Study Committee in the second year; the budget had already gone through.

I personally went to Neil Kirk and said Neil, what do we do, and he said that he was aware of the issues with the shortage of staff and the Consumer Protection Division and he suggested that we do the Bill asking for the staff and next year they are going to have to fight over the funding in the new budgetary cycle, and we said fine, and that is why we are not here on this Bill asking for money.

They are going to have to go before the full financial process in the next budgetary cycle to justify these positions. But we will have said, we believe that you should have these positions. I think I have pretty much covered what we have done and I know you guys have been working hard today and you are running a little behind so I will keep my info short.

Senator Russell E. Prescott, D. 19: Senator Flanders?

Senator Robert B. Flanders, D. 7: Just one question. My memory serves me right, we discussed many ways of funding it, one was designated funds and so on. I believe our testimony was that whatever the cost of these addition to staff are, they will bring in that amount of money and more to cover the cost of the additional staff that will come back into the general fund, is that what we heard?

Rep. Quandt: Yes, Senator Flanders. I think that what we heard was that with a couple more lawyers there would be more settlement money that should...I don't think that there is anything that says it will... but will offset the cost. We didn't want to try and go for designated funds of a half million or a million dollars a year because that is just too much to ask for. So we did it this way to let the Consumer Protection Division and the AG go before the House and the Senate Finance and justify it with an understanding that this money has been coming in.

Look at some of the money that has been brought into the State through these types of settlements, the tobacco settlement. I could stand to be corrected but I don't think that we gave the AG Office any money for bringing in that tobacco settlement. They do the work, the money comes in, it goes into the general fund, they go before the Finance like they did the last time and ask for 11 new Assistant AG's, they turn around and give them 4.

I have been in the Criminal Justice field for about 33 years and I don't mean to say anything and make light of it but here you have a person with a lemon

law issue, here you have the Hanover area with two people getting butchered, guess where the Attorney General's resources go? They don't just send one lawyer up there, they send a team with investigators and Police. The resources constantly get shifted back and forth. Consumer Protection has a tendency to come out a little bit light. It is almost like trying to hold a perimeter under enemy attack, you have to shift your resources to meet your threats. We would like to see this given to the AG's Office to the Consumer Protection Division. We don't think that we are asking for anything excessive. Thank you, that concludes my testimony.

Senator Russell E. Prescott, D. 19: Thank you very much for your testimony. Any questions?

Rep. Quandt: Thank you Mr. Chairman, honorable members.

Senator Russell E. Prescott, D. 19: Thank you. Any other sponsors of the Bill wish to speak on behalf of the Bill?

Rep. Quandt: Mr. Chairman, Representative Spiess had a three o'clock meeting in Manchester, he just wanted to put his name down and say that he was for the Bill.

Senator Russell E. Prescott, D. 19: Very good.

Senator Robert B. Flanders, D. 7: Mr. Chairman, I am also a sponsor of the Bill and I am signed up in favor of it but do not wish to speak.

Rep. Langley: I'm a sponsor of the Bill and in the interest of time, I am not going to speak.

Senator Russell E. Prescott, D. 19: Thank you.

Rep. Langley: But, I have worked with the Attorney General's Office.

Senator Russell E. Prescott, D. 19: For the record, Robert Blaisdell, New Hampshire Trail Lawyers is signed up in favor of the Bill. Kristin Spath?

Kristine Spath: Thank you. I am Kristin Spath; I am the Bureau Chief of the Consumer Protection and Anti-Trust Bureau. I thought I would just give you a few of the statistics that Representative Quandt discussed and explain why when asked by the Study Committee to identify where our deficiencies were, how we came up with the positions that we have asked for.

In the last biennium the Consumer Bureau did handle over 35,00 calls and received over 6,000 written complaints. We successfully mediated close to 3,000 compliant of individual consumers who had individual complaints with businesses and were able to recover almost 400,000 dollars for these consumers. And, this mediation is done by 13 volunteers, and they actually field the complaints that come in, contact the business and the consumer and mediate the cases; without their help there is no way that we would be able to reach 1/3 of those consumers, so it is a great program.

We have also been some what active in multi-state settlements, and this is an opportunity where we get to sign on with other states, usually through the National Association of Attorney Generals and sometimes through the Federal Trade Commission and it allows us the opportunity to pool our resources with other states which allows us to gain the benefit of some settlement agreements with some companies that we would not be otherwise be able to go after; we wouldn't have the resources to do so.

And by way of example, in the last biennium, we were involved in 5 multi-state cases, in those 5 cases we were able to recover \$100,000 in Attorney's fees which came to the general fund. We also did recover in a Publisher ClearingHouse settlement over a million dollars for New Hampshire consumers, they are in the process of receiving restitution. With a Readers Digest sweepstakes case, \$41,000 was returned to New Hampshire consumers. In another United States purchasing exchange, another sweepstakes, over 100,000.00 was returned to New Hampshire consumers.

One of the areas where we certainly believe that an additional Attorney position would be very fruitful financially is with the multi-state settlements. There are many offers to participate in multi-state settlements that we have been unable to except simply because of resource issues. We have not had the staff to expend on them and a lot of times it isn't a lot of staff time but it can be cumbersome as far as monitoring conference calls. Occasionally there is a request for a monetary contribution towards investigative costs through all the states. But generally speaking it is my estimation that if we had

another attorney that could focus their time on that alone, that we would probably be able to recover 10 to 15 settlement through multi state efforts and that would bring in another 150,000, roughly just in attorney's fees. So, I think that the benefit would be great.

The Consumer Protection Bureau does have very divers responsibilities under the statute. We have enforcement, investigative and regulatory obligations. Not only are we tasked with making sure that there is not unfair and deceptive business practices but we are tasked to resolve individual consumer complaints. We are required to monitor and have registered all health clubs in the state, all condominiums and sub-divisions have to be registered with us. We are responsible for all of the Anti-trust laws, buying clubs, distributorships, pharmacy discount cards, all have to register with us. We are responsible for fair net collection, making sure that debt collectors are acting appropriately under the law. So, are obligations are diverse.

When the Study Committee met, one of the things they did ask was to identify, as I said, where are deficiencies are. And I identified 3 areas where I felt we really...not only to fill our obligations but to go beyond them where we would have the ability to do so with some additional positions. And loosely, I identified one position for the Attorney, being the multi-state actions and to pick up anti-trust actions. We do feel that we are gaining an expertise in this area and are obligated and ready to go forward very aggressively on any anti-trust violations.

The other position is as Representative Quandt talked about is Consumer outreach and education. We have been amazed at the response that we have received. We have set up a High School program for Seniors and Juniors, where we go out and speak to High School Junior and Senior classes about what we have identified as the 3 areas that they seem to get in trouble the most early on and that is buying their first car, using their first credit card, renting their first apartment and purchases on the internet.

This year alone, we have already been to 10 different High Schools. We are doing this again, mostly with our volunteers who tend to be retired business men and women and then we will send usually a paralegal to the school as well; again, we are taking time away from the other duties but we really think that the Outreach ahead of time has and will continue to make a real impact.

The other area that we have identifies with our outreach is our senior citizens. We try to speak to as many senior citizens groups around the state as we can. We think that they outreach to them is extremely important. We do get a lot of complaints from senior citizens, particularly having received

telemarketing calls. And, we feel that the outreach and education program would also allow us to do regular consumer tips on the television. But, basically we would like to be able to have office hours around the state and reach a lot of the population that can't get to us.

The third area in what where we would see, probably be a attorney in marketing in compliance. I'm sorry to say, our sorely lacking in our ability to enforce is in advertising. Every single day there are many, many ads on the radios, on the TV, in the newspaper that are false and misleading. Every week there are advertisements in your Sunday flyers for goods that you go to the store and it rings up the wrong price or they tell you that they don't have any or on the first day of the sales they happen to be all out.

There are many, many areas where we would like to be able to monitor and bring to task the many, many violation that we know that are out there. It is very difficult for me on a daily basis when I read the newspaper or see a ad not to jot down the information and go back and see if we have had a complaint against the person or that Company. And up to now, it has been hit or miss, if one of us happens to see something then we will send a letter or inquire further or see what we can do.

But with a full-time position, we would be able, I think to, really send a message; number one, to advertisers in the State of what their responsibility is and that we will not tolerate misleading and unfair and deceptive practices on behalf of the consumers of New Hampshire. And that is really the three areas where we would put our efforts should we have the luxury of having some more positions and we would appreciate your help. Thank you.

Senator Russell E. Prescott, D. 19: Thank you very much. Senator Flanders?

Senator Robert B. Flanders, D. 7: Something that we discussed in Committee was one of my pet peeves was few and fewer banks were being bought up coming to the Banking Commission and a lot of complaints coming in about interest rates and mortgage loans that are coming out of, there are people up north coming down and signing mortgages in hotel rooms and they are going back up north and this is the type of thing that you just don't even have time for.

Kristine Spath: We don't. And actually, one of things, as a result of this Study Committee that we have done though is, we just started a joint task Committee with the Department of Safety and Banking and the Department

of Insurance to at least pool our resources to try and look more deeply into these. And that was exactly the result of our hearing.

Senator Robert B. Flanders, D. 7: That was a great Study Committee, I enjoyed working with you on that.

Kristine Spath: We appreciated it.

Senator Russell E. Prescott, D. 19: Thank you very much. Steve Judge?

Steve Judge: Thank you. For the record, my name is Steve Judge; I am the Deputy Attorney General. I promise I will brief. On the merits of the Bill as it came over from the House, we accept the challenge that we hope you give us. This Bill does not contain another preparation for these positions. I look forward to working with Kris, going through the budget process and justifying them.

I will take issue with one thing she just said, I hope you are able (I won't be able)(?) to convince the budget writers that it is not a luxury, it is a necessity for us to have these key positions.

Senator Robert B. Flanders, D. 7: She knew she shouldn't have said that.

Kristine Spath: I knew I shouldn't of said that with my boss around.

Steve Judge: Thank you, you gave me the opening I was looking for.

Senator Robert B. Flanders, D. 7: We will take that off the record.

Steve Judge: What I want to address, particularly is the Amendment that has been offered today and explain what the problem is that we are trying to address and then why it is that we are here at this point in time. What we have is a law office administrator in my office, he has been there for quite a long time; his name is Mark Thompson, he has been a classified employee and since the reorganization of the office in 1985, he has been at labor grade

32, he has been maxed out for more than 15 years at that position. As a result of the raises that just went through that improve the labor grades, he is now a labor grade 33 as of December of last year.

His duties include what you would think an administrator in a law office would have to do. He has got a ten million agency budget, we have a 130 employees, he would probably be happy that 55 of them are lawyers and they are not the easiest people in the work to deal with but I won't tell you that. In addition to that though, what is unusual about his position is that he is, since 1985, been the repository for Federal funds that come in on grants in this State. Since 85, he has brought in about a hundred million dollars of Federal grants; at the current time, he is running 40 million worth of Federal grants and that affects us all in many, many different ways.

Two examples, two recent examples; you may have read in the paper and you may just be well aware of it that the State has received 14 million dollars to expand YDC down in Manchester and get some new bed space down there. Mark Thompson is the one who went to Washington, figuratively speaking, talked to Washington, and convinced Washington that there was a grant out there that, boy, unless you looked at it really, really hard, you wouldn't think it would allow us to do this but Mark looked at it really, really hard and convinced that people in Washington because of the long relationships that he has had with them to give New Hampshire the money to start to do this.

Today, he went with me to Governor Council and testified about a 320 thousand grant that came in that is going to the Department of Safety to help with finger printing identification that will have a network that goes to the County correction facilities that you have heard a lot about today so that when people come in, take their fingerprints and immediately know what kind of trouble you might have to expect. He appears in front of Governor Council, he appears to testify in Senate and House Committee hearings. He does, essentially, the same sort of things that Directors of Administration do for other State agencies, the difference is he's classified now at labor grade 33, they are unclassified and now at section GG in the statute.

Another difference is, he makes 63 thousand dollars a year, they make 75 thousand a year. So, what we are trying not to do is take this position, change it from a classified, labor grade 33 position into an unclassified, GG position. The amendment does not change the Bill at all, as it came over from the House. It does not add any money to the Bill because whether or not he gets a raise is something that we will have to deal with the Governor Council about. This Bill in and of itself only changes him from a classified position to an unclassified position and it puts him at the same level as all the other Directors of Administration.

Now, I promised I would tell you why we are here today. We raised this issue more than a year ago, it was part of the discussion with the hay group and the unclassified salary study. And, we thought that the issue had actually been taken care of because when the statute that came out, RSA 94 was Amended, there is in the statute, in GG, a position, and the Department of Justice called Director and until December or there about of last year, I had thought that that was Mark's position, it had been taken care of.

It turns out that what happened is, as you may know, the attorneys in the office were handled separately than the rest of unclassified employees, there is a brand new salary structure that is in place for them. One of our attorneys is the director of charitable trusts, he is in the attorney section of the statute but the director position is also in the regular GG section of the statute, so there is an item there that actually there is nobody in the position. So once we learn that it has not been taken care of, our next thought was we will try to address in the classified system. I spent some time talking with Don Hill and his suggestion was that there really isn't the right thing to do is to make him a classified.

We found a piece of legislation... Representative Dyer is here and he has been very helpful in... a piece of legislation that I foolishly identified as perhaps the right vehicle to do this with, but unfortunately we learned last Thursday that it wasn't the right vehicle. Since then I have had some discussions with the Senate President's office, the with Senator D'Allesandro and Representative Quandt who is kind enough to make the amendment today, Senator D'Allesandro is the one who will put it together for us yesterday, that is what brings us here at this late date.

Obviously I wish we had done this earlier but we tried a number of different ways to make this happen. So, I would ask for your support for this. As I said, there is no (inaudible) money, this is not creating a new position, it is just changing a long time state employee who really deserves to get the pay that others that are doing the same job as he is. Give us a opportunity again, to go to Governor Council and argue that he shouldn't be getting a different salary. I would be happy to answer any questions.

Senator Russell E. Prescott, D. 19: Any questions from the committee?
Senator Francoeur?

Senator Gary R. Francoeur, D. 14: Can you explain what, right now he is classified?

Steve Judge: Yes.

Senator Gary R. Francoeur, D. 14: And you want him to go to unclassified?

Steve Judge: That is right/

Senator Gary R. Francoeur, D. 14: What is he in right now under classified?

Steve Judge: What labor grade is he? 33. So the max for that labor grade is 72, the max for the unclassified labor grade we want to put him in is 75, so that is not that much difference.

Senator Gary R. Francoeur, D. 14: GG has only 1 slot, it doesn't have years of service it automatically moves you to 75, doesn't it?

Steve Judge: No, I don't believe so. First of all, this bill doesn't address Mark Thompson specifically at all; all it does is allow the Attorney General to go to Governor of Council to seek to have somebody appointed; to tell you that that is who we would seek to have appointed. We could request Governor of Council, a salary, we will not request the max. If you are referring to the statute that caused people to automatically got to max, I don't think that that applies to this. It is not our plan to seek maximum.

Senator Gary R. Francoeur, D. 14: But you are not sure (inaudible)?

Steve Judge: To be honest with you, I haven't thought about it until you just raised the question. That statute is part of 941A. I can tell you that our opinion was that it didn't apply to anybody that got maximum. So, I think that we would not be inconsistent with that opinion. And since that we are not going through fiscal for this request, I don't see any reason why... and mark is the one who had told me that he does not want maximum, he wants us to go less than that because he wants the Governor of Council to look favorably upon it.

Senator Gary R. Francoeur, D. 14: I'm just looking at that, you already this and you already ended up once (inaudible)...

Steve Judge: I understand that. I guess all that I can say to you is that my office... because I think you know... issued a opinion that said that that particularly statutory provision did not require that all of the unclassified go to maximum and that opinion has never as a legal matter has never been challenged. I understand that there were different opinions that and obviously the legislature is going to follow whose ever opinion they want, here we are not talking about a legislative role in the selection of the salaries, this is purely executive branch. So, I will tell you that we will follow that opinion and we will not see maximum.

Senator Gary R. Francoeur, D. 14: Even though the legislature decides in the best interest of the state?

Steve Judge: The legislature has every ability to do that but the legislature doesn't have a role to play once this law is enacted; it's only a executive branch decision.

Senator Russell E. Prescott, D. 19: Any further questions? Thank you.

Steve Judge: Thank you.

Senator Russell E. Prescott, D. 19: For the record, Janet Monahan from the New Hampshire Medical Society voted in favor of the bill not wishing to speak. Anyone else here wish to testify on behalf of House Bill 1437? Seeing none, we will close the hearing on House Bill 1437. Thank you all for coming.

Hearing Closed at 3:30 P.M.

Respectfully Submitted,

Amy Lynn Reczko
Committee Secretary.



Sen. D'Allesandro, Dist. 20
April 2, 2002
2002-3205s
05/10

Amendment to HB 1437-FN-A

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT increasing the staff in the consumer protection and antitrust bureau of the
4 department of justice and establishing a director of administration in the office of
5 attorney general.
6

7 Amend the bill by replacing all after section 1 with the following:

8

9 2 Department of Justice; Law Office Administrator. RSA 21-M:3, VI is repealed and reenacted
10 to read as follows:

11 VI. The attorney general may appoint, subject to confirmation by the governor and council,
12 an unclassified director of administration for the office of attorney general, within the limits of the
13 appropriation made for the appointment, who shall serve for a 5-year term. The director of
14 administration may be removed only as provided by RSA 4:1.

15 3 Unclassified Officers; Position Added. Amend RSA 94:1-a, I(b) by inserting in Grade GG the
16 following new position:

17	Grade	Agency	Position
18	GG	Department of justice	director of administration

19 4 Effective Date.

20 I. Section 1 of this act shall take effect July 1, 2003.

21 II. The remainder of this act shall take effect July 1, 2002.



2002-3205s

AMENDED ANALYSIS

This bill authorizes the addition of 3 attorneys, 2 paralegals, and one legal secretary to the staff in the department of justice, consumer protection and antitrust bureau.

The bill also changes the position of law office administrator in the department of justice to the unclassified position of director of administration.

Senate Journal

Referred to the Finance Committee (Rule #24).

HB 1437-FN-A, relative to increasing the staff in the consumer protection and antitrust bureau of the department of justice. Executive Departments and Administration Committee. Vote 3-2. Ought to pass, Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: I rise to recommend on behalf of the Executive Departments and Administration Committee that HB 1437 be voted ought to pass. House Bill 1437 allows for the additional of three attorneys, two paralegals and one legal secretary for the staff in the Attorney General's office Consumer Protection and Anti Trust Bureau. The House amended the bill to remove the appropriation and changed the effective date to July, 2003. It is expected that the funding for these positions will be part of the next budget preparation for the Attorney General's Office. The need for financial support for this bureau has been clearly demonstrated during the committee testimony. We heard that this bureau currently has two and a half attorneys and 13 volunteers, that last year handled 35,000 verbal complaints, 6,000 written complaints and successfully mediated 3,000 situations. For these reasons, the committee recommends this bill ought to pass. Thank you Mr. President.

SENATOR BARNES: Senator D'Allesandro, did I hear you say that this is not going to affect the budget this year?

SENATOR D'ALLESANDRO: That is correct.

SENATOR BARNES: The hiring freeze won't affect this because it will be hopefully...

SENATOR D'ALLESANDRO: Yes, because these would be recommendations for the next operating budget.

SENATOR BARNES: But it says 2003 in here. That has been changed? That is going to be changed?

SENATOR D'ALLESANDRO: The bill as amended stripped out...the bill that came from the House stripped out all of the financing for this, so it is just a policy situation. All of that was taken out of the bill that we got from the House.

SENATOR BARNES: I hear you and I certainly believe you. Here again, it is here in front of us and this is what we are voting on, what is written on this paper, not what we have heard has happened.

SENATOR D'ALLESANDRO: I can only reiterate what the testimony was before our committee and there is not "shall", it is "may" in the legislation.

SENATOR BARNES: Thank you.

SENATOR FRANCOEUR: I am one of the two votes that was against this. I just think that it is important when we are here in session, in a nonbudget year to approve of positions with no monies. This is a joke to the people that we are representing that are out there. This should come forth in a year that we have the budget, not as a separate item in a year with...and then turn around and appropriate no money in it. I suppose that this makes you feel good that yes, you approved some positions, but you didn't fund them, then we will come in next time and we will sit with the budget. We will say that we have all of these positions but they are not filled, but we need the money for them. So you are going to hear it next time. I just feel that this is just encouraging

department after department to come in here and tell us their story and then turn around and give them no money, but oh, we gave you the positions. I think that this really puts a burden on everybody here next time, to say that we have these positions, but they weren't filled. I think that especially in a year where here we are, we met this week, where we are approximately \$60 million in the hole and we turn around and approve positions that if we believe that they should be approved, then put the money forth with them. If you don't have the money, why put the positions there? Deal with them at the time that the budget is there. I would ask that the Senate turn down this ought to pass and do the right thing. Tell the people that we are not playing a shell game here, but we really don't have the money so we aren't approving any positions. Thank you.

SENATOR FLANDERS: I served on the study committee that came up with this bill. The reason that we didn't put any money into this bill is because it is a nonbudget year. I would like to report that what we have asked the attorney general's office to do, after we studied it, we determined that these are the people that they need. You have to remember that any addition to staff in the attorney general's office, as far as attorney's are concerned, that money will be returned as far as fees are concerned. We were told that we were not able to get involved into a lot of the bigger lawsuits with other states because we just don't have the manpower to do it. What we are saying from the study committee is that this is what our study shows that we need, now you go to the budget people and you show them that from the addition of this staff that they are going to pay for themselves, and let the budget people decide whether to go in or not. All that we did in the study committee is say yes, our study committee shows this is what...we would have loved to have funded it. We wouldn't be talking about it today if we would have funded it. So what we are saying is that this is what the study says, this is what they need. We want you people to know that this is what they need. They have 13 people over there taking complaints and they fall through the cracks. Nothing happens to them. I have forgotten the figure, Senator D'Allesandro, the money that...the fees that we got out of the tobacco settlement, if we could get involved in more things like that this will pay for itself. So let's pass this and let everybody know what they need over there and let them come and present their case to the budget people and say that they need this much money, but we are going to bring this much money in. I urge you to pass this. Thank you.

SENATOR D'ALLESANDRO: I agree with Senator Francoeur, I think that he makes a good point. You shouldn't propose things that you can't fund. In the original piece of legislation, there were monies from the monies recovered from litigation that funded these positions. The House in their wisdom sought to extract that from the bill. But as a policy, when you get 35,000 complaints, when you get 6,000 written complaints, and when you are successfully able to mediate at least 3,000 of those, there is solid rationale to do this. We were also told in testimony that the office that is currently operating has recovered hundreds of thousands of dollars through these suits, but you know what the House's attitude is towards restrictive funds. We were going to take the money recovered from these suits to fund these positions, of course that made sense. Obviously, the House didn't accept that. That was sensible. That is how to fund the positions. They were funded by the action that was taking place.

So what we wanted to do was to make a statement that we want to protect the public. We realized that with the people that we have now, they are doing a job but they can't do the kind of job that needs to be done and that was our sentiment. Thank you Mr. President.

SENATOR LARSEN: I rise to support Senator Flanders and Senator D'Allesandro. We know that our office of Consumer Protection is currently actually being operated with volunteers answering phones. Senator Flanders has taken the time to study this issue and I think that we ought to recognize that time spent. I also think that there are times when the legislature can make a statement that we need to fill these positions and that it will be a stronger statement when it becomes budget time and we need to fund those, stronger than the department coming in and saying that we would like them, which all of the departments come in and say. This in fact, could be legislative approval for them to pursue this. We heard that it will in fact bring in revenues to support those positions. I think that we ought to vote yes on this.

Recess.

Out of Recess.

Question is on the motion of ought to pass.

A roll call was requested by Senator Francoeur.

Seconded by Senator Barnes.

The following Senators voted Yes: Burns, Below, McCarley, Flanders, Disnard, Fernald, O'Hearn, Pignatelli, Larsen, Gatsas, O'Neil, D'Allesandro, Wheeler, Hollingworth, Cohen.

The following Senators voted No: Gordon, Johnson, Boyce, Roberge, Eaton, Francoeur, Barnes, Prescott, Klemm.

Yeas: 15 - Nays: 9

Adopted.

Referred to the Finance Committee (Rule #24).

HB 1455-FN-L, establishing portability of a person's qualifying retirement funds for the purchase of permissive service credit in the New Hampshire retirement system. Executive Departments and Administration Committee. Vote 5-0. Ought to pass, Senator Flanders for the committee.

SENATOR FLANDERS: I rise on behalf of the ED & A Committee that HB 1455 is ought to pass. This bill originally was referred to us by the town of Rye. The bill went through the House and was passed and then it came to our committee. By the time that it came to the Senate Committee they realized that because of problems with the town of Rye, they did not qualify for the New Hampshire Retirement System. In our testimony, we heard that there may be as many as 50 other towns and cities that might be eligible to join the New Hampshire Retirement Program. For that reason, we decided to vote ought to pass to leave this avenue open for those cities and towns that might want to join the New Hampshire Retirement System; therefore, there is no...at this time there is no financial burden on the state, this is a local decision. It would be made locally and we ask that you vote ought to pass.

Adopted.

(d) The commissioner of the department of revenue administration, or designee.

(e) The comptroller of the division of accounting services, department of administrative services, or designee.

(f) Three members of the business community with expertise in business and economics, appointed by the governor.

(g) Two members of the academic community, appointed by the governor.

II. Members of the panel shall serve without compensation, except that legislative members of the panel shall receive mileage at the legislative rate when attending to the duties of the panel.

III. Legislative members of the panel shall serve a term coterminous with their term in office. Members from the executive branch shall serve a term coterminous with their appointment. Members from the private sector shall serve a 3-year term.

17-Q:3 Duties. The panel shall:

I. Monitor revenue estimating variables such as employment, population, interest rates, income, and other indices as are appropriate.

II. Provide periodic revenue estimates available to both the legislative and executive branches of government.

17-Q:4 Chairperson; Quorum. The members of the panel shall elect a chairperson from among the members. The panel shall adopt rules for its procedures and meetings. Six members of the panel shall constitute a quorum. In conducting its business, the panel may solicit relevant information and testimony from a variety of sources, including:

- I. The legislative budget assistant.
- II. The commissioner of the department of revenue administration.
- III. The commissioner of administrative services.
- IV. The commissioner of the department of transportation.
- V. The commissioner of the department of safety.
- VI. The commissioners of the state liquor commission.
- VII. The commissioner of the department of insurance.
- VIII. The commissioner of the department of health and human services.

17-Q:5 Report. The panel shall provide quarterly reports of its findings and recommendations on November 1, February 1, May 1, and August 1 to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, the chairs of the house and senate ways and means and finance committees, and the state library. The first such report shall be filed on November 1, 2003.

155:2 Repeal. Chapter RSA 17-Q, relative to the consensus revenue estimating panel, is repealed.

155:3 Effective Date.

I. Section 2 of this act shall take effect May 1, 2005.

II. The remainder of this act shall take effect 60 days after its passage.

(Approved: June 17, 2003)

(Effective Date: I. Section 2 of this act shall take effect May 1, 2005. II. The remainder of this act shall take effect August 16, 2003.)

CHAPTER 156 (HB 816)

AN ACT MAKING TECHNICAL CORRECTIONS TO THE SECURITIES LAWS.

Be it Enacted by the Senate and House of Representatives in General Court convened:

156:1 Securities; Definition of Agent. Amend RSA 421-B:2, II(d) and (e) to read as follows:

(d) Effecting transactions in securities registered by notification under RSA 421-B:12 if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state;

(e) Effecting other transactions, if such individual is an officer or director of the issuer, no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state, and upon application, such individual is specifically authorized by name in an order issued by the secretary of state; or

(f) Effecting transactions under RSA 421-B:11, I-a(e), if such individual is an officer or director of the issuer to whom no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

156:2 New Section; Securities; Suitability of Recommendation; Reasonable Grounds Required. Amend RSA 421-B by inserting after section 3 the following new section:

421-B:3-a Suitability of Recommendation; Reasonable Grounds Required.

I. In recommending to a customer the purchase, sale, or exchange of a security, a broker-dealer or broker-dealer agent must have reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by the customer after reasonable inquiry as to his or her other security holdings and as to his or her financial situation and needs.

II. Before the execution of a transaction recommended to a noninstitutional customer, other than transactions with customers where investments are limited to money market mutual funds, a broker-dealer, salesperson, investment adviser, or investment adviser representative shall make reasonable efforts to obtain information concerning:

- (a) The customer's financial status.
- (b) The customer's tax status.
- (c) The customer's investment objectives.

(d) Such other information used or considered to be reasonable by the broker-dealer, salesperson, investment adviser, or investment adviser representative in making recommendations to the customer.

156:3 New Paragraphs; Post-Licensing Provisions; Confidentiality; Examination Expenses. Amend RSA 421-B:9 by inserting after paragraph V the following new paragraphs:

VI. All reports pursuant to this section shall be absolutely privileged and although filed in the department as provided in paragraph V shall nevertheless not be for public inspection. The comments and recommendations of the examiner shall also be deemed confidential information and shall not be available for public inspection, except as the secretary of state in his or her discretion may deem advisable.

VI-a. The broker-dealer or other person examined pursuant to this section shall bear the expense of the examination. Such expenses shall be limited to a reasonable per diem allowance for compensation and expenses as determined by the secretary of state. The per diem allowance shall not exceed \$100. Notwithstanding any other provision of law, domestic issuer-dealers shall be exempt from bearing the expense of examinations conducted pursuant to this section, except for the mileage expenses to and from the examination incurred by the department.

156:4 Securities; Denial, Revocation, and Withdrawal of License. Amend RSA 421-B:10, IV to read as follows:

IV. If the secretary of state finds that any licensee or applicant for license is no longer in existence or has ceased to do business as a broker-dealer, issuer-dealer, agent, or investment adviser, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the secretary of state may by order revoke the license or deny the application. The secretary of state may deem abandoned and withdrawn any application for licensure made pursuant to this chapter, if any applicant fails to respond in writing within 90 days to a written request from the secretary of state requesting a response.

156:5 Registration of Securities; Filing Requirements. Amend RSA 421-B:11, I-a (e)(4) and (5) to read as follows:

(4) The name of any registered broker-dealer who will effect transactions in this state;

(5) The fee pursuant to RSA 421-B:31, I(h); and

(6) A statement indicating the date on which the first sale in this state of covered securities under section 18(b)(4)(D) of the Securities Act of 1933 occurred.

156:6 Regulation of Securities; Provisions Applicable to Registration Generally. Amend RSA 421-B:15, II-a to read as follows:

II-a. Issuers of securities registered under this chapter shall provide quarterly financial reports within 60 days of the end of each quarter to their shareholders, partners, and members. Such quarterly reports need not be independently audited.

156:7 New Paragraph; Securities; Provisions Applicable to Registration Generally; Criteria for Withdrawal of Registration Statement. Amend RSA 421-B:15 by inserting after paragraph XIV the following new paragraph:

XV. The secretary of state may deem abandoned and withdrawn any registration statement submitted pursuant to this chapter if any registrant fails to respond

in writing within 90 days to a written request from the secretary of state requesting a response.

156:8 Securities Regulation; Exemption From Registration; Withdrawal of Registration. Amend RSA 421-B:17, III to read as follows:

III. The secretary of state may issue an order requiring any person who claims the benefit of an exemption with respect to a specific security or transaction, to show cause why the exemption should not be revoked. The order shall be calculated to give reasonable notice of the time and place for the revocation hearing, and shall state the reasons for the entry of the order. The secretary of state may by order summarily suspend, deny or revoke an exemption pending final determination of any order to show cause, provided the secretary of state finds the public interest will be irreparably harmed by delay in issuing such an order. If an exemption is denied, revoked or suspended pending final determination of an order to show cause, a hearing on the merits shall be held within 10 days of the issuance. The secretary of state may deem abandoned and withdraw any filing made pursuant to this section, if any person fails to respond in writing within 90 days, to a written request from the secretary of state requesting a response.

156:9 Securities; Investigations and Subpoenas; Application by Secretary of State. Amend RSA 421-B:22, III to read as follows:

III. In the event that a person refuses to obey a subpoena issued to him or her or any order or determination the secretary of state is authorized to make, the superior court, upon application by the attorney general or secretary of state or any officer designated by the secretary of state, may issue to the person an order directing him or her to appear before the attorney general or secretary of state, or the officer designated by him or her, to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

156:10 Securities; Cease and Desist Orders; Injunctions; Receivers. Amend RSA 421-B:23 to read as follows:

421-B:23 Cease and Desist Orders; Injunctions; Receivers.

I. Whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order under this chapter:

(a) The secretary of state shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. The order shall be calculated to give reasonable notice of the rights of the person to request a hearing on the order and shall state the reasons for the entry of the order. The order shall be served at the last known address of such person. Service of the order and publication of the order in a newspaper of general circulation in the area of the last known address of such person shall serve to duly notify the person of the order and of the right to a hearing on the order. A hearing shall be held not later than 10 days after the request for such hearing is received by the secretary of state after which and within 20 days of the date of the hearing the secretary of state shall issue a further order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be conducted in accordance with the rules adopted pursuant to this

chapter. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, such person shall be deemed in default, and the proceeding may be determined against him or her upon consideration of the cease and desist order, the allegations of which may be deemed to be true. If the person to whom a cease and desist order is issued fails to request a hearing within 30 calendar days of receipt of such order, but in any case no later than 60 calendar days from the issuance of the order, then such person shall likewise be deemed in default, and the order shall, on the thirty-first day from the receipt of the order and no later than the sixty-first day from the issuance of the order, become permanent and shall remain in full force and effect until and unless later modified or vacated by the secretary of state, for good cause shown. The secretary of state may adopt rules of procedure concerning all proceedings conducted pursuant to this section;

(b) The attorney general or secretary of state or his or her designee may, with or without prior administrative action by the secretary of state, bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted. In addition, the court may issue an order for other appropriate or ancillary relief, to include an asset freeze, accounting, writ of attachment, writ of general or specific execution, and an appointment of a receiver or conservator, that may be the administrator, for the defendant or the defendant's assets. The court shall not require the attorney general or secretary of state to post a bond; and

(c) The attorney general or secretary of state or his or her designee may bring an action for injunctive relief and civil penalties for violations of any provision of this chapter. In any action brought by the attorney general or secretary of state or his or her designee, the civil penalties shall not exceed \$5,000 for each violation in the case of knowing violations, or \$2,500 for each violation in the case of negligent violations, and each of the acts specified shall constitute a separate violation. The action may be brought in the superior court of the county in which the defendant resides or has his or her principal place of business, or, with the consent of the parties or if the defendant is a nonresident and has no place of business within the state, in the superior court of Merrimack county.

II. In a proceeding in superior court under this section where the state prevails, the secretary of state and the attorney general shall be entitled to recover all costs and expenses of investigation, and the court shall include the costs in its final judgment.

156:11 New Paragraph; Administrative Penalty; Investor Education; Fine for Violation of Cease and Desist Order. Amend RSA 421-B:26 by inserting after paragraph III-a the following new paragraph:

III-b. Notwithstanding any provision to the contrary, violation of a cease and desist order may result in an administrative fine not to exceed \$2,500 per day for as long as such violation continues. This fine shall be in addition to any other penalties provided.

156:12 Securities; Fees; Reference Change. Amend RSA 421-B:31, I(f) to read as follows:

[2003]

- (f) Registration fee prior to offers or sales of securities in this state.

2/10 of one percent of the offering securities in this state. Value of the securities offered in the registration statement, provided said fee shall not be more than \$1,050, plus a \$200 non-refundable examination fee.

156:13 Securities; Fees; Reference Change. Amend RSA 421-B:31, I(k) to read as follows:

- (k) Initial notice filing fee prior to offers or sales of covered securities under sections 18(b)(4)(C) and 18(b)(3) of the Securities Act of 1933.

2/10 of one percent of the offering value of the securities offered in the registration statement, provided said fee shall not be more than \$1,050, plus a \$200 non-refundable initial notice fee.

156:14 Securities; Fees; Reference Change. Amend RSA 421-B:31, II(f) to read as follows:

- (f) Annual notice filing fee for offers or sales of covered securities under sections 189(b)(4)(C) and 18(b)(3) of the Securities Act of 1933.

2/10 of one percent of the offering value of the securities offered in the registration statement, provided said fee shall not be more than \$1050

156:15 Securities; Fees; Reference Change. Amend RSA 421-B:31, II(i) to read as follows:

- (i) Annual registration fee for securities offered in this state, due one year from the effective date of registration, and each year thereafter:

2/10 of one percent of the offering value of the securities offered in the registration statement, provided said fee shall not be more than \$1,050.

156:16 Securities; Fees; Reference Change. Amend the introductory paragraph of RSA 421-B:31, III to read as follows:

III. In addition to any other penalties, provisions, or fees prescribed under this chapter, a late filing fee of 1/10 of one percent of the offering value of (1) securities offered in the registration statement, or (2) an offering of federal covered securities, provided said fee shall not be more than \$525, shall be imposed if:

156:17 Disclosure of Security Takeovers; Requirement of Financial Disclosure; Clarification of Material Terms. Amend RSA 421-A:3 to read as follows:

421-A:3 Requirement of Financial Disclosure. No offeror shall make a takeover bid unless as soon as practicable on the date of commencement of the takeover bid the offeror files with the secretary of state and the target company a registration statement containing the information required by RSA 421-A:4 and publicly discloses the material terms of the offer, including the total number and class of securities sought in the offer and the type and amount of consideration offered to security holders. The registration statement filed with the secretary of state shall be accompanied by such fees as may be prescribed under RSA 421-A:9. The offeror shall provide the target company with any amendments or revisions to the registration statement at the same time that such amendments or revisions are filed with the secretary of state.

156:18 Registration Statements for Takeovers; Contents of Registration Statement. Amend RSA 421-A:4 to read as follows:

421-A:4 Contents of Registration Statement. The registration statement required to be filed pursuant to RSA 421-A:3 shall include:

I. Copies of all prospectuses, brochures, advertisements, circulars, letters or other matter by means of which the offeror proposes to disclose to offerees all information material to a decision to accept or reject the offer.

II. The identity and material background information of all persons on whose behalf the acquisition of any equity security of the target company has been or is to be effected, including, but not limited to:

(a) If the offeror is a corporation, complete information on the organization and operations of offeror, including without limitation the year of organization, form of organization, jurisdiction in which it is organized, a description of each class of the offeror's capital stock and of its long term debt, audited balance sheets and income statements for each of the 3 most recent fiscal years and, if the most recent balance sheet and income statement are for a period ending more than 90 days prior to the date of filing, an interim balance sheet and income statement covering the period from the date of the last audited balance sheet and income statement filed hereunder to a date within 90 days of the date of filing, an explanation of losses reflected in the required income statements, a brief description of the location and general character of the principal physical properties of the offeror and its subsidiaries, prior acquisitions, a description of threatened legal action, threatened legal proceedings, or pending legal proceedings, to which the offeror or any of its subsidiaries, officers, directors, or key personnel is or may be a party or of which any of their property is the subject, a brief description of the business done and projected by the offeror and its subsidiaries and the general development of such

business over the past 5 years, a listing of all properties leased by the offeror, a listing of all intellectual property rights owned by the offeror, the number of employees of the offeror, the wages, salaries and other remuneration of the management of the offeror, the names of all directors, executive officers and key personnel, including principal and beneficial owners of greater than 10 percent of the offeror's stock, together with biographical summaries of each for the preceding 5 years, to date, and the approximate amount of any material interest, direct or indirect, of any of the directors or officers in any material transaction during the past 3-years, or in any proposed material transactions to which the offeror or any of its subsidiaries was or is to be a party.

(b) If the offeror is not a corporation, information concerning the background of the person, including:

(1) His or her current principal occupation and employment and the name, principal business, and address of any corporation or other organization in which the employment or occupation is conducted.

(2) Material business activities and affiliations during the past 3 years, giving the starting and ending dates of each and the name, principal business, and address of any corporation or other organization in which the occupation, position, office, employment, or affiliation was conducted.

(3) A description of any material pending legal or administrative proceeding in which he or she is a party.

III. The source and amount of all funds or other consideration, whether direct or indirect used or to be used in acquiring any equity security, including a statement describing any securities, other than the existing capital stock or long term debt of the offeror, which are being offered in exchange for the equity securities of the target company, and if any part of the acquisition price is or will be represented by borrowed funds or other consideration, a description of the material terms of any financing arrangements, including the names of the parties from whom the funds were borrowed, the term, the collateral, the stated and effective interest rates, and any other material terms or conditions of the loan. Any plans or arrangements to finance or repay the loan, or if no such plans or arrangements exist, shall be disclosed. Any alternative financing arrangements or alternative financing plans in the event the primary financing plans fall through, or the fact that no such arrangements or plans exist, shall be disclosed.

IV. A statement of any plans or proposals which the offeror, upon gaining control, may have to liquidate the target company, sell its assets, effect a merger or consolidation of it, or make any other major change in its business, corporate structure, management personnel, or policies of employment.

V. The number of shares of any equity security of the target company of which each offeror is beneficial or record owner or has a right to acquire, directly or indirectly, together with the name and address of each person defined in this chapter as an offeror.

VI. Particulars as to any contracts, arrangements or understandings to which an offeror is party with respect to any equity security of the target company, including, without limitation, transfers of any equity security, joint ventures, loans or option arrangements, puts and calls, guarantees of loan, guarantees against loss,

guarantees of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into.

VII. A description of any court or governmental proceeding in which the offeror has been disapproved or enjoined and of any pending court or governmental proceeding in which it is alleged that the offer does not comply with the provisions of the applicable laws or regulations.

VIII. A statement of which other tender offers, subject to section 13, clause (d) or proxy contests subject to section 14 of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.), as amended, the offeror has engaged in within 5 years prior to the offer.

IX. A statement of whether any officer or director of the offeror or the offeror has:

(a) Been convicted within the prior 10 years of a felony or within the prior 5 years in any other criminal proceeding, excluding traffic violations or similar misdemeanors. If the person was convicted, describe the criminal proceeding, including the dates, nature of conviction, name and location of the court, and the penalty imposed or other disposition in the case; or

(b) Been subject of a judgment, decree or final order, including a description of the proceeding with a summary of the terms of judgment, decree, or final order, entered by a court or governmental agency with respect to laws relating to:

- (1) Antitrust,
- (2) Fair employment practices,
- (3) Purchase or sale of securities, or
- (4) Environmental protection, or

(c) Been subject of a disciplinary action such as, but not limited to, a censure, reprimand, or warning, by a non-governmental body commonly known as a self-regulatory organization, or SRO, such as, but not limited to, the National Association of Securities Dealers, the New York Stock Exchange, or the American Stock Exchange.

X. A statement of risk factors related to the transaction for security holders of the target company.

XI. Such other and further documents, exhibits, data, and information as may be required by regulations of the secretary of state or as may be necessary to make fair, full, and effective disclosure to offerees of all information material to a decision to accept or reject the offer. If any material change occurs in the facts set forth in the registration statement required by RSA 421-A:3, the offeror who filed such statement shall promptly notify the secretary of state and the target company of such change and shall amend the registration statement to reflect such change within 10 days of the change.

156:19 Disclosure of Security Takeovers; Scheduling of Public Hearing; Offeror and Target Companies As Parties. Amend RSA 421-A:5 to read as follows:

421-A:5 Scheduling of Public Hearing. Within 20 days after the filing of a registration statement pursuant to this chapter, the secretary of state shall com-

mence his investigation and order a hearing, if he determines a hearing is necessary or appropriate for the protection of offerees in this state, for the purpose of determining compliance with the requirements of this chapter and whether the offeror has provided full and fair disclosure to the offerees of all material information concerning the takeover bid including the filing of a complete and accurate registration statement. Any hearing shall include the offeror and the target company as parties, and shall commence within 25 days after the filing of a registration statement.

156:20 Effective Date. This act shall take effect 60 days after its passage.

(Approved: June 17, 2003)

(Effective Date: August 16, 2003)

CHAPTER 157 (HB 825)

AN ACT ESTABLISHING A COMMITTEE TO STUDY METHODS OF SAFELY REDUCING THE PRISON POPULATION IN THE STATE.

Be it Enacted by the Senate and House of Representatives in General Court convened:

157:1 Committee Established. There is established a committee to study methods of safely reducing the prison population in the state.

157:2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the house of representatives, appointed by the speaker of the house.

(b) Two members of the senate, appointed by the president of the senate.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

157:3 Duties. The committee shall study methods of safely reducing the prison population in the state and any other issues involving the prison population.

157:4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

157:5 Report. The committee shall issue an interim report of its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2003, and shall issue a final report on or before November 1, 2004.

157:6 Effective Date. This act shall take effect upon its passage.

(Approved: June 17, 2003)

(Effective Date: June 17, 2003)

**Bill as
Introduced**

HB 816 - AS INTRODUCED

2003 SESSION

03-0896
05/01

HOUSE BILL **816**

AN ACT making technical corrections to the securities laws.

SPONSORS: Rep. Spiess, Hills 47; Rep. Welch, Rock 79; Sen. Peterson, Dist 11

COMMITTEE: Commerce

ANALYSIS

This bill:

I. Narrows the definition of agent to exclude certain individuals who provide the secretary of state with securities notice filings.

II. Defines broker-dealer and agent responsibility with respect to the suitability of recommended securities.

III. Inserts authorization to charge \$100 per diem and other expenses related to a securities broker examination.

IV. Shortens the time period in which the secretary of state may consider a license application withdrawn for lack of information.

V. Clarifies and makes technical corrections to the filing requirements for the registration of securities.

VI. Authorizes the secretary of state, rather than the attorney general, to perform certain investigatory and enforcement functions relative to securities regulation.

VII. Increases the fine for violation of a cease and desist order.

This bill is a request of the department of state.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struckthrough.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT making technical corrections to the securities laws.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Securities; Definition of Agent. Amend RSA 421-B:2, II(d) and (e) to read as follows:

2 (d) Effecting transactions in securities registered by notification under RSA 421-B:12 if
3 no commission or other remuneration is paid or given directly or indirectly for soliciting any person
4 in this state; ~~or~~

5 (e) Effecting other transactions, if such individual is an officer or director of the issuer,
6 no commission or other remuneration is paid or given directly or indirectly for soliciting any person
7 in this state, and upon application, such individual is specifically authorized by name in an order
8 issued by the secretary of state~~[-]~~; **or**

9 (f) ***Effecting transactions under RSA 421-B:11, I-a(e), if such individual is an***
10 ***officer or director of the issuer to whom no commission or other remuneration is paid or***
11 ***given directly or indirectly for soliciting any person in this state.***

12 2 New Section; Securities; Suitability of Recommendation; Reasonable Grounds Required.
13 Amend RSA 421-B by inserting after section 3 the following new section:

14 421-B:3-a Suitability of Recommendation; Reasonable Grounds Required.

15 I. In recommending to a customer the purchase, sale, or exchange of a security, a broker-
16 dealer or broker-dealer agent must have reasonable grounds for believing that the recommendation
17 is suitable for the customer upon the basis of the facts, if any, disclosed by the customer after
18 reasonable inquiry as to his or her other security holdings and as to his or her financial situation and
19 needs.

20 II. Before the execution of a transaction recommended to a noninstitutional customer, other
21 than transactions with customers where investments are limited to money market mutual funds, a
22 broker-dealer, salesperson, investment adviser, or investment adviser representative shall make
23 reasonable efforts to obtain information concerning:

24 (a) The customer's financial status.

25 (b) The customer's tax status.

26 (c) The customer's investment objectives.

27 (d) Such other information used or considered to be reasonable by the broker-dealer,
28 salesperson, investment adviser, or investment adviser representative in making recommendations
29 to the customer.

30 3 New Paragraphs; Post-Licensing Provisions; Confidentiality; Examination Expenses. Amend
31 RSA 421-B:9 by inserting after paragraph V the following new paragraphs:

1 VI. All reports pursuant to this section shall be absolutely privileged and although filed in
2 the department as provided in paragraph V shall nevertheless not be for public inspection. The
3 comments and recommendations of the examiner shall also be deemed confidential information and
4 shall not be available for public inspection, except as the secretary of state in his or her discretion
5 may deem advisable.

6 VI-a. The broker-dealer or other person examined pursuant to this section shall bear the
7 expense of the examination. Such expenses shall be limited to a reasonable per diem allowance for
8 compensation and expenses as determined by the secretary of state. The per diem allowance shall
9 not exceed \$100. Notwithstanding any other provision of law, domestic issuer-dealers shall be
10 exempt from bearing the expense of examinations conducted pursuant to this section, except for the
11 mileage expenses to and from the examination incurred by the department.

12 4 Securities; Denial, Revocation, and Withdrawal of License. Amend RSA 421-B:10, IV to read
13 as follows:

14 IV. If the secretary of state finds that any licensee or applicant for license is no longer in
15 existence or has ceased to do business as a broker-dealer, issuer-dealer, agent, or investment adviser,
16 or is subject to an adjudication of mental incompetence or to the control of a committee, conservator,
17 or guardian, or cannot be located after reasonable search, the secretary of state may by order revoke
18 the license or deny the application. The secretary of state may deem abandoned and withdrawn any
19 application for licensure made pursuant to this chapter, if any applicant fails to respond in writing
20 within ~~[180]~~ 90 days to a written request from the secretary of state requesting a response. ~~[Such~~
21 ~~request shall be sent via certified mail to the last known address of the applicant.]~~

22 5 Registration of Securities; Filing Requirements. Amend RSA 421-B:11, I-a (e)(4) and (5) to
23 read as follows:

24 (4) The name of any registered broker-dealer who will effect transactions in this
25 state; ~~[and]~~

26 (5) The fee pursuant to RSA 421-B:31, I(h)~~[-]~~; **and**

27 (6) ***A statement indicating the date on which the first sale in this state of***
28 ***covered securities under section 18(b)(4)(D) of the Securities Act of 1933 occurred.***

29 6 Regulation of Securities; Provisions Applicable to Registration Generally. Amend
30 RSA 421-B:15, II-a to read as follows:

31 II-a. ~~[Every corporation and partnership having securities registered in this state shall,~~
32 ~~within 120 days after the close of its fiscal year, file with the secretary of state annually a financial~~
33 ~~statement audited and certified by an independent certified public accountant. The audited~~
34 ~~statement shall be prepared in accordance with generally accepted accounting principles and such~~
35 ~~other standards as the secretary of state shall adopt by rule.]~~ Issuers of securities registered under
36 this chapter shall ~~[also]~~ provide quarterly financial reports within 60 days of the end of each quarter

1 to their shareholders, partners, and members. Such quarterly reports need not be independently
2 audited. ~~[Filings may be made through the Securities and Exchange Commission's EDGAR system.
3 The secretary of state may extend the time for filing such statement for good cause shown.]~~

4 7 New Paragraph; Securities; Provisions Applicable to Registration Generally; Criteria for
5 Withdrawal of Registration Statement. Amend RSA 421-B:15 by inserting after paragraph XIV the
6 following new paragraph:

7 XV. The secretary of state may deem abandoned and withdrawn any registration statement
8 submitted pursuant to this chapter if any registrant fails to respond in writing within 90 days to a
9 written request from the secretary of state requesting a response.

10 8 Securities Regulation; Exemption from Registration; Withdrawal of Registration. Amend RSA
11 421-B:17, III to read as follows:

12 III. The secretary of state may issue an order requiring any person who claims the benefit of
13 an exemption with respect to a specific security or transaction, to show cause why the exemption
14 should not be revoked. The order shall be calculated to give reasonable notice of the time and place
15 for the revocation hearing, and shall state the reasons for the entry of the order. The secretary of
16 state may by order summarily suspend, deny or revoke an exemption pending final determination of
17 any order to show cause, provided the secretary of state finds the public interest will be irreparably
18 harmed by delay in issuing such an order. If an exemption is denied, revoked or suspended pending
19 final determination of an order to show cause, a hearing on the merits shall be held within 10 days of
20 the issuance. The secretary of state may deem abandoned and withdraw any filing made pursuant
21 to this section, if any person fails to respond in writing within ~~[180]~~ **90** days, to a written request
22 from the secretary of state requesting a response ~~[- such request having been sent via certified mail to
23 the last known address of the person making the filing].~~

24 9 Securities; Investigations and Subpoenas; Application by Secretary of State. Amend
25 RSA 421-B:22, III to read as follows:

26 III. In the event that a person refuses to obey a subpoena issued to him *or her* or any order
27 or determination the secretary of state is authorized to make, the superior court, upon application by
28 the ~~[attorney general]~~ **secretary of state or any officer designated by the secretary of state**,
29 may issue to the person an order directing him *or her* to appear before the ~~[attorney general]~~
30 **secretary of state**, or the officer designated by him *or her*, ~~[thereto]~~ to produce documentary
31 evidence if so ordered or to give evidence touching the matter under investigation or in question.
32 Failure to obey the order of the court may be punished by the court as a contempt of court.

33 10 Securities; Cease and Desist Orders; Injunctions; Receivers. Amend RSA 421-B:23 to read as
34 follows:

35 421-B:23 Cease and Desist Orders; Injunctions; Receivers.

1 I. Whenever it appears to the secretary of state that any person has engaged or is about to
2 engage in any act or practice constituting a violation of this chapter or any rule or order under this
3 chapter:

4 (a) The secretary of state shall have the power to issue and cause to be served upon such
5 person an order requiring the person to cease and desist from violations of this chapter. The order
6 shall be calculated to give reasonable notice of the rights of the person to request a hearing on the
7 order and shall state the reasons for the entry of the order. ***The order shall be served at the last
8 known address of such person. Service of the order and publication of the order in a
9 newspaper of general circulation in the area of the last known address of such person
10 shall serve to duly notify the person of the order and of the right to a hearing on the order.***

11 A hearing shall be held not later than 10 days after the request for such hearing is received by the
12 secretary of state after which and within 20 days of the date of the hearing the secretary of state
13 shall issue a further order vacating the cease and desist order or making it permanent as the facts
14 require. All hearings shall be conducted in accordance with the rules adopted pursuant to this
15 chapter. If the person to whom a cease and desist order is issued fails to appear at the hearing after
16 being duly notified, such person shall be deemed in default, and the proceeding may be determined
17 against him ***or her*** upon consideration of the cease and desist order, the allegations of which may be
18 deemed to be true. If the person to whom a cease and desist order is issued fails to request a hearing
19 within 30 calendar days of receipt of such order, ***but in any case no later than 60 calendar days
20 from the issuance of the order***, then such person shall likewise be deemed in default, and the
21 order shall, on the thirty-first day ***from the receipt of the order and no later than the sixty-first
22 day from the issuance of the order***, become permanent, and shall remain in full force and effect
23 until and unless later modified or vacated by the secretary of state, for good cause shown. The
24 secretary of state may adopt rules of procedure concerning all proceedings conducted pursuant to
25 this section;

26 (b) The ~~[attorney general]~~ ***secretary of state or his or her designee*** may ~~[, with or
27 without prior administrative action by the secretary of state,]~~ bring an action in the superior court to
28 enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under
29 this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or
30 writ of mandamus shall be granted ~~[and a receiver may be appointed for the defendant or the
31 defendant's assets].~~ ***In addition, the court may issue an order for other appropriate or
32 ancillary relief, to include an asset freeze, accounting, writ of attachment, writ of general
33 or specific execution, and an appointment of a receiver or conservator, that may be the
34 administrator, for the defendant or the defendant's assets.*** The court shall not require the
35 ~~[attorney general]~~ ***secretary of state*** to post a bond; and

36 (c) The ~~[attorney general]~~ ***secretary of state or his or her designee*** may bring an
37 action in the name of the state for injunctive relief and civil penalties for violations of any provision

1 of this chapter. In any action brought by the ~~[attorney general]~~ **secretary of state or his or her**
2 **designee**, the civil penalties shall not exceed \$5,000 for each violation in the case of knowing
3 violations, or \$2,500 for each violation in the case of negligent violations, and each of the acts
4 specified shall constitute a separate violation. The action may be brought in the superior court of the
5 county in which the defendant resides or has his **or her** principal place of business, or, with the
6 consent of the parties or if the defendant is a nonresident and has no place of business within the
7 state, in the superior court of Merrimack county.

8 II. In a proceeding in superior court under this section where the state prevails, the
9 secretary of state ~~[and the attorney general]~~ shall be entitled to recover all costs and expenses of
10 investigation, and the court shall include the costs in its final judgment.

11 11 New Paragraph; Administrative Penalty; Investor Education; Fine for Violation of Cease And
12 Desist Order. Amend RSA 421-B:26 by inserting after paragraph III-a the following new paragraph:

13 III-b. Notwithstanding any provision to the contrary, violation of a cease and desist order
14 may result in an administrative fine not to exceed \$2500 per day for as long as such violation
15 continues. This fine shall be in addition to any other penalties provided.

16 12 Securities; Fees; Reference Change. Amend RSA 421-B:31, I(f) to read as follows:

17 (f) Registration fee prior to offers or sales of 2/10 of one percent of the offering
18 securities in this state value of the ~~[issue]~~ **securities**
19 **offered in the registration**
20 **statement** provided said fee shall
21 not be more than \$1,050, plus a \$200
22 non-refundable examination fee.

23 13 Securities; Fees; Reference Change. Amend RSA 421-B:31, I(k) to read as follows:

24 (k) Initial notice filing fee prior to offers or 2/10 of one percent of the offering
25 sales of covered securities under sections value of the ~~[issue]~~ **securities**
26 18(b)(4)(C) and 18(b)(3) of the Securities Act **offered in the registration**
27 of 1933. **statement**, provided said fee shall
28 not be more than \$1,050, plus a
29 \$200 non-refundable initial notice fee.

30 14 Securities; Fees; Reference Change. Amend RSA 421-B:31, II(f) to read as follows:

31 (f) Annual notice filing fee for offers or sales 2/10 of one percent of the offering
32 of covered securities under sections value of the ~~[issue]~~ **securities**
33 18(b)(4)(C) and 18(b)(3) of the Securities **offered in the registration**
34 Act of 1933. **statement**, provided said fee shall not
35 be more than \$1,050

1 15 Securities; Fees; Reference Change. Amend RSA 421-B:31, II(i) to read as follows:

2 (i) Annual registration fee for securities offered 2/10 of one percent of the offering
3 in this state, due one year from the value of the ~~[issue]~~ **securities**
4 effective date of registration, and each **offered in the registration**
5 year thereafter: **statement**, provided said fee
6 shall not be more than \$1,050.

7 16 Securities; Fees; Reference Change. Amend the introductory paragraph of RSA 421-B:31, III
8 to read as follows:

9 III. In addition to any other penalties, provisions, or fees prescribed under this chapter,
10 a late filing fee of 1/10 of one percent of the offering value of (1) ~~[a registered securities issue]~~
11 **securities offered in the registration statement**, or (2) an offering of federal covered securities,
12 provided said fee shall not be more than \$525, shall be imposed if:

13 17 Disclosure of Security Takeovers; Requirement of Financial Disclosure; Clarification of
14 Material Terms. Amend RSA 421-A:3 to read as follows:

15 421-A:3 Requirement of Financial Disclosure. No offeror shall make a takeover bid unless as
16 soon as practicable on the date of commencement of the takeover bid ~~[he]~~ **the offerer** files with the
17 secretary of state and the target company a registration statement containing the information
18 required by RSA 421-A:4 and publicly discloses the material terms of the offer, **including the total**
19 **number and class of securities sought in the offer and the type and amount of**
20 **consideration offered to security holders**. The registration statement filed with the secretary of
21 state shall be accompanied by such fees as may be prescribed under RSA 421-A:9.

22 18 Registration Statements for Takeovers; Contents of Registration Statement. Amend
23 RSA 421-A:4 to read as follows:

24 421-A:4 Contents of Registration Statement. The registration statement required to be filed
25 pursuant to RSA 421-A:3 shall include:

26 I. Copies of all prospectuses, brochures, advertisements, circulars, letters or other matter by
27 means of which the offeror proposes to disclose to offerees all information material to a decision to
28 accept or reject the offer~~;~~.

29 II. The identity and material background information of all persons on whose behalf the
30 acquisition of any equity security of the target company has been or is to be effected, including, but
31 not limited to:

32 (a) If the offeror is a corporation, complete information on the organization and
33 operations of offeror, including without limitation the year of organization, form of organization,
34 jurisdiction in which it is organized, a description of each class of the offeror's capital stock and of its
35 long term debt, audited balance sheets and income statements for each of the 3 most recent fiscal
36 years and, if the most recent balance sheet and income statement are for a period ending more than
37 90 days prior to the date of filing, an interim balance sheet and income statement covering the

1 period from the date of the last audited balance sheet and income statement filed hereunder to a
 2 date within 90 days of the date of filing, ***an explanation of losses reflected in the required***
 3 ***income statements***, a brief description of the location and general character of the principal
 4 physical properties of the offeror and its subsidiaries, ***prior acquisitions***, a description of
 5 ***threatened legal action, threatened legal proceedings, or*** pending legal proceedings, [~~either~~
 6 ~~than routine litigation,~~] to which the offeror or any of its subsidiaries, ***officers, directors, or key***
 7 ***personnel*** is ***or may be*** a party or of which any of their property is the subject, a brief description of
 8 the business done and projected by the offeror and its subsidiaries and the general development of
 9 such business over the past 5 years, ***a listing of all properties leased by the offeror, a listing of***
 10 ***all intellectual property rights owned by the offeror, the number of employees of the offeror,***
 11 ***the wages, salaries and other remuneration of the management of the offeror,*** the names of
 12 all directors [~~and~~], executive officers ***and key personnel, including principal and beneficial***
 13 ***owners of greater than 10 percent of the offeror's stock,*** together with biographical summaries
 14 of each for the preceding 5 years, to date, and the approximate amount of any material interest,
 15 direct or indirect, of any of the directors or officers in any material transaction during the past
 16 3-years, or in any proposed material transactions to which the offeror or any of its subsidiaries was
 17 or is to be a party[;].

18 (b) If the offeror is not a corporation, information concerning the background of the
 19 person, including:

20 (1) ***His or her current principal occupation and employment and the name,***
 21 ***principal business and address of any corporation or other organization in which the***
 22 ***employment or occupation is conducted.***

23 (2) Material business activities and affiliations during the past 3 years, ***giving the***
 24 ***starting and ending dates of each and the name, principal business, and address of any***
 25 ***corporation or other organization in which the occupation, position, office, employment, or***
 26 ***affiliation was conducted.***

27 (3) [~~and~~] A description of any material pending legal or administrative proceeding in
 28 which he ***or she*** is a party [;].

29 III. The source and amount of ***all*** funds or other consideration, ***whether direct or***
 30 ***indirect*** used or to be used in acquiring any equity security, including a statement describing any
 31 securities, other than the existing capital stock or long term debt of the offeror, which are being
 32 offered in exchange for the equity securities of the target company, and if any part of the acquisition
 33 price is or will be represented by borrowed funds or other consideration, a description of the material
 34 terms of any financing arrangements, [~~and~~] ***including*** the names of the parties from whom the
 35 funds were borrowed, ***the term, the collateral, the stated and effective interest rates, and any***
 36 ***other material terms or conditions of the loan. Any plans or arrangements to finance or***
 37 ***repay the loan, or if no such plans or arrangements exist, shall be disclosed. Any***

1 *alternative financing arrangements or alternative financing plans in the event the*
 2 *primary financing plans fall through, or the fact that no such arrangements or plans exist,*
 3 *shall be disclosed.*

4 IV. A statement of any plans or proposals which the offeror, upon gaining control, may have to
 5 liquidate the target company, sell its assets, effect a merger or consolidation of it, or make any other
 6 major change in its business, corporate structure, management personnel, or policies of employment[;].

7 V. The number of shares of any equity security of the target company of which each offeror
 8 is beneficial or record owner or has a right to acquire, directly or indirectly, together with the name
 9 and address of each person defined in this chapter as an offeror[;].

10 VI. Particulars as to any contracts, arrangements or understandings to which an offeror is
 11 party with respect to any equity security of the target company, including, without limitation,
 12 transfers of any equity security, joint ventures, loans or option arrangements, puts and calls,
 13 guarantees of loan, guarantees against loss, guarantees of profits, division of losses or profits, or the
 14 giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or
 15 understandings have been entered into[;].

16 VII. A description of any court or governmental proceeding in which the offer has been
 17 disapproved or enjoined and of any pending court or governmental proceeding in which it is alleged
 18 that the offer does not comply with the provisions of the applicable laws or regulations[;].

19 VIII. A statement of which other tender offers, subject to section 13, clause (d) or proxy
 20 contests subject to section 14 of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.), as
 21 amended, the offeror has engaged in within 5 years prior to the offer[;].

22 IX. A statement of whether any officer or director of the offeror or the offeror has:

23 (a) Been convicted within the prior 10 years of a felony *or within the prior 5 years in any*
 24 *other criminal proceeding, excluding traffic violations or similar misdemeanors. If the person*
 25 *was convicted, describe the criminal proceeding, including the dates, nature of conviction,*
 26 *name and location of the court, and the penalty imposed or other disposition in the case[;]; or*

27 (b) Been subject of a judgment, [ø] decree *or final order, including a description of*
 28 *the proceeding with a summary of the terms of judgment, decree, or final order,* entered by a
 29 court or governmental agency with respect to laws relating to:

- 30 (1) Antitrust,
 31 (2) Fair employment practices,
 32 (3) Purchase or sale of securities, or
 33 (4) Environmental protection, or

34 (c) Been subject of a disciplinary action such as, but not limited to, a censure, reprimand,
 35 or warning, by a non-governmental body commonly known as a self-regulatory organization, or SRO,
 36 such as, but not limited to, the National Association of Securities Dealers, the New York Stock
 37 Exchange, or the American Stock Exchange[;and].

1 X. *A statement of risk factors related to the transaction for security holders of the*
2 *target company.*

3 XI. Such other and further documents, exhibits, data, and information as may be
4 required by regulations of the secretary of state or as may be necessary to make fair, full, and
5 effective disclosure to offerees of all information material to a decision to accept or reject the offer. If
6 any material change occurs in the facts set forth in the registration statement required by
7 RSA 421-A:3, the offeror who filed such statement shall promptly notify the secretary of state and
8 the target company of such change and shall amend the registration statement to reflect such change
9 within 10 days of the change.

10 19 Effective Date. This act shall take effect 60 days after its passage.

House Committee

HOUSE COMMITTEE ON COMMERCE

PUBLIC HEARING ON HB 816

BILL TITLE: making technical corrections to the securities laws.
DATE: March 7, 2003
LOB ROOM: 302 **Time Public Hearing Called to Order:** 10 am
Time Adjourned: 11 am

(please circle if present)

Committee Members: Reps. Hunt, L. Fraser, Francoeur, Belanger, Langley, DiFruscia, D. Flanders, Spiess, Holden, Liebl, Quandt, Charles Clark, Brady, Scamman, Stepanek, Reardon, Kathleen Taylor, Meader, DeStefano, Vachon and Kopka.

Bill Sponsors: Reps. Spiess and Welch and Sen. Petersen

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

***Rep. Paul Spiess, prime sponsor** –He is unable to attend but submitted written testimony.

Mark Connolly & Jeff Spill, Bureau of Securities Regulation, NH Attorney Generals Office – Housekeeping measure. Introduced new members of staff. Changes made apply to 421A and 421B. Will make department more effective and they will be able to utilize their resources in a better way. Went through the VII steps of this bill. This is not intended to exclude the AG's Office but to expedite the process. Gave figures on how many bankers/financial advisers they serviced last year-\$100 fee not unreasonable. Explained various fees. Looking for more uniformity. Changed proposed 421A. Clarify what information that must be given on registration statement. Changes modeled in federal regulations. Authority of Secretary of State's Office re: enforcement action would enable rapid action to get information into the courts and freeze assets, etc.

Chairman John Hunt – Said originally this authority was in the Securities Division, then the authority went to the AG's Office, and now we are being asked to grant the authority back to Securities Division.

Mark Connolly – Fees would make the department more uniform with other states. An estimated reduction of \$15,000 in state revenue. Not from bill.

Q: Rep. Sheila Francoeur – Questioned how they would determine the Secretary of State's Office could handle enforcement or to go to AG's.

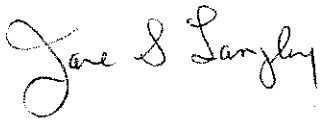
A: If possible they would like to make a decision and go right forward if they felt the need.

Suzanne Gorman, NH Attorney General's Office – Section 9 her only concern. A very good relation with the two departments. AG's Office has legal authority to all departments in New

Hampshire. Can't anticipate problems. Bill should be written to include AG as well as Sec. Of State. Would certainly hope AG and Secretary of State's Office would work together. "Appearance before" section should also include both AG and Secretary of State.

Chairman Hunt – Requests both departments get together and agree on the wording, re: enforcement.

Respectfully Submitted:

A handwritten signature in cursive script that reads "Jane S. Langley". The signature is written in dark ink and is positioned above the typed name.

Jane S. Langley, Clerk

**TESTIMONY BEFORE HOUSE COMMERCE COMMITTEE
MARCH 7, 2003
HB816
MAKING TECHNICAL CORRECTIONS TO SECURITIES LAWS AND
ENHANCING THE POWERS OF THE SECRETARY OF STATE.**

Good morning Mr. Chairman and members of the Committee. For the record, I am Representative Paul Spiess, Hillsborough 47, representing the towns of Amherst and Milford. I regret that I am unable to present this testimony in person, but I believe that it is important for you to understand my reasons for sponsoring this bill.

This bill has been introduced at the request of the Secretary of State's office. It is a companion bill to HB815, which you just heard. HB816 makes numerous technical corrections to existing securities laws. Rather than describe these changes in my remarks, I will let the representatives of the Secretary's office testify to the specifics of the bill.

I would, however, like to point out the relatively important changes embodied in sections 9 and 10 of the bill. Section 9 (page 3) grants to the Secretary (or his designee) the right to petition the Superior Court directly to compel testimony and produce requested documentation. This will accelerate the Secretary's ability to obtain information in a timely basis. Section 10 (page 3, 4 and 5) allows the Secretary of State to petition the court directly for appropriate orders to protect assets. Both these sections alleviate the requirement to work through the Attorney General's office to achieve court action in a timely manner.

Once again, if the Secretary of State believes that he needs enhanced powers to supervise and regulate business conduct, we should listen.

Thank you for your consideration of this bill.

Frasier

This bill has been introduced at the request of the Secretary of State's office. **

IT does the following things

I. Narrows the definition of agent to exclude certain individuals who provide the secretary of state with securities notice filings.

II. Defines broker-dealer and agent responsibility with respect to the suitability of recommended securities.

III. Inserts authorization to charge \$100 per diem and other expenses related to a securities broker examination.

IV. Shortens the time period in which the secretary of state may consider a license application withdrawn for lack of information.

V. Clarifies and makes technical corrections to the filing requirements for the registration of securities.

VI. Authorizes the secretary of state, rather than the attorney general, to perform certain investigatory and enforcement functions relative to securities regulation.

VII. Increases the fine for violation of a cease and desist order.

~~This bill is a request of the department of state.~~

The Attorney General's office in their testimony was only concerned with one section of the bill

This was addressed in the comment so that where in all sections where the Secretary of State was created, that was changed to the Attorney General or the Secretary of State

(JBL)

The final changes ~~are~~ ^{once} ~~are~~ the
take over bid filing is complete
and accurate, The hearing
shall include the offer and
The largest company as parties
and shall commence within
25 days after the filing of the
Registration Statement



Amendment to HB 816

1 Amend the bill by replacing sections 9 and 10 with the following:

2

3 9 Securities; Investigations and Subpoenas; Application by Secretary of State. Amend
4 RSA 421-B:22, III to read as follows:

5 III. In the event that a person refuses to obey a subpoena issued to him *or her* or any order
6 or determination the secretary of state is authorized to make, the superior court, upon application by
7 the attorney general *or secretary of state or any officer designated by the secretary of state*,
8 may issue to the person an order directing him *or her* to appear before the attorney general *or*
9 *secretary of state*, or the officer designated by him *or her*, [~~thereto~~] to produce documentary
10 evidence if so ordered or to give evidence touching the matter under investigation or in question.
11 Failure to obey the order of the court may be punished by the court as a contempt of court.

12 10 Securities; Cease and Desist Orders; Injunctions; Receivers. Amend RSA 421-B:23 to read as
13 follows:

14 421-B:23 Cease and Desist Orders; Injunctions; Receivers.

15 I. Whenever it appears to the secretary of state that any person has engaged or is about to
16 engage in any act or practice constituting a violation of this chapter or any rule or order under this
17 chapter:

18 (a) The secretary of state shall have the power to issue and cause to be served upon such
19 person an order requiring the person to cease and desist from violations of this chapter. The order
20 shall be calculated to give reasonable notice of the rights of the person to request a hearing on the
21 order and shall state the reasons for the entry of the order. *The order shall be served at the last*
22 *known address of such person. Service of the order and publication of the order in a*
23 *newspaper of general circulation in the area of the last known address of such person*
24 *shall serve to duly notify the person of the order and of the right to a hearing on the order.*

25 A hearing shall be held not later than 10 days after the request for such hearing is received by the
26 secretary of state after which and within 20 days of the date of the hearing the secretary of state
27 shall issue a further order vacating the cease and desist order or making it permanent as the facts
28 require. All hearings shall be conducted in accordance with the rules adopted pursuant to this
29 chapter. If the person to whom a cease and desist order is issued fails to appear at the hearing after
30 being duly notified, such person shall be deemed in default, and the proceeding may be determined
31 against him *or her* upon consideration of the cease and desist order, the allegations of which may be
32 deemed to be true. If the person to whom a cease and desist order is issued fails to request a hearing



1 within 30 calendar days of receipt of such order, *but in any case no later than 60 calendar days*
2 *from the issuance of the order*, then such person shall likewise be deemed in default, and the
3 order shall, on the thirty-first day *from the receipt of the order and no later than the sixty-first*
4 *day from the issuance of the order*, become permanent, and shall remain in full force and effect
5 until and unless later modified or vacated by the secretary of state, for good cause shown. The
6 secretary of state may adopt rules of procedure concerning all proceedings conducted pursuant to
7 this section;

8 (b) The attorney general *or secretary of state or his or her designee* may, with or
9 without prior administrative action by the secretary of state, bring an action in the superior court to
10 enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under
11 this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or
12 writ of mandamus shall be granted [~~and a receiver may be appointed for the defendant or the~~
13 ~~defendant's assets~~]. *In addition, the court may issue an order for other appropriate or*
14 *ancillary relief, to include an asset freeze, accounting, writ of attachment, writ of general*
15 *or specific execution, and an appointment of a receiver or conservator, that may be the*
16 *administrator, for the defendant or the defendant's assets.* The court shall not require the
17 attorney general *or secretary of state* to post a bond; and

18 (c) The attorney general *or secretary of state or his or her designee* may bring an
19 action [~~in the name of the state~~] for injunctive relief and civil penalties for violations of any provision
20 of this chapter. In any action brought by the attorney general *or secretary of state or his or her*
21 *designee*, the civil penalties shall not exceed \$5,000 for each violation in the case of knowing
22 violations, or \$2,500 for each violation in the case of negligent violations, and each of the acts
23 specified shall constitute a separate violation. The action may be brought in the superior court of the
24 county in which the defendant resides or has his *or her* principal place of business, or, with the
25 consent of the parties or if the defendant is a nonresident and has no place of business within the
26 state, in the superior court of Merrimack county.

27 II. In a proceeding in superior court under this section where the state prevails, the
28 secretary of state and the attorney general shall be entitled to recover all costs and expenses of
29 investigation, and the court shall include the costs in its final judgment.

30
31 Amend RSA 421-A:3 as inserted by section 17 of the bill by replacing it with the following:

32
33 421-A:3 Requirement of Financial Disclosure. No offeror shall make a takeover bid unless as
34 soon as practicable on the date of commencement of the takeover bid [he] *the offerer* files with the
35 secretary of state and the target company a registration statement containing the information
36 required by RSA 421-A:4 and publicly discloses the material terms of the offer, *including the total*
37 *number and class of securities sought in the offer and the type and amount of*



1 *consideration offered to security holders.* The registration statement filed with the secretary of
2 state shall be accompanied by such fees as may be prescribed under RSA 421-A:9. *The offeror*
3 *shall provide the target company with any amendments or revisions to the registration*
4 *statement at the same time that such amendments or revisions are filed with the secretary*
5 *of state.*

6

7 Amend the bill by inserting after section 18 the following and renumbering the original section 19 to
8 read as 20:

9

10 19 Disclosure of Security Takeovers; Scheduling of Public Hearing; Offeror and Target
11 Companies As Parties. Amend RSA 421-A:5 to read as follows:

12 421-A:5 Scheduling of Public Hearing. Within 20 days after the filing of a registration
13 statement pursuant to this chapter, the secretary of state shall commence his investigation and
14 order a hearing, if he determines a hearing is necessary or appropriate for the protection of offerees
15 in this state, for the purpose of determining compliance with the requirements of this chapter and
16 whether the offeror has provided full and fair disclosure to the offerees of all material information
17 concerning the takeover bid including the filing of a complete and accurate registration statement.
18 Any [initial] hearing shall *include the offeror and the target company as parties, and shall*
19 *commence within 25 days after the filing of a registration statement.*



2003-0771h

AMENDED ANALYSIS

This bill:

I. Narrows the definition of agent to exclude certain individuals who provide the secretary of state with securities notice filings.

II. Defines broker-dealer and agent responsibility with respect to the suitability of recommended securities.

III. Inserts authorization to charge \$100 per diem and other expenses related to a securities broker examination.

IV. Shortens the time period in which the secretary of state may consider a license application withdrawn for lack of information.

V. Clarifies and makes technical corrections to the filing requirements for the registration of securities.

VI. Authorizes the secretary of state or the attorney general to perform certain investigatory and enforcement functions relative to securities regulation.

VII. Increases the fine for violation of a cease and desist order.

VIII. Provides that the offeror and target company shall be parties to any public hearing relative to a security takeover.

This bill is a request of the department of state.

House Journal

7 New Paragraphs: Powers of Attorney: Limitations on the Agent. Amend RSA 506:7 by inserting after paragraph VI the following new paragraphs:

VII. The probate court, prior to authorizing a lifetime gift in a proceeding under this section, shall appoint a guardian ad litem if:

(a) The agent is a beneficiary of a proposed gift that is not in accordance with the principal's personal history of making or joining in the making of lifetime gifts or an estate plan established prior to the principal's incapacity; or

(b) The circumstances of the proposed gift benefit the agent personally or otherwise create a potential conflict of interest between the principal's interests and the agent's personal interests.

VIII. The department of health and human services, county attorney, and the department of justice shall be notified and shall have the opportunity to address the court in any proceeding under this section if:

(a) There is a concern that the proposed gift will pose a risk that the ward will be deprived of sufficient assets to cover his or her needs during any period of medicaid ineligibility that would result from the proposed gift.

(b) There is concern that the principal has been the victim of a crime or has been or is at risk of being abused, neglected or exploited within the meaning of RSA 161-F:43.

8 Effective Date. This act shall take effect January 1, 2004.

HB 807-FN, increasing the filing fees for a fund raising counsel and a paid solicitor of a charitable trust. **OUGHT TO PASS WITH AMENDMENT**

Rep. Kathleen N. Taylor for Commerce: This bill raises the filing fees for a fund raising counsel and a paid solicitor of a charitable trust. The committee heard testimony that many charities reap as little as 2% from a paid phone campaign after all fees are paid to the solicitor. On one occasion the charity raised nothing and had to pay the solicitor over \$1000. The additional fees will support the hiring of a financial analyst in the Attorney General's Office who will oversee these contracts and educate volunteer boards and executive directors of charities on the fine print contained in the contracts and their possible financial ramifications. Vote 13-1.

Amendment (0590h)

Amend the bill by replacing sections 2 and 3 with the following:

2 Paid Solicitor: Charitable Trusts: Fee Increased. Amend RSA 7:28-c, II to read as follows:

II. A paid solicitor shall register with the attorney general prior to engaging in any solicitation. Applications for registration or re-registration shall be in writing, under oath, in the form prescribed by the attorney general, and shall be accompanied by a fee of [~~\$300~~] \$500. The application shall contain such information as the attorney general shall require. Each registration is valid for one year and may be renewed for additional one-year periods upon application and payment of the fee.

3 Solicitor's Notice: Charitable Trusts: Fee Increased. Amend RSA 7:28-c, IV to read as follows:

IV. Prior to the commencement of each solicitation campaign, the paid solicitor shall file with the attorney general a completed "solicitation notice" on forms prescribed by the attorney general. The solicitation notice shall include a copy of the contract described in paragraph IV of this section, the projected dates when soliciting shall commence and terminate, the location and telephone number from where the solicitation shall be conducted, the name and residence address of each person responsible for directing and supervising the conduct of the campaign, a statement as to whether the paid solicitor shall at any time have custody of contributions, and a full description of the charitable program for which the solicitation campaign is being carried out. The charitable trust on whose behalf the paid solicitor is acting shall certify that the solicitation notice and accompanying material are true and complete to the best of its knowledge. The solicitation notice shall be accompanied by a fee of [~~\$75~~] \$200.

HB 816, making technical corrections to the securities laws. **OUGHT TO PASS WITH AMENDMENT**

Rep. Leo W. Fraser Jr. for Commerce: This bill has been introduced at the request of the Secretary of State's Office. It does the following things: (1) Narrows the definition of agent to exclude certain individuals who provide the Secretary of State with securities notice filings; (2) Defines broker-dealer and agent responsibility with respect to the suitability of recommended securities; (3) Inserts authorization to charge \$100 per diem and other expenses related to a securities broker examination; (4) Shortens the time period in which the Secretary of State may consider a license

application withdrawn for lack of information; (5) Clarifies and makes technical corrections to the filing requirements for the registration of securities; (6) Authorizes the Secretary of State, rather than the Attorney General, to perform certain investigatory and enforcement functions relative to securities regulation; and (7) Increases the fine for violation of a cease and desist order. The Attorney General's Office, in its testimony, was only concerned with one section of the bill. This was addressed in the amendment so that in all sections where the Secretary of State was noted, that was changed to the Attorney General or the Secretary of State. The final change is that once the takeover bid filing is complete and accurate, the hearing shall include the offeror and the target company as parties, and shall commence within 25 days after the filing of a registration statement. Vote 13-0.

Amendment (0771h)

Amend the bill by replacing sections 9 and 10 with the following:

9 Securities: Investigations and Subpoenas: Application by Secretary of State. Amend RSA 421-B:22, III to read as follows:

III. In the event that a person refuses to obey a subpoena issued to him *or her* or any order or determination the secretary of state is authorized to make, the superior court, upon application by the attorney general *or secretary of state or any officer designated by the secretary of state*, may issue to the person an order directing him *or her* to appear before the attorney general *or secretary of state*, or the officer designated by him *or her*, [there] to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

10 Securities: Cease and Desist Orders: Injunctions; Receivers. Amend RSA 421-B:23 to read as follows:

421-B:23 Cease and Desist Orders: Injunctions; Receivers.

I. Whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order under this chapter:

(a) The secretary of state shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. The order shall be calculated to give reasonable notice of the rights of the person to request a hearing on the order and shall state the reasons for the entry of the order. *The order shall be served at the last known address of such person. Service of the order and publication of the order in a newspaper of general circulation in the area of the last known address of such person shall serve to duly notify the person of the order and of the right to a hearing on the order.* A hearing shall be held not later than 10 days after the request for such hearing is received by the secretary of state after which and within 20 days of the date of the hearing the secretary of state shall issue a further order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be conducted in accordance with the rules adopted pursuant to this chapter. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, such person shall be deemed in default, and the proceeding may be determined against him *or her* upon consideration of the cease and desist order, the allegations of which may be deemed to be true. If the person to whom a cease and desist order is issued fails to request a hearing within 30 calendar days of receipt of such order, *but in any case no later than 60 calendar days from the issuance of the order*, then such person shall likewise be deemed in default, and the order shall, on the thirty-first day *from the receipt of the order and no later than the sixty-first day from the issuance of the order*, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the secretary of state, for good cause shown. The secretary of state may adopt rules of procedure concerning all proceedings conducted pursuant to this section:

(b) The attorney general *or secretary of state or his or her designee* may, with or without prior administrative action by the secretary of state, bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted [and a receiver may be appointed for the defendant or the defendant's assets]. *In addition, the court may issue an order for other appropriate or ancillary relief, to include an asset freeze, accounting, writ of attachment, writ of general or specific execution, and an appointment of a receiver or conservator, that may be the administrator, for the defendant or the defendant's assets.* The court shall not require the attorney general *or secretary of state* to post a bond; and

(c) The attorney general *or secretary of state or his or her designee* may bring an action ~~[in the name of the state]~~ for injunctive relief and civil penalties for violations of any provision of this chapter. In any action brought by the attorney general *or secretary of state or his or her designee*, the civil penalties shall not exceed \$5,000 for each violation in the case of knowing violations, or \$2,500 for each violation in the case of negligent violations, and each of the acts specified shall constitute a separate violation. The action may be brought in the superior court of the county in which the defendant resides or has his *or her* principal place of business, or, with the consent of the parties or if the defendant is a nonresident and has no place of business within the state, in the superior court of Merrimack county.

II. In a proceeding in superior court under this section where the state prevails, the secretary of state and the attorney general shall be entitled to recover all costs and expenses of investigation, and the court shall include the costs in its final judgment.

Amend RSA 421-A:3 as inserted by section 17 of the bill by replacing it with the following:

421-A:3 Requirement of Financial Disclosure. No offeror shall make a takeover bid unless as soon as practicable on the date of commencement of the takeover bid ~~[he]~~ *the offeror* files with the secretary of state and the target company a registration statement containing the information required by RSA 421-A:4 and publicly discloses the material terms of the offer, *including the total number and class of securities sought in the offer and the type and amount of consideration offered to security holders*. The registration statement filed with the secretary of state shall be accompanied by such fees as may be prescribed under RSA 421-A:9. *The offeror shall provide the target company with any amendments or revisions to the registration statement at the same time that such amendments or revisions are filed with the secretary of state.*

Amend the bill by inserting after section 18 the following and renumbering the original section 19 to read as 20:

19 Disclosure of Security Takeovers: Scheduling of Public Hearing: Offeror and Target Companies As Parties. Amend RSA 421-A:5 to read as follows:

421-A:5 Scheduling of Public Hearing. Within 20 days after the filing of a registration statement pursuant to this chapter, the secretary of state shall commence his investigation and order a hearing, if he determines a hearing is necessary or appropriate for the protection of offerees in this state, for the purpose of determining compliance with the requirements of this chapter and whether the offeror has provided full and fair disclosure to the offerees of all material information concerning the takeover bid including the filing of a complete and accurate registration statement. Any ~~[initial]~~ hearing shall *include the offeror and the target company as parties, and shall* commence within 25 days after the filing of a registration statement.

AMENDED ANALYSIS

This bill:

I. Narrows the definition of agent to exclude certain individuals who provide the secretary of state with securities notice filings.

II. Defines broker-dealer and agent responsibility with respect to the suitability of recommended securities.

III. Inserts authorization to charge \$100 per diem and other expenses related to a securities broker examination.

IV. Shortens the time period in which the secretary of state may consider a license application withdrawn for lack of information.

V. Clarifies and makes technical corrections to the filing requirements for the registration of securities.

VI. Authorizes the secretary of state or the attorney general to perform certain investigatory and enforcement functions relative to securities regulation.

VII. Increases the fine for violation of a cease and desist order.

VIII. Provides that the offeror and target company shall be parties to any public hearing relative to a security takeover.

This bill is a request of the department of state.

HB 817, relative to the regulation of first and second mortgage brokers and mortgage servicers.

ought to pass with amendment

Rep. Leo W. Fraser Jr. for Commerce: This bill is a huge effort by the New Hampshire Banking Department to streamline the process in banking. This legislation, as amended, does the following:

Senate Committee

Date: April 22, 2003
Time: 1:15 p.m.
Room: 103 LOB

The Senate Committee on Banks held a hearing on the following:

HB 816 making technical corrections to the securities laws.

Members of Committee present: Senator Flanders
Senator Barnes

The Chair, Senator Robert B. Flanders, opened the hearing.

I'd like to open the hearing on HB 816. Is there anyone here wishing to testify on HB 816?

Mr. Connolly: Good afternoon. My name is Mark Connolly, Director of Securities Regulation for the Secretary of State's office. Joining me is Jeff Spill who is head of enforcement for the Securities Bureau and Kevin Moquin who heads up our auditing function in the bureau. HB 816 we're characterizing as basically technical corrections to our current securities laws which are 421:A which is the business takeover statute and 421:B which is the general securities enforcement law in the state. I'm going to ask Jeff to speak to some of the highlights of the bill. Essentially what we believe it does is it makes our operation more efficient in terms of how we operate. It tightens up some of the administrative procedures under which we act. It also allows us to act a little more quickly in terms of enforcement activities that we currently engage in. Having said that I'll ask Jeff to jump in and kind of give an overview of the bill.

Jeff Spill, Head of Enforcement for the Secretary of State: As you can see the bill is divided into sections. Section one deals with the sales side of securities. When you think of securities law you think of two sides. There is the sales side and there is the issuing side. When agents sell securities they have to be licensed, however there are some specifically delineated exceptions. Section one allows the bureau to avoid having to qualify those individuals that sell securities pursuant to federal rule 506. The reason being is it was taking up needed resources of the office and since under rule

506 the sale is to credited investors or sophisticated investors our regulatory jurisdiction in that area was not needed.

Section two discusses suitability. It would allow the bureau to take enforcement action when investors purchase securities from sales representatives that are not suitable investments. According to NAST rules, sales individuals must sell securities after doing an analysis of suitability for investor's background in terms of financial status, investment objectives and risk tolerance. When those criteria are not suitable this would allow the bureau to take action as well as and along with any other agencies that regulate sales agents.

Section three Kevin Moquin will address. It involves fees for auditing exams.

Section four allows the bureau to deem abandoned applications for licensure or registration or exemption, which have not been responded to, via the applicants.

Section five allows for in a 506 offering to give the date of the first sale in the State of New Hampshire so that we can regulate when the issuers are making those transactions in our state.

Section six does away with mandatory filing of financial statements annually for registered offerings. We thought that was not needed and a duplication of efforts. Where most registered offerings are filed in coordination with the SEC and are monitored by the SEC and we would leave in the provision that would allow for financial statements to be distributed by issuers to shareholders. So shareholders would have access to that information.

Section seven and section eight also address the abandonment issue and the bureau's ability to deem abandoned filings that are not responded to.

Section nine and ten allows the bureau to take enforcement action along with and in conjunction with the Attorney General's office. This section was addressed by the Attorney General's office over in the house. The initial version of the bill allowed for the Secretary of State's office to have enforcement authority whereas the bill before did not. The amendment allowed for the Secretary of State's office or the Attorney General's office to take enforcement action so the Attorney General's office would not lose jurisdiction. The reason for this requested change is on cases where we needed to act quickly or on cases where the resources of the Attorney General could not provide assistance, the Secretary of State's office would be allowed to go into court and enforce subpoena's, enforce orders of the bureau and to freeze and appoint receivers for assets.

Section eleven increases the penalty that would be allowed to be assessed against violators of any bureau's orders to \$25 per day as opposed to \$25 per violation.

Sections Twelve through sixteen address fees and Kevin Moquin will address those sections.

Section seventeen and section eighteen addresses our takeover statute, which is 421-A. The aspects of the takeover statute that we are requesting change would involve additional disclosure to our office and to shareholders or offeror's making takeover bids to target companies in terms of various aspects of the offer and the condition of the offeror and their ability to provide the appropriate financing to make the offer. Specifically we ask that the offeror state specifically they value and number of shares and class of shares requested to be purchased in the takeover. It would also address hearings for the review process of the bureau in takeovers such that any amendments reviewed by the bureau or requested by the bureau be also provided to the target company and such that if there is a hearing requested by the bureau for review of the takeover registration statement, the offeror and the target company would be parties to that proceeding.

Kevin Moquin, Securities Bureau: Section three of the bill deals with examination fees and expenses. Essentially what we're finding and there's two reasons for this provision. First of all we're finding that there is a lack of an incentive at times for an investment buyer who is a broker dealers to provide documentation, records, that sort of thing rapidly. At one point we were able to collect fees and expenses and that was removed so we're looking for \$100 per diem for the exam fee. We're finding that most states have some provision for recovery of expenses and costs, we don't. We inadvertently removed the recovery of expenses in 2001 so we can't even recover the normal expenses of an exam. So if we have an exam in a far flung location way in the North Country, that can be expensive and it might involve overnight stays in a hotels and that sort of thing that we can't assess the expenses. So we're looking to recover exam fees and expenses.

Section five basically is an attempt to bring some uniformity and fairness specifically to the issue of the fee for registration of bonds. Currently the fee is assessed per issue. We want to change that to the fee being assessed for each registration statement that is offered. The problem being that we're finding that right now as defined, issue currently means each bond series has to be assessed a fee individually we're really one of the only state, if not the only state that does this and we're finding a lot of complaints about this so we'd like to change the fee so that it's assessed on the registration statement

so that each series within the registration statement does not receive its own fee. The fee would remain substantial but reasonable to \$1,250 fee. You'll note in the fiscal note that our fiscal note states that there will be a \$20,000 annual loss in general fund revenue because of this. That's a couple of assumptions. The first assumption that there won't be more registrations because of a more reasonable fee. The other thing that we mistakenly left out was that we are going to be recovering some money through the fee and expenses that we're trying to recover under our examinations. So basically it's a wash. We don't actually have a loss of \$20,000 per year due to that oversight in the fiscal note.

Senator Robert B. Flanders, D. 7: Any questions?

Senator John S. Barnes, Jr., D. 17: Yes, thank you Mr. Chairman You started off by talking about the Secretary of State having no authority.

Mr. Spill: Are you addressing that to me?

Senator John S. Barnes, Jr., D. 17: Yes, one of you gentlemen talked about the Secretary of State if I remember correct.

Mr. Spill: The way the law originally read, when it came to enforcement action, enforcing our own orders or subpoenas or asking a receiver to step in and to freeze assets that jurisdiction was in the Attorney General's office. We found that at times that was cumbersome because at times they were short of resources and could not assist or would have a time delay in assisting. We thought it would be a better use of resources for us to have the authority to act if we needed to act. So this was not taking away authority from the Attorney General's office but allowing us along with the Attorney General's office to have jurisdiction.

Senator John S. Barnes, Jr., D. 17: Thank you. I'm on page three line twenty-seven. It's talking about the Secretary of State. I'm wondering if the Secretary of State has the resources to do what you're asking me to do in this piece of legislation.

Mr. Connolly: What line is that sir?

Senator John S. Barnes, Jr., D. 17: A little historical perspective. The security bureau has basically in the last twelve to fifteen resided in the insurance department and in the enforcement area went over to the Attorney General's office and the legislature back in the early 90's centralized securities under the Department of State. Some of the enforcement law resided within the Attorney General's office but really what's happened in

that intervening time, is that the bureau by example by hiring Jeff and people like Kevin, have taken the expertise in administering 421-B, the securities law. So what's happened is sometimes we've had to issue a subpoena and then we have to work with the Attorney General's office. They don't have people over there who are conversant in 421-B or securities law as we might be so we've actually concerted in the last year hired several individuals we believe allows us to act more efficiently in terms of being able to bring action against registrants or people we believe or companies that should be filed subpoena's against for information.

Senator John S. Barnes, Jr., D. 17: Is that answer a yes or a no?

Mr. Connolly: That's yes. We believe we have the resources to administer this.

Senator John S. Barnes, Jr., D. 17: Thank you.

Senator Robert B. Flanders, D. 7: Any other questions? I'm not sure if this is the place to ask it and I'm not sure if I should but there's no such thing as a stupid question. Is there anything in here that has to do with when a broker is renewing his license? Is there anything in here about that?

Mr. Connolly: No, I don't believe so. Do you think it does Jeff? No.

Senator Robert B. Flanders, D. 7: So in your rewrite here that is not part of it?

Mr. Connolly: No I don't believe any of the language in here directly affects registration brokers.

Senator Robert B. Flanders, D. 7: At some point you may want to look to see when an application to renew licenses is final. The statute now says upon completion of the date of application. When is it complete? When it is received or when the secretary has had all his questions answered? Am I making any sense?

Mr. Connolly: Yes, I think I know what you alluding to.

Mr. Spill: It doesn't address that issue.

Senator Robert B. Flanders, D. 7: Ok. Thank you.

Senator John S. Barnes, Jr., D. 17: I'm on the cover sheet of this piece of legislation, item 3. Inserts authorization to charge \$100. What is it now?

Mr. Connolly: Zero. It's zero. It used to be that we charged \$250.

Mr. Spill: \$275.

Mr. Connolly: What Kevin was alluding to is that we have to go out under statute and audit broker/dealers and what we found is that when you have some incentive for them to deal with you and get you out of there then the audit usually goes pretty fast. Now they don't have to pay any money, we ask for documents and things, there is no incentive in some cases for them to produce documents. We did a scan of all the states and we're one of the only states that doesn't charge for our service if you will. This is actually a third of what we charged just three years ago. So we thought it was a fair number.

Senator John S. Barnes, Jr., D. 17: That certainly makes sense. One other question is on the same page but down to number 7. Increases the fine for violation of a cease and desist order. What are you increasing the fine to?

Mr. Connolly: I'll let Jeff speak to that but basically we have a per fine amount which is \$2,500. This language allows us to assess that a little bit higher over a period of time. It's \$2,500 a day.

Mr. Spill: It would allow a penalty per day of violation and the reason why we wanted to augment that is..

Senator John S. Barnes, Jr., D. 17: That is the where the \$25 per day you were talking about..

Mr. Spill: \$2,500 per day.

Senator John S. Barnes, Jr., D. 17: \$2,500.

Senator Robert B. Flanders, D. 7: You said \$25 per day when you testified.

Mr. Spill: I did say \$25 when I testified?

Senator Robert B. Flanders, D. 7: It will not exceed \$2,500 per day. So you're saying \$2,500 per day. You heard the same as I did, \$25. That's not to exceed, Senator Barnes, it doesn't have to be \$2,500 per day right? Not to exceed that. You will decide what it is going to be per day?

Senator John S. Barnes, Jr., D. 17: Who sets that?

Mr. Spill: It would have to be in a hearings process whereby we would file a petition for a hearing and address the violation of our order at the hearing and request what fine we felt was appropriate for a violation of that order.

Senator John S. Barnes, Jr., D. 17: Thank you very much.

Senator Robert B. Flanders, D. 7: Any other questions? Thank you for your testimony. Are there any sponsors here that would like to speak?

Representative Spiess: I'm sorry I was late.

Senator Robert B. Flanders, D. 7: I have a reputation of always starting on time and I don't want to break that.

Representative Spiess: I've learned my lesson. I will not be a minute late next time. Thank you. For the record I am Representative Paul Speiss representing Hillsborough 47, the towns of Amherst and Milford. I'm the sponsor of the bill. I was asked to bring the bill by the Secretary of State's office. I'm also a member of the Commerce committee that heard the bill. They have given you testimony on the merits of the bill. I would just reflect that the Commerce committee paid particular interest to sections 9 and 10 because the Attorney General's office raised some questions that would make, that they had concerns about. Loosing powers as it relates to issuing subpoenas. We addressed those concerns in an amendment, which they referred to. I believe all parties are now happy with the amended draft of the bill that you have before you. The bill was reported out of Commerce 13-0 so it was strongly supported. There really was no substantive testimony against the bill, just making sure the language of the bill as it related to the powers of both the Secretary of State and the Attorney General's office. I'd be glad to answer any questions.

Senator Robert B. Flanders, D. 7: Thank you. I don't have the sign up sheet. Is there anyone else wishing to speak on HB 816? If not then we'll close the hearing.

Hearing closed at 1:30

Respectfully submitted


Pamela Manocchi
May 5, 2003

Senate Journal

SENATOR BARNES: Trust me, it is a good bill.

SENATOR FLANDERS: What is your question again, quickly?

SENATOR BOYCE: Okay, on page one of the bill, line six and seven, it talks about...it simply says "whether the gift is intended to reduce the words "assets or income" in order to qualify him or her for Medicaid or other governmental benefits." What I don't know is, what that is plugged into. Is that saying that these gifts cannot be approved if the intent is to put somebody into Medicaid or does it say that the gifts can be approved if the intent is to put them into Medicaid? In other words, if somebody has assets that would keep them from going into Medicaid, and this guardian gives away their estate in order to make them a ward of the state and cost to the taxpayers.

SENATOR FLANDERS: This does not allow that to happen. That is the purpose of this bill. So that can't happen. Now that it has caught my attention. This is so that somebody cannot appoint a guardian, take the money and put it somewhere and say okay, now I am ready for Medicaid. This bill prevents that.

SENATOR BOYCE: Okay. I just wanted to be clear. Thank you.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 816, making technical corrections to the securities laws. Banks Committee. Ought to pass, Vote 2-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you Mr. President. As you note the vote on these are 2 to 0, I am wondering if you were able to figure out the two that were there at Banks that day? Thank you Mr. President. I move

HB 816 ought to pass. This bill was requested by the Department of State and makes various changes to the securities laws. These changes will tighten procedures and allow for more enforcement. Corporations and partnerships will no longer have to submit two financial statements, one to the Secretary of State and the other to the SEC (Securities and Exchange Commission). This will now allow them to have to submit one statement to the SEC in order to eliminate duplication. Currently the Secretary of State is able to issue orders such as subpoenas, and so forth and the Secretary of State or his designee will now be able to enforce the same orders issued. This will allow for a more efficient method of enforcement. The Banks Committee asks for your support for the motion of ought to pass. Thank you.

Adopted.

Ordered to third reading.

Senator Sapareto Rule #42 on HB 816.

mtg w/ Spill 6/11/03

lic. mortgage lender &
small loan lender

- issued shares illegally &
promissory notes illegally

- in Meredith, NH

- in a building owned by Trust
controlled by ~~Trust~~
two wife

(TT) he says

- building 1.3 - 1.6 mil \$

- he has indebtedness in the building \$900,000

business holds notes receivable

- would yield about
1.5 ~~mil~~ mil.

best case scenario
(if he in default)

- nego. with business about 1yr ago

- he wanted to accum. enough \$ to

do a recession
↳ so needed time

been 1 yr. - not have the \$

- been expanding the building -
in past 6 mo.

Trusts been enriched

- wife - trustee; kids are beneficiaries

- the notes are 12% interest rates - high

- the receivables - high interest too -
but questionable whether
would collect.

he ~~wants~~ ^{wants} to do pro rata -
recision -

not permitted under the statute

must be total plus 10%

another thing - the shares
- he pays down the debt -

gives it negative value.

Financial Resources and Assistance of the Lakes Region, Inc.

- he brokers loans for a company
- he has indep. files across the
co. - he gives them a
commit

~~His~~
action against him personally
& the company.

Securities
Opisc

TC w/ spill 9/12/06

Lakes Region Financial Resources

↳ considered
~~asset~~ freeze

- had a buy a few yrs ago
- Barry did not render a decision

newspaper calling - Scott Farrow

- had an investment scheme -
investors participate in a
mortgage to
3d party.

↳ parishioner in parish where Scott's
father is minister
↳ wanted their \$ back

- civil suit settled

- newspaper + checking at Securities

last spring - since had ~~to~~
no buy decision

↳ began investigation anew to see
what happening

① - investigation ongoing. (give her public buy records)

9/5/02

mtg w/ Spill

clients w/

- 100,000 prom. notes.

- small broker lender.

- gave the \$ b/c bond getting high interest rate

- she was told the \$ would be invested in mortgages.

investigation:

- the \$ was placed in a general acct

- he is also ~~iss~~ issuing stock

- he had no authority from Bureau of Sec

- and his articles of incorp. do not authorize

Financial Resources & Assistance

↳ heard

Dennis Maloney at Gallagher.

- asked for card. of hwy pending getting what Spill told

- Spill asked for list of shareholders

several court - July 2002
produced the info.

- he's out to investors ~~over~~
2 ~~mil~~ mil.

~~to~~
- only assets he has are
accts, receivable.

- during cease & desist -
he issued additional
stock.

(Spill feels that's a
violation of the
cease & desist.

- could not rescind. b/c he could not
tender the #.

421-A:11, I

* 1) cease & desist order

2) Sect. of state may bring action
to ~~enjoin~~ enjoin

* III officer may bring action to enjoin

421-A:12, I appeal

- may appeal - aggrieved party
w/in 20 days.

RSA 421-A:4, X - material change?
- must amend if material
change in facts.

The State of New Hampshire



Mailing Address

State House Room 204
Concord, New Hampshire 03301-4989
Telephone (603) 271-1463
Facsimile (603) 271-7933

Location

State House Annex
25 Capitol St.
Concord, New Hampshire 03301

Department of State
Bureau of Securities Regulation

6/17/2003

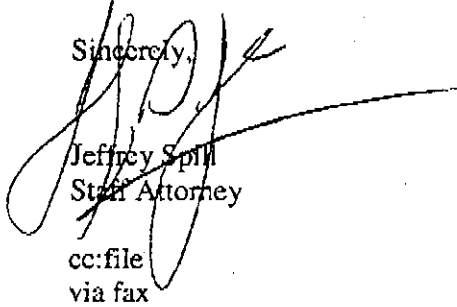
Suzanne Gorman, Esq.
Senior Assistant AG
33 Capitol Street
Concord, NH 03301

Re: Scott Farah and Financial Resources and Assistance of the Lakes Region, Inc.
("FRA")

Dear Suzanne:

This letter is a follow-up to our conversation on 6/12/2003. Thank you for spending the time assisting our office. Yesterday, 6/16/2003, the above named Respondents were notified that negotiations for settlement of the state's claims would terminate and the state will proceed to a hearing on 7/8/2003. The investors were also notified by letter of the same date that there will be a hearing to determine the outcome of the alleged violations of unregistered and unlicensed securities transactions and that we represent the state and not the investors. I will wait to hear from you regarding the issue of securing assets for the benefit of the investors. Our hearing date remains 7/8/2003.

Sincerely,


Jeffrey Spill
Staff Attorney

cc:file
via fax

***** -COMM. JOURNAL- ***** DATE JUN-17-2003 ***** TIME 08:17 *****

MODE = MEMORY TRANSMISSION

START=JUN-17 08:16

END=JUN-17 08:17

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-NH BUREAU SECURITIES -

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THE STATE OF NEW HAMPSHIRE

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Concord, New Hampshire 03301

Department of State
Bureau of Securities Regulation

FAX COVER SHEET

TO: Suzanne Gorman

COMPANY: AG Office

DATE: 6/17/03

FAX NUMBER: 271-2110

FROM: J. Spill

TELEPHONE NUMBER TO CALL IN CASE OF PROBLEMS: 603-271-1463

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 2

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Department of State
Bureau of Securities Regulation

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The State of New Hampshire



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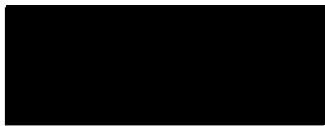
Location

State House Annex
25 Capitol St.
Concord, New Hampshire 03301

Department of State
Bureau of Securities Regulation

January 23, 2003

STATE HOUSE
DEPT OF JUSTICE
03 JUN 12 11:12:43



Re: Scott Farah and Financial Resources and Assistance
of the Lakes Region, Inc. (the "Company")

Dear



6/12/03

Sue Gorman

From: Jeff Spill

"Bureau"), Department of State, Bureau of Securities Regulation, under the Uniform Securities Act RSA 421-B (the "Act"). In connection with our investigation of the above-referenced investment in the Company sold to you and its principal, Scott Farah, have been provided your name and address to the Bureau. We have provided a conditional agreement regarding these

We are not authorized to bring a civil action to the benefit of individual investors. Therefore, you may not bring any claim you may have. We represent that this letter is not for you or provide you with legal or financial advice, nor act as your personal attorney or representative.

Our settlement negotiations with the Company may lead to a formal offer by the Company for you to either confirm or rescind your investment with the Company. If so, you will receive further information from the Company regarding such offer at a later date.

If you have any questions, please call me.

Sincerely,



JS
Jeffrey Spill
Staff Attorney

js/kr

cc:file

The State of New Hampshire



Mailing Address

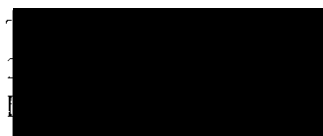
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Location

State House Annex
25 Capitol St.
Concord, New Hampshire 03301

Department of State
Bureau of Securities Regulation

January 23, 2003



Re: Scott Farah and Financial Resources and Assistance
of the Lakes Region, Inc. (the "Company")

Dear [REDACTED]:

The Bureau of Securities Regulation (the "Bureau"), Department of State, State of New Hampshire, is responsible for administering the Uniform Securities Act RSA 421-B (the "Act"). The Bureau has been conducting an investigation of the above-referenced Company with respect to its compliance with the Act. Based upon the results of our investigation, the Bureau believes that your investment in the Company sold to you was done in violation of the Act. The Company and its principal, Scott Farah, have been cooperating with the Bureau, and have provided your name and address to the Bureau. The Bureau and the Company have reached a conditional agreement regarding these alleged violations.

Be advised that in our role as regulator, we are not authorized to bring a civil action to obtain recovery of an investment on behalf of individual investors. Therefore, you may wish to consult a private attorney regarding any claim you may have. We represent the state in this matter, and can neither represent you or provide you with legal or financial advice, nor act as your personal attorney or representative.

Our settlement negotiations with the Company may lead to a formal offer by the Company for you to either confirm or rescind your investment with the Company. If so, you will receive further information from the Company regarding such offer at a later date.

If you have any questions, please call me.

Sincerely,



JS
Jeffrey Spill
Staff Attorney

js/kr

cc:file

STATE OF NEW HAMPSHIRE
BUREAU OF SECURITIES REGULATION
DEPARTMENT OF STATE

IN THE MATTER OF:)	ORDER TO SHOW CAUSE
Scott D. Farah,)	ORDER TO CEASE AND DESIST
Financial Resources and Assistance)	
Of the Lakes Region, Inc.)	INV00-007
and T. Gary Coyne)	
)	
RESPONDENTS)	

NOTICE OF ORDER

This Order commences an adjudicative proceeding under the provisions of RSA 421-B:26-a.

LEGAL AUTHORITY AND JURISDICTION

Pursuant to RSA 421-B:23, the Secretary of State has the authority to issue and cause to be served an order requiring any person appearing to him to be engaged or about to be engaged in any act or practice constituting a violation of RSA 421-B or any rule or order thereunder, to cease and desist from violations of RSA 421-B.

Pursuant to RSA 421-B:24, I, any person who willfully violates a cease and desist order issued pursuant to RSA 421-B:23 shall be guilty of a class B felony.

Pursuant to RSA 421-B:26, the Secretary of State has the authority to suspend, revoke or deny any registration or license and to impose administrative penalties of up to \$2,500.00 for each violation of New Hampshire securities law and rules.

Pursuant to RSA 421-B:26, V, after notice and hearing, the Secretary of State may enter an order of rescission, restitution or disgorgement to any person who has violated RSA 421-B.

Pursuant to RSA 421-B:22,II the Secretary of State may require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the Secretary of State deems relevant or material to an inquiry.

NOTICE OF RIGHT TO REQUEST A HEARING

The above named respondents have the right to request a hearing on this order to cease and desist and order to show cause, as well as the right to be represented by counsel. Any such request for a hearing shall be in writing, shall be signed by the respondents, or by the duly authorized agent of the above named respondents, and shall be delivered either by hand or certified mail, return receipt requested, to the Bureau of Securities Regulation, Department of State, 25 Capitol Street, Concord, New Hampshire 03301.

Under the provisions of RSA 421-B:23, I, if respondents fail to request a hearing on the cease and desist order within 30 calendar days of receipt of this order, respondents shall be deemed in default, and this order to cease and desist shall, on the thirty-first day, become permanent.

Upon request for a hearing being received by the Bureau of Securities Regulation, in the manner and form indicated above, a hearing shall be held not later than 10 days after such request is received by the Bureau, after which hearing, and within 20 days of the date of the hearing, the Secretary of State, or such other person authorized by statute, shall issue a further order vacating or modifying this order, or making it permanent, as the circumstances require.

STATEMENT OF ALLEGATIONS

The allegations contained in the Staff Petition for Relief dated November 5, 2001 (a copy of which is attached hereto) are incorporated by reference hereto.

ORDER

WHEREAS, finding it necessary and appropriate and in the public interest, and for the protection of investors and consistent with the intent and purposes of the New Hampshire securities laws, and

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

It is hereby ORDERED, that:

1. The Respondents are hereby ordered to immediately cease and desist from the above indicated acts and from in any other way violating RSA 421-B;
2. The Respondents are hereby ordered to produce within ten (10) days the requested information as specified in the Staff Petition and letters of the Bureau dated April 19, 2001, May 8, 2001 and May 10, 2001, copies attached.
3. The Respondents are hereby ordered to show cause why the administrative relief, including the penalties, requested in the Staff Petition should not be imposed; and
4. Failure to request a hearing within 30 days of the date of receipt of this Order shall result in a default judgment being rendered and administrative penalties being imposed upon the defaulting Respondents.

SIGNED,
WILLIAM M. GARDNER
SECRETARY OF STATE
BY HIS DESIGNEE:



ROBERT P. AMBROSE
DEPUTY SECRETARY OF STATE

Dated: 11/8/01

STATE OF NEW HAMPSHIRE
BUREAU OF SECURITIES REGULATION
DEPARTMENT OF STATE
CONCORD, NEW HAMPSHIRE

_____)	
)	
STAFF PETITION FOR RELIEF)	
IN THE MATTER OF:)	
)	
Scott D. Farah,)	
Financial Resources and Assistance)	
of the Lakes Region, Inc.,)	No.INV00-007
and T. Gary Coyne)	
)	
Respondents)	
_____)	

STATEMENT OF FACTS

I. The Bureau of Securities Regulation, Department of State, State of New Hampshire (hereinafter referred to as "the Bureau"), hereby petitions the Director, and makes the following statements of fact:

1. Financial Resources and Assistance of the Lakes Region, Inc. (hereinafter "FRA"), is a business entity with a principal office located at 15 Northview Drive, PO Box 1158, Meredith, New Hampshire 03235. FRA was incorporated in the State of New Hampshire on or about 5/18/89. Scott D. Farah (hereinafter "Farah"), is the President and sole owner of FRA. FRA is a licensed New Hampshire mortgage broker and small loan lender engaged in the business of consumer and mortgage lending. T. Gary Coyne (hereinafter "Coyne"), is the sole proprietor of Coyne Associates located at 60 Pleasant Street, PO Box 568, Meredith, New Hampshire 03235. Coyne, is also engaged in the business of consumer and mortgage lending, and during all times material to this petition, his principal office was located at the address of FRA, and he used the letter head and office equipment of FRA. During all times material to this petition, Coyne acted with the apparent and or actual authority of Farah and FRA.
2. On or about January 1996, investor #1, of Pompano Beach, Florida, was introduced to Coyne through a friend. Through a series of phone conversations with Coyne, investor #1 agreed to invest in a series of promissory notes dated 2/26/96, 2/29/96, and 3/19/96. Investor #1 was lead to believe by Coyne, that he was working with FRA. The 2/26/96 note was

issued by Coyne from his office location at FRA in the amount of \$20,000, and investor #1 made a check out to FRA in the amount of \$20,000 for this note. The note has no maturity date and promises to pay investor #1 \$500.00 per month while the note was outstanding. \$500.00 payments were made by Coyne for eleven months and then the payments stopped. Coyne paid back the principal of \$20,000 in December of 1997. The \$20,000 principal was due and payable on demand. The 2/29/96 note was issued by Coyne for \$60,000 from his office at the FRA location, and investor #1 made a check out for \$50,000 to FRA for this note which promises to pay investor #1 \$10,000 in interest plus the principal and was to mature on 6/29/96. The 3/19/96 note was issued by Farah and FRA from the FRA Meredith office location to investor #1 in the amount of \$22,500, and investor #1 wire transferred \$20,000 for this note to FRA. The note was to mature on 5/19/96. Investor #1 was paid \$23,000 on this note on or about 10/25/96.

3. Investor #1 was induced by Coyne to invest in the three promissory notes listed in paragraph 2 through statements by Coyne that the money would be invested in mortgages. In actuality, the money for the 2/26/96 and 3/19/96 notes was placed in the general operating account of FRA and commingled with the funds of FRA for general operating expenses. Neither Coyne, Farah, or any representative of FRA informed investor #1 of this material information.
4. FRA and Farah issued additional promissory notes as follows: On or about 3/5/99, investor #2 was issued a note for \$5,000. On or about 7/2/99, investor #3 was issued a note for \$10,000. On or about 7/2/99, investor #4 was issued a note for \$15,042.61. On or about 8/31/99, investor #5 was issued a note for \$10,000. On or about 2/1/00, investor #6 was issued a note for \$29,000. On or about 2/24/00, investor #7 was issued a note for \$8,000. On or about 2/4/00, investor #8 was issued a note for \$15,000. On or about 3/7/00, investor #9 was issued a note for \$25,000. On or about 4/12/00, investor #10 was issued a note for \$7,000. On or about 6/5/00, investor #11 was issued a note for \$30,000. On or about 6/26/00, investor #12 was issued a note for \$10,000. On or about 6/26/00, investor #13 was issued a note for \$7,000. On or about 7/18/00, investor #14 was issued a note for \$11,000. On or about 9/15/00, investor #8 was issued a note for \$5,000. On or about 10/11/00, investor #15 was issued a note for \$11,310.41. On or about 10/18/00, investor #16 was issued a note for \$179,000. On or about 12/1/00, investor #8 was issued a note for \$20,000, and on or about 1/11/01, investor #17 was issued a note for \$60,000. These notes have a term of repayment ranging from 10 days to indefinite, and a range of effective interest rate from 0% to 119%.
5. During the investigation into the promissory notes listed in this petition, the Bureau, by letters dated 4/19/01, 5/8/01, and 5/10/01, requested additional relevant and material information from Coyne, Farah, and FRA. (The letters

are attached to this petition). The 5/8/01 letter to Coyne was sent certified mail and received by Coyne on 5/10/01. The 5/10/01 letter to Farah and FRA was sent certified mail and received by Farah and FRA on or about 5/14/01. No information was received by the Bureau from Coyne, Farah, or FRA, as a result of those letters.

6. Based on Bureau records, at the time of the issuance of the promissory notes listed in paragraph 4 of the Statement of Facts, Farah and FRA, did not have license or authority to do so by the State of New Hampshire, and the promissory notes were not registered, exempt from registration, or a federal covered security as defined by RSA 421-B.

STATEMENTS OF LAW

II. The Bureau hereby petitions the Director and makes the following statements of law under the New Hampshire Revised Statutes Annotated, RSA 421-B, and regulations thereunder (hereinafter referred to as the Act):

1. Coyne, Farah, and FRA, are each a "Person" within the meaning of RSA 421-B:2.
2. The promissory notes are "securities" within the meaning of RSA 421-B:2.
3. The distribution of the securities listed above constitute "sales" within the meaning of RSA 421-B:2.
4. Farah, and FRA, is an "issuer-dealer" within the meaning of RSA 421-B:2.
5. Pursuant to RSA 421-B:3,II, it is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly: To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading. Coyne violated this section by indicating to investor #1 that the money for the 2/26/96 and 3/19/96 promissory notes listed above would be invested in mortgages and by omitting the actual fact that the money would be deposited in the sole bank account of FRA which was used for the general business operations of FRA. Farah and FRA violated this section by failing to inform investor #1 of this material fact.
6. Pursuant to RSA 421-B:8,III, the Secretary of State may require at any reasonable time and in any reasonable manner from any person or company subject to the chapter, statements, reports, including reports audited by independent public accountants, answers to questionnaires and

other information, and evidence thereof, in whatever form he designates, and at such reasonable intervals as he may choose. Coyne, Farah, and FRA, are in violation of this section for not producing the requested information.

7. Pursuant to RSA 421-B:22,I(f), the Secretary of State may require an issuer to report to him all transactions as they pertain to any security. Such reports shall be made within 10 days after the demand. Coyne, Farah, and FRA, are in violation of this section for not producing the requested information.
8. Pursuant to RSA 421-B:22,II, for the purpose of any investigation, hearing or proceeding under RSA 421-B, the secretary of state or any officer designated by him may subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the secretary of state deems relevant or material to the inquiry. Coyne, Farah, and FRA, are in violation of this section for not producing the requested information.
9. Pursuant to RSA 421-B:11, I, it is unlawful for any person to offer or sell any security in this state unless it is registered under RSA 421-B, exempt under RSA 421-B:17, or a federal covered security for which the fee has been paid and notice has been filed as required by RSA 421-B:11,I-a. Farah, and FRA, are in violation of this section for distributing securities in New Hampshire that were not registered, exempt from registration, or federal covered securities.
10. Pursuant to RSA 421-B:6,I, it is unlawful for any person to transact business in this state as a issuer-dealer unless such person is licensed under RSA 421-B or exempt from licensing. Farah, and FRA, is in violation of this section for transacting business in securities in New Hampshire as an unlicensed issuer-dealer.
11. Pursuant to RSA 421-B:17,V, and RSA 421-B:11,I-b(a) and (c), the burden of proving an exemption, preemption, or an exception from a definition is upon the person claiming it.
12. Pursuant to RSA 421-B:23, whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule under this chapter, he shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. Coyne, Farah, and FRA, are subject to this section for violations of RSA421-B:3, 421-B:6, 421-B:8, 421-B:11, and 421-B:22.

13. Pursuant to RSA 421-B:26,III, any person who, either knowingly or negligently, violates any provisions of this chapter may, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation or denial of any registration or license, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation. Coyne is subject to a suspension, revocation, or denial, and a fine for violations of RSA 421-B:3, 421-B:8, and 421-B:22. Farah and FRA are subject to a suspension, revocation, or denial, and a fine for violations of RSA 421-B:3, 421-B:6, 421-B:8,421-B:11, and 421-B:22.
14. Pursuant to RSA 421-B:26,III-a, every person who directly or indirectly controls a person liable under paragraph III, every principal executive officer, or director of such person, may, upon hearing, and in addition to any other penalty provided by law, be subject to such suspension, revocation, or denial of any registration or license, or administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal penalties imposed pursuant to RSA 421-B:24 or civil liabilities imposed pursuant to RSA 421-B:25. Farah and FRA are subject to this section.
15. Pursuant to RSA 421-B:26,V, after notice and hearing, the Secretary of State may enter an order of rescission, restitution, or disgorgement directed to a person who has violated RSA 421-B. Coyne, Farah, and FRA are subject to his section for violations of RSA 421-B.

RELIEF REQUESTED

III. The Bureau makes the following requests for relief in the above-referenced matter as permitted under the Act.

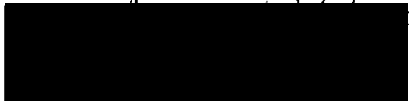
1. Find as fact the statements contained in section I of the Statements of Fact.
2. Make conclusions of law relative to the statements contained in section II of the Statements of Law.
3. Pursuant to RSA 421-B:23, issue an order to cease and desist against Coyne, Farah, and FRA, for violations under the Act pursuant to RSA 421-B:23.
4. Assess administrative fines and penalties of \$2,500 per violation against Coyne totaling \$5,000, and against Farah and FRA of \$2,500 per violation totaling \$95,000, for the above-referenced violations under the Act.

5. Order the Respondents to produce the following information: The promissory notes listed in the 4/19/01 letter to Coyne, and items #1 (years 2000 and 2001 only), #2, and #3 listed in the 4/19/01 letter to Farah and FRA.
6. Issue an order denying, suspending, and revoking, any license and registration privileges of the Respondents pursuant to RSA 421-B:26,III and 421-B:26,III-a.
7. Take any other just and equitable relief as permitted under the Act including but limited to rescission, restitution, or disgorgement.

RIGHT TO AMEND

The Bureau's staff reserves the right to amend this Petition for Relief and requests that the Director of Securities Regulation take further enforcement action.

Respectfully submitted by:

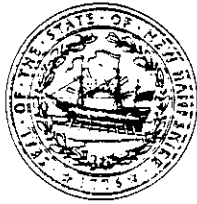


Jeffrey D. Spill
Staff Attorney

11/5/01

Date

The State of New Hampshire



Mailing Address

State House Room 204
Concord, New Hampshire 03301-4989
Telephone (603) 271-1463
Facsimile (603) 271-7933

Location

State House Annex
25 Capitol St.
Concord, New Hampshire 03301

Department of State Bureau of Securities Regulation

4/19/01

Ruth Hall, Esq.
Rte 11 PO Box 69
Alton, NH 03809

Re: Financial Resources and Assistance ("FRA")

Dear Atty Hall;

Thank you for opening the files to our review on 4/17/01. We obtained copies of promissory notes going back two years to 1999. Pursuant to RSA 421-B:8 and 421-B:22 please provide copies of the following additional items:

1. A copy of FRA's check book ledger, checking account ledger, and checking account statements going back to 1/1/96.
2. A copy of a commitment letter dated 1/29/96 from Invest Inc. signed by [REDACTED] (Mr. Coyne says you have a copy of this letter.)
3. Mr. Farah indicated on 4/17/01 that he issued stock as collateral on promissory notes issued to [REDACTED] and [REDACTED]. Provide a copy of any stock ledger, shareholder list, and any evidence that this stock was issued as collateral. Mr. Farah's financial statements indicate that there is outstanding common and preferred stock. Account for all the shares outstanding or issued and redeemed since 1/1/96.

Please provide this information within ten days of this letter.

Thank you.

Sincerely,

Jeffrey Spill
Staff Attorney

The State of New Hampshire



Mailing Address

State House Room 204
Concord, New Hampshire 03301-4989
Telephone (603) 271-1463
Facsimile (603) 271-7933

Location

State House Annex
25 Capitol St.
Concord, New Hampshire 03301

Department of State Bureau of Securities Regulation

5/8/2001

T. Gary Coyne
5 Gould Ave
Meredith, NH 03253

Re: Coyne Associates

Dear Mr. Coyne:

Reference is made to my request for information dated 4/19/2001, and I enclose a copy for your review. I feel I have given you sufficient opportunity to comply with that request. You should be aware that if I am forced to issue a subpoena for said records, if successful at hearing, the state would be entitled to recover the costs associated with any part of this investigation, and further, failure to comply in itself would be considered a violation of RSA 421-B:22.I(f) and or 421-B:8.III. You have ten days from the date of this letter to respond.

Thank you.

Sincerely,

Jeffrey Spill
Staff Attorney

cc:File

The State of New Hampshire



Mailing Address

State House Room 204
Concord, New Hampshire 03301-4989
Telephone (603) 271-1463
Facsimile (603) 271-7933

Location

State House Annex
25 Capitol St.
Concord, New Hampshire 03301

Department of State Bureau of Securities Regulation

5/10/2001

Scott Farah
Financial Resource and Assistance of the Lakes Region, Inc.
15 Northview Drive
PO Box 1158
Meredith, NH 03253

Dear Mr. Farah:

Reference is made to my request for information dated 4/19/2001, and I enclose a copy for your review. Also, since I do not know who represents you, I am sending this request to you directly. I feel I have given you sufficient opportunity to comply with that request. You should be aware that if I am forced to issue a subpoena for said records, if successful at hearing, the state would be entitled to recover the costs associated with any part of this investigation, and further, failure to comply would in itself be considered a violation of RSA 421-B:22.I(f) and or 421-B:8.III. You have ten days from the date of this letter to respond.

Thank you.

Sincerely,

Jeffrey Spill
Staff Attorney

Cc:File

The State of New Hampshire



Mailing Address

State House Room 204
Concord, New Hampshire 03301-4989
Telephone (603) 271-1463
Facsimile (603) 271-7933

Location

State House Annex
25 Capitol St.
Concord, New Hampshire 03301

Department of State
Bureau of Securities Regulation

4/19/01

T. Gary Coyne
5 Gould Ave
Meredith, NH 03253

Re: Request for records

Dear Mr. Coyne:

As a follow-up to my examination of your records on 4/18/01, please provide a copy of the following promissory notes we located in your file:

1. Note from Coyne to [REDACTED] dated 3/1/96 for \$2,000.
2. Note from Coyne to [REDACTED] dated 2/16/96 for \$1,100.
3. Note from Coyne to [REDACTED] dated 1/8/96 for \$11,000.
4. Note from Coyne to [REDACTED] dated 6/30/96 for \$6,000.
5. Note from Coyne to [REDACTED] dated 8/30/96 for \$6,000.
6. Note from Coyne to [REDACTED] dated 4/30/96 for \$6,000.
7. Note from Coyne to [REDACTED] dated 4/29/97 for \$2,200.
8. Note from Coyne to [REDACTED] dated 7/25/97 for \$10,000.
9. Note from Coyne to [REDACTED] dated 12/15/95 for \$22,000.
10. Note from Coyne to [REDACTED] dated 7/14/99 for \$4,500.
11. Note from Coyne to [REDACTED] dated 4/28/97 for \$2,500.

RSA 421-B:22 and 421-B:8 authorizes the Secretary of State to investigate violations of RSA 421-B, and to obtain copies of your records. Please provide this information within 10 days of this letter.

Thank you.

Sincerely,

Jeffrey Spill
Staff Attorney
Cc:File

RECEIVED
STATE OF NEW HAMPSHIRE
BUREAU OF SECURITIES REGULATION
DEPARTMENT OF STATE

IN THE MATTER OF:)
) HEARING ORDER
SCOTT D. FARAH)
FINANCIAL RESOURCES &) INV00-007
ASSISTANCE OF THE LAKES)
REGION, INC., AND)
T. GARY COYNE)

WHEREAS, an Order to Cease and Desist and Order to Show Cause in the above entitled matter was issued on November 8, 2001, and

WHEREAS, a hearing in this matter was scheduled for September 10, 2002, and

WHEREAS, any request for continuance of the hearing shall comply with the provisions of RSA 421-B:26-a, IX and X, and

WHEREAS, Respondent T. Gary Coyne, through motion dated September 9, 2002 requested said hearing be continued to October 8, 2002, having obtained the assent of all parties to this action for such continuance, and

WHEREAS, on September 13, 2002 the Bureau of Securities Regulation filed an amendment to its Staff Petition dated November 5, 2001, and

WHEREAS, on September 27, 2002 Respondent Scott D. Farah, Financial Resources & Assistance of the Lakes Region, Inc. moved for joinder of the Bureau's Staff Petition of November 5, 2001 and amended Petition of September 13, 2002, and requests said hearing scheduled for October 8, 2002 be continued to October 22, 2002, and

WHEREAS, Respondent Scott D. Farah, Financial Resources & Assistance of the Lakes Region, Inc. obtained the assent of all parties to this action for such joinder and continuance,

THEREFORE, it is hereby ORDERED that:

1. For the purposes of this particular request for continuance only, the exigent circumstances requirement of RSA 421-B:26-a shall be deemed to have been met.
2. The Bureau of Securities Regulation Staff Petition of November 5, 2001 and Amended Petition of September 13, 2002 are hereby joined for hearing,
3. A hearing on the above-entitled matter shall be held at 10:00 a.m. on Tuesday, October 22, 2002 at the offices of the Bureau of Securities Regulation, Third Floor, State House Annex, Concord, New Hampshire 03301.

SIGNED,
WILLIAM M. GARDNER
SECRETARY OF STATE
BY HIS DESIGNEE:

Dated: _____



BARRY J. GLENNON
HEARINGS OFFICER

STATE OF NEW HAMPSHIRE
BUREAU OF SECURITIES REGULATION
DEPARTMENT OF STATE
CONCORD, NEW HAMPSHIRE

_____)	
STAFF PETITION TO AMEND)	
STAFF PETITION FOR RELIEF)	
IN THE MATTER OF:)	
)	
Scott D. Farah,)	
Financial Resources and Assistance)	
of the Lakes Region, Inc.,)	
and T. Gary Coyne)	NoINV.00-007
)	
Respondents)	
_____)	

STATEMENT OF FACTS

I. The Bureau of Securities Regulation, Department of State, State of New Hampshire (hereinafter referred to as "the Bureau"), hereby petitions to amend the Staff Petition For Relief dated 11/5/2001, by making the following additional statements of fact:

1. Financial Resources and Assistance of the Lakes Region, Inc. (hereinafter "FRA"), is a business entity with a principal office located at 15 Northview Drive, PO Box 1158, Meredith, New Hampshire 03235. FRA was incorporated in the State of New Hampshire on or about 5/18/89. Scott D. Farah (hereinafter "Farah"), is the President and sole owner of FRA. FRA is a licensed New Hampshire mortgage broker and small loan lender engaged in the business of consumer and mortgage lending.
2. On 11/15/2001 a Staff Petition For Relief was filed with the Director of the Bureau alleging violations of RSA 421-B:3, 421-B:6, 421-B:8, 421-B:11, and RSA 421-B:22. Pursuant to said petition a Cease and Desist Order was executed on 11/8/2001, which ordered the Respondents to cease and desist, produce information, and to show cause why relief and penalties should not be imposed. Following said Order to Cease and Desist, Respondents, Farah and FRA produced information which contains evidence of additional violations of RSA 421-B in the issuance of preferred stock of FRA.
3. FRA and Farah issued shares of preferred stock of FRA as follows: On or about 5/96, investor #18 was issued 10 shares. On or about 5/96, investor #18 was

issued 90 shares. On or about 7/96, investor #19 was issued 113 shares. On or about 7/96, investor #18 was issued 80 shares. On or about 9/96, investor #20 was issued 30 shares. On or about 12/96, investor #19 was issued 8 shares. On or about 1/97, investor #16 was issued 68 shares. On or about 4/99, investor #21 was issued 5 shares. On or about 3/00, investor #9 was issued 25 shares. On or about 7/00, investor #22 was issued 39 shares. On or about 7/00, investor #23 was issued 4 shares. On or about 7/00, investor #24 was issued 19 shares. On or about 8/00, investor #11 was issued 40 shares. On or about 10/00, investor #16 was issued 86 shares. These shares have a dividend rate of 12%.

4. FRA and Farah issued additional preferred stock as follows: On or about 1/02, investor #25 was issued 34 shares and investor #26 was issued 34 shares. FRA and Farah redeemed 5 shares of preferred stock on or about 2/02 from investor #21.
5. Based on Bureau records, at the time of the issuance of the preferred shares listed in paragraph 3 of the Statement of Facts, Farah and FRA, did not have license or authority to do so by the State of New Hampshire, and the shares were not registered, exempt from registration, or a federal covered security as defined by RSA 421-B.
6. Based on Bureau records, at the time of the issuance and redemption of the preferred shares listed in paragraph 4 of the Statement of Facts, Farah and FRA, were under a Cease and Desist Order of the New Hampshire Secretary of State dated 11/08/01, and said transactions were conducted without issuer-dealer licensure or approval of the Bureau.

STATEMENTS OF LAW

II. The Bureau hereby petitions the Director to amend the Staff Petition For Relief dated 11/5/2002 by making the following additional statements of law under the New Hampshire Revised Statutes Annotated, RSA 421-B, and regulations thereunder (hereinafter referred to as the Act):

1. Farah, and FRA, are each a "Person" within the meaning of RSA 421-B:2.
2. The preferred stock of FRA are "securities" within the meaning of RSA 421-B:2.
3. The distribution of the securities listed above constitute "sales" within the meaning of RSA 421-B:2.
4. Farah, and FRA, is an "issuer-dealer" within the meaning of RSA 421-B:2.

5. Pursuant to RSA 421-B:11, I, it is unlawful for any person to offer or sell any security in this state unless it is registered under RSA 421-B, exempt under RSA 421-B:17, or a federal covered security for which the fee has been paid and notice has been filed as required by RSA 421-B:11,I-a. Farah, and FRA, are in violation of this section for distributing securities in New Hampshire that were not registered, exempt from registration, or federal covered securities.
6. Pursuant to RSA 421-B:6,I, it is unlawful for any person to transact business in this state as a issuer-dealer unless such person is licensed under RSA 421-B or exempt from licensing. Farah, and FRA, is in violation of this section for transacting business in securities in New Hampshire as an unlicensed issuer-dealer.
7. Pursuant to RSA 421-B:17,V, and RSA 421-B:11,I-b(a) and (c), the burden of proving an exemption, preemption, or an exception from a definition is upon the person claiming it.
8. Pursuant to RSA 421-B:23, whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule under this chapter, he shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. Farah, and FRA, are subject to this section for violations of RSA421-B:6, and 421-B:11.
9. Pursuant to RSA 421-B:26,I and II, any person who knowingly or negligently violates any rule or order of the secretary of state may, upon hearing, except where another penalty is expressly provided, be subject to such suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or administrative fine for each violation in lieu of or in addition to such suspension or revocation as may be applicable under this RSA 421-B for violation of the provision to which such rule or order relates.
10. Pursuant to RSA 421-B:26,III, any person who, either knowingly or negligently, violates any provisions of this chapter may, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation or denial of any registration or license, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation. Farah and FRA are subject to a suspension, revocation, or denial, and a fine for violations of RSA 421-B:6, and 421-B:11.
11. Pursuant to RSA 421-B:26,III-a, every person who directly or indirectly controls a person liable under paragraph III, every principal executive

officer, or director of such person, may, upon hearing, and in addition to any other penalty provided by law, be subject to such suspension, revocation, or denial of any registration or license, or administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal penalties imposed pursuant to RSA 421-B:24 or civil liabilities imposed pursuant to RSA 421-B:25. Farah and FRA are subject to this section.

12. Pursuant to RSA 421-B:26,V, after notice and hearing, the Secretary of State may enter an order of rescission, restitution, or disgorgement directed to a person who has violated RSA 421-B. Farah, and FRA are subject to his section for violations of RSA 421-B.

RELIEF REQUESTED

III. The Bureau makes the following amended requests for relief in the above-referenced matter as permitted under the Act.

1. Find as fact the statements contained in section I of the Statement of Fact in the Staff petition For Relief with amendments.
2. Make conclusions of law relative to the statements contained in section II of the Statements of Law in the Staff Petition For Relief with amendments.
3. Pursuant to RSA 421-B:23, issue an order to cease and desist against Coyne, Farah, and FRA, for violations under the Act pursuant to RSA 421-B:23.
4. Assess administrative fines and penalties of \$2,500 per violation against Coyne totaling \$5,000, and against Farah and FRA of \$2,500 per violation totaling \$137,500.
5. Issue an order denying, suspending, and revoking, any license and registration privileges of the Respondents pursuant to RSA 421-B:26,I, 421-B:26,II, 421-B:26,III and 421-B:26,III-a.
6. Take any other just and equitable relief as permitted under the Act including but limited to rescission, restitution, or disgorgement.

Respectfully submitted by:



Jeffrey D. Spill
Staff Attorney

9/13/02

Date

I hereby certify that a copy of the within Petition To Amend was forwarded this 13th day of September, 2002, to Attorney Denis Maloney, counsel for Respondents Scott Farah and FRA, and Michael Burke, counsel for T. Gary Coyne.

A handwritten signature in black ink, appearing to read "J. Spill", written over a horizontal line.

Jeffrey D. Spill
Staff Attorney

9/13/02

Date

Gallagher, Callahan & Gartrell, P.A.

P.O. Box 1415
Concord, NH 03302-1415

Phone (603) 228-1181
Fax (603) 224-7588

FAX TRANSMITTAL SHEET

Date: January 14, 2003

To: BARRY J. GLENNON
HEARINGS OFFICER

Fax#: 271-7933

From: Denis J. Maloney

Total Number of Pages: 10 Time Sent: _____

IF YOU DO NOT RECEIVE THIS FAX PROPERLY, PLEASE CONTACT
LISA TILLOTSON (603) 228-1181, ext. 238.

Remarks: In re Scott D. Farah and Financial Resources & Assistance of the
Lakes Region, Inc., INV 00-007 – attached please find Joint Motion for
Continuance of Scheduled Hearing. Thank you.

File #:



Signature of Fax Operator

The information contained in this facsimile message may be subject to the attorney client privilege and contain confidential information, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that reading the contents, or the dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (collect) at (603) 228-1181 and return the original message to us at the above address via regular mail. We will reimburse you for postage. Thank you.

Gallagher, Callahan & Gartrell, P.A.

P.O. Box 1415
Concord, NH 03302-1415

Phone (603) 228-1181
Fax (603) 224-7588

FAX TRANSMITTAL SHEET

Date: January 14, 2003

To: JEFFREY D. SPILL, ESQUIRE
Bureau of Securities Regulation

Fax#: 271-7933

From: Denis J. Maloney

Total Number of Pages: 10 Time Sent: _____

IF YOU DO NOT RECEIVE THIS FAX PROPERLY, PLEASE CONTACT
LISA TILLOTSON (603) 228-1181, ext. 238.

Remarks: In re Scott D. Farah and Financial Resources & Assistance of the Lakes
Region, Inc., INV 00-007 -

Jeff - attached is copy of today's filing with the Presiding Officer, thank
you for your time yesterday.



Signature of Fax Operator

The information contained in this facsimile message may be subject to the attorney client privilege and contain confidential information, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that reading the contents, or the dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (collect) at (603) 228-1181 and return the original message to us at the above address via regular mail. We will reimburse you for postage.



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MICHAEL R. CALLAHAN
DONALD E. GARTRELL
W. JOHN FUNK
EDWARD E. SHUMAKER, III
MICHAEL D. RUEDIG
ANNE G. SCHEER
DENIS J. MALONEY
DAVID A. GARFUNKEL

DONALD J. PFUNDSTEIN
ANDREW B. ELLS
DONALD R. SAXON
SUSAN B. HOKLINGER
ANDREA K. JOHNSTONE
MICHAEL D. RAMSDELL
DODD S. GRIFFITH
WALTER L. MARONEY
ARI H. POLLACK

SETH L. SHORTLIDGE
LYNMARIE C. CUSACK
JEANNE T. HERRICK
CELIA LEONARD WAGNER
INGRID E. WHITE
JAMES D. KEROUAC
JON M. GARON
OF COUNSEL
ROBERT E. KIRBY
1961-1994

January 14, 2003

**VIA FACSIMILE AND
FIRST CLASS MAIL**

Bureau of Securities Regulation
Department of State
State of New Hampshire
State House, Room 204
Concord, New Hampshire 03301-4989

Attn: Barry J. Glennon, Hearings Officer

Re: In re Scott D. Farah and Financial Resources & Assistance
of the Lakes Region, Inc.; INV 00-007
Joint Motion for Continuance of Scheduled Hearing

Dear Mr. Glennon:

On behalf of Scott D. Farah and Financial Resources & Assistance of the Lakes Region, Inc. (collectively, "the Farah Respondents"), with respect to the above-referenced matter, enclosed please find a Joint Motion for Continuance of Scheduled Hearing, requesting an extension of the hearing presently scheduled for Tuesday, January 14, 2003 until Tuesday, April 29, 2003.

I am authorized to state that Jeffrey Spill, Esquire, counsel for the Bureau of Securities Regulation; and Phillip Brouillard, Esquire, co-counsel for the Farah Respondents, have each consented to the requested continuance. Please contact me with any questions or comments.

Very truly yours,

Denis J. Maloney

DJM/ldt
Enclosure

cc: Scott D. Farah
Financial Resources & Assistance of the Lakes Region, Inc.
Jeffrey D. Spill, Esquire
Philip Brouillard, Esquire

H:\LIB\DOCS\F040\00001\LTR\660978.DOC

GALLAGHER, CALLAHAN & GARTRELL, P.A.
214 NORTH MAIN STREET · P.O. BOX 1415 · CONCORD, NEW HAMPSHIRE 03302-1415
TEL 603-228-1181 · 800-528-1181 · FAX 603-224-7588 · 603-226-3477
www.gcglaw.com

STATE OF NEW HAMPSHIRE
BUREAU OF SECURITIES REGULATION
DEPARTMENT OF STATE
CONCORD, NEW HAMPSHIRE

IN THE MATTER OF:)
)
Scott D. Farah and)
Financial Resources & Assistance)
of the Lakes Region, Inc.)
)
)
Respondents)
)

No. INV 00-007

JOINT MOTION FOR CONTINUANCE OF SCHEDULED HEARING

NOW COMES Scott D. Farah & Financial Resources and Assistance of the Lakes Region, Inc., respondents in the above-entitled matter (collectively, "the Farah Respondents"), by and through their undersigned attorney, and respectfully move as follows:

1. That a certain Staff Petition for Relief, matter No. INV 00-007, dated November 5, 2001, (the "Staff Petition") was initiated against the Farah Respondents and T. Gary Coyne, as an additional respondent, alleging among other things, violations of the New Hampshire Uniform Securities Act, RSA Chapter 421-B et seq. ("Uniform Securities Act"). An Order to Show Cause and Order to Cease and Desist in this matter was issued on November 11, 2001.

Page 2

2. That the Bureau of Securities Regulation filed a certain Staff Petition to Amend Staff Petition for Relief dated September 13, 2002 (the "Amended Petition") alleging additional and distinct violations of the Uniform Securities Act by the Farah Respondents.

3. That by Hearing Order dated on or about October 10, 2002, the Amended Petition was joined for hearing together with the Staff Petition.

4. A hearing in this matter was most recently scheduled for Tuesday, January 14, 2003.

5. That counsel for the Farah Respondents and Staff counsel to the Bureau continue to explore settlement of the alleged claims as well as appropriate remedies arising from the matters alleged in the Staff Petition and the Amended Petition, and have, on or about this date, agreed that the Farah Respondents will take certain actions in lieu of proceeding with the subject administrative process. A true copy of the letter from counsel to the Farah Respondents to the Bureau is attached hereto and incorporated herein by reference.

6. That Jeffrey D. Spill, Staff counsel for the Bureau of Securities Regulation, and Phillip Brouillard, co-counsel for the Farah Respondents, have each been contacted and assents to the filing of this Joint Motion for Continuance of Scheduled Hearing. Further, I am authorized to state each such party is available for a rescheduled hearing on Tuesday, April 29, 2003.

NOW THEREFORE, the Farah Respondents respectfully move the Secretary of

State as follows:


- A. To continue the hearing scheduled for January 14, 2003 until April 29, 2003; and
- B. For such other relief as may be just and equitable under the circumstances.

Respectfully submitted,

Scott D. Farah and Financial Resources &
Assistance of the Lakes Region, Inc.,

By and through their undersigned attorneys,
GALLAGHER, CALLAHAN & GARTRELL,
Professional Association

Dated: January 14, 2003

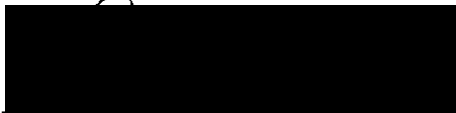
By: 
 Denis J. Maloney
 P.O. Box 1415
 Concord, NH 03302-1416
 (603) 228-1181

Page 4

CERTIFICATION

I hereby certify that a copy of the Joint Motion for Continuance of Scheduled Hearing has been served this day to all interested parties in this proceeding, by mailing a copy of same, first class, postage prepaid, to Jeffrey Spill, Esquire, Staff Attorney for the Bureau of Securities Regulation; and Philip A. Brouillard, Esq., co-counsel for Scott D. Farah and Financial Resources & Assistance of the Lakes Region, Inc.

Dated: January 14, 2003

By. 
Denis J. Maloney

HALIB\DOCS\F040\0001\PLDGE775912.DOC



CHRISTOPHER C. GALLAGHER
 MICHAEL R. CALLAHAN
 DONALD E. GARTRELL
 W. JOHN JUNK
 EDWARD F. SHUMAKER, III
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 JON M. GARON
 OF COUNSEL
 ROBERT F. KIRBY
 1961-1994

January 14, 2003

**VIA FACSIMILE AND
 FIRST CLASS MAIL**

Bureau of Securities Regulation
 Department of State
 State of New Hampshire
 State House, Room 204
 Concord, New Hampshire 03301-4989

Attn: Jeffrey Spill, Esquire

Re: In re Scott D. Farah, Financial Resources & Assistance of the Lakes
 Region, Inc., Respondents
 No. INV00-007

Ladies and Gentlemen:

On behalf of Scott D. Farah and Financial Resources & Assistance of the Lakes Region, Inc. (the "Company"; collectively with Scott D. Farah, the "Farah Respondents"), for purposes of setting forth several material undertakings to be performed by the Company in lieu of presently scheduled administrative proceedings, the Farah Respondents hereby undertake and agree with the Bureau of Securities Regulation, Department of State, State of New Hampshire (the "Bureau"), as follows:

- The administrative proceedings scheduled for Tuesday, January 14, 2003 are hereby postponed until Tuesday, April 29, 2003 pending satisfaction of the undertakings expressed herein and subsequent execution of a formal Consent Agreement, as discussed further below, in this proceeding. The Farah Respondents will file a joint motion with the Presiding Officer in the administrative proceeding requesting a continuance until April 29, 2003, and will attach a true copy of this letter agreement thereto.

GALLAGHER, CALLAHAN & GARTRELL, P.A.

214 NORTH MAIN STREET • P.O. BOX 1415 • CONCORD, NEW HAMPSHIRE 03302-1415

TEL 603-228-1181 • 800-528-1181 • FAX 603-224-7588 • 603-226-3477

www.gcglaw.com

Bureau of Securities Regulation

January 14, 2003

Page 2

- The Bureau will furnish a letter to each of the stakeholders of the Company, namely "holders" of shares of its preferred stock and notes, substantially in the form of the letter attached as Schedule 1 hereto. The Company will furnish the Bureau with the names and current addresses of each of such stakeholders within seven (7) days after the date hereof.
- The Company will not issue any new securities without the prior approval of the Bureau (for purposes hereof, the term securities shall include but is not limited to, shares of preferred stock and notes or "Accounts", so called). Neither the Company nor its agents will communicate with any stakeholder for the purpose of soliciting the stakeholder to keep or to sell his, her or its investment in the Company.
- Upon the prior request of a preferred holder or a note holder, the Company is authorized to pay-off and thereby redeem any outstanding preferred stock or note.
- The Company will subsequently undertake a rescission offer to the holders of its outstanding preferred stock and notes, such undertaking to be commenced at the discretion of the Bureau. The Company will cooperate with the Bureau in undertaking such a rescission offer, which will include full disclosure with respect to the Company's operations and financial status. The rescission offer must be fully funded by the Company.
- The Company will immediately commence procedures necessary to have its financial statements for the periods ended December 31, 2001 and 2002 prepared and audited by an independent third party, Connor & Associates, P.C. Any change in the identity of such auditor must be approved by the Bureau. The Company will furnish the Bureau with a complete copy of said audited financial statements as soon as they are finalized and received. Not later than April 14, 2003, the Company will file with the Bureau updated schedules listing the stakeholders of the Company and the amounts of their investments, substantially in the form of the schedules previously furnished to the Bureau. The Bureau may withdraw from this letter agreement at its own initiative following April 14, 2003, or in the event of a material adverse change in the financial condition of the Company.

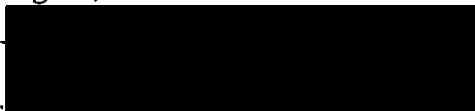
Bureau of Securities Regulation
January 14, 2003
Page 3

- Following satisfactory completion of the rescission offer to the satisfaction of the Bureau, the parties will thereafter enter into a negotiated Consent Agreement in this matter in which, among other things, the Farah Respondents, without admitting or denying the allegations and findings set forth therein, including but not limited to compliance with the registration and licensing provisions of the Act for any sale of securities, will consent to certain findings, conclusions and undertakings set forth therein, included but not limited to the payment of an administrative fine in the amount of \$25,000.

Very truly yours,

Scott Farah
Financial Resources & Assistance of the
Lakes Region, Inc.

By Its Attorneys
Gallagher, Callahan & Gartrell, P.A.

By: 

 Denis J. Maloney

H:\LIB\DOCS\F040\0001\AGREE\776145.DOC

Schedule 1

[Bureau Letterhead]

Name and Address of Stakeholder

Re: Scott Farah and Financial Resources and Assistance
of the Lakes Region, Inc. (the "Company")

Dear _____;

The Bureau of Securities Regulation (the "Bureau"), Department of State, State of New Hampshire, is responsible for administering the Uniform Securities Act RSA 421-B (the "Act"). The Bureau has been conducting an investigation of the above-referenced Company with respect to its compliance with the Act. Based upon the results of our investigation, the Bureau believes that your investment in the Company sold to you was done in violation of the Act. The Company and its principal, Scott Farah, have been cooperating with the Bureau, and have provided your name and address to the Bureau. The Bureau and the Company have reached a conditional agreement regarding these alleged violations.

Be advised that in our role as regulator, we are not authorized to bring a civil action to obtain recovery of an investment on behalf of individual investors. Therefore, you may wish to consult a private attorney regarding any claim you may have. We represent the state in this matter, and can neither represent you or provide you with legal or financial advice, nor act as your personal attorney or representative.

Our settlement negotiations with the Company may lead to a formal offer by the Company for you to either confirm or rescind your investment with the Company. If so, you will receive further information from the Company regarding such offer at a later date.

If you have any question, please call me.

Sincerely,

Jeffrey Spill
Staff Attorney

cc:file

FINANCIAL RESOURCES & ASSISTANCE
OF THE LAKES REGION, INC.

CAPITAL/DEBT SCHEDULE
(12/31/02)

I.	PREFERRED STOCK		
A)	Series A certificate	392 shares	392,000
B)	Series A w/o certificate	926 shares	926,000
C)	Series A w/o Certificate (1/02/02)	68 Shares	<u>68,000</u>
			\$1,386,000
II.	NOTES		
A)	5 NOTES; 14-25%		\$ 451,345
III.	ACCOUNTS		
A)	1 account; 18%		\$ <u>68,000</u>
	CURRENT CAPITAL/DEBT TOTAL (12/31/02)		\$1,905,345

SCHEDULE A
GCG 04/14/03

FINANCIAL RESOURCES
PREFERRED STOCK
outstanding as of 12/31/02
(certificates issued)

Name	Date	Dividend Rate	# Shares	Status
[REDACTED]	3/98	12%	111	Still outstanding
	6/98	12%	32	Still outstanding
	2/95	12%	15	Still outstanding
	7/96	12%	113	Still outstanding
	12/96	12%	8	Still outstanding
	3/97	12%	2	Still outstanding
	12/97	12%	15	Still outstanding
	9/96	12%	30	Still outstanding
	4/98	12%	9	Still outstanding
	8/00	12%	40	Still outstanding
	4/99	12%	17	Still outstanding

TOTAL:

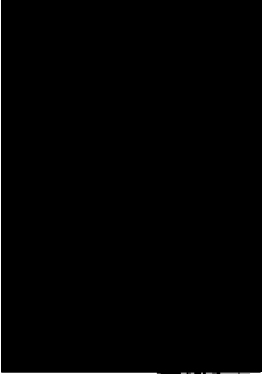
392 SHARES

NOTES:

All shares \$1,000 par value per share

**FINANCIAL RESOURCES
PREFERRED STOCK**

Shares Sold But No Certificates Issued
outstanding as of 12/31/02

Name	Date	Dividend Rate	# Shares	Status
		12%	344	Still outstanding
		12%	61	Still outstanding
		12%	36	Still outstanding
		12%	401	Still outstanding
		12%	28	Still outstanding
		12%	34	Still outstanding
		12%	22	Still outstanding

Total:

926 shares

*All shares \$1,000 par value per share

FINANCIAL RESOURCES

**PREFERRED STOCK TO BE ISSUED AS
COLLATERAL FOR NOTES
AS OF 12/31/02**

Name	Date	# Shares	Status
[REDACTED]	5/96	10	See below
	5/96	90	See below
	7/96	80	See below
	1/97	68	See below
	2/99	25	See below
	10/00	86	See below
	3/00	25	See below

TOTALS: 384 SHARES

[REDACTED] holds a promissory note outstanding for \$200,000. The shares were committed to be issued as additional collateral for the note. There have been no dividends paid to her, only interest under the note.

[REDACTED] holds a promissory note outstanding for \$158,000. The shares were committed to be issued as additional collateral for the note. There have been no dividends paid to her, only interest under the note.

[REDACTED] holds a promissory note outstanding for \$25,000. The shares were committed to be issued as additional collateral for the note. There have been no dividends paid to him, only interest under the note.

**FINANCIAL RESOURCES
PREFERRED STOCK**

Shares Sold in 2002
(No Certificates Issued)

Name	Date	Dividend Rate	# Shares	Status
[REDACTED]	1/02	12%	34	outstanding
[REDACTED]	1/02	12%	34	outstanding

Total: 68 SHARES

FINANCIAL RESOURCES
NOTES

Balance as of 12/31/02

+ 2,236

Name	Date Issued	High Balance	12/31/02 Balance	Interest Rate	Status
[REDACTED]	8/01	33,636	38,345	14	
	3/00	25,000	25,000	22	Secured by Preferred
	10/00	179,000	158,000	25	Secured by Preferred
	5/00	30,000	30,000	24	
	7/96	200,000	200,000	18	Secured by Preferred See #1 below

TOTAL: \$451,345

Notes:

- 1) No promissory note was issued to evidence the obligation

FINANCIAL RESOURCES
ACCOUNTS
as of 12/31/02

Name	Open Date	High Balance	12/31/02 Balance	Interest Rate	Status
	1/00	142,000	68,000	18	

12/31/02 total: \$68,000

Notes:

+ 5100

FINANCIAL RESOURCES

**PREFERRED STOCK TO BE ISSUED AS
COLLATERAL FOR NOTES
AS OF 12/31/02**

Name	Date	# Shares	Status
[REDACTED]	5/96	10	See below
[REDACTED]	5/96	90	See below
[REDACTED]	7/96	80	See below
[REDACTED]	1/97	68	See below
[REDACTED]	2/99	25	See below
[REDACTED]	10/00	86	See below
[REDACTED]	3/00	25	See below

TOTALS: 384 SHARES

[REDACTED] holds a promissory note outstanding for \$200,000. The shares were committed to be issued as additional collateral for the note. There have been no dividends paid to her, only interest under the note.

[REDACTED] holds a promissory note outstanding for \$158,000. The shares were committed to be issued as additional collateral for the note. There have been no dividends paid to her, only interest under the note.

[REDACTED] holds a promissory note outstanding for \$25,000. The shares were committed to be issued as additional collateral for the note. There have been no dividends paid to him, only interest under the note.

4/14/03

Financial Resources of the Lakes Region, Inc.
Asset Schedule

Name of Borrower	Principal Balance 12/31/02	Collateral	Term	Annual Interest Rate
[REDACTED]	103,458	Unsecured	N/A	0%
[REDACTED]	9,989	Unsecured	N/A	0%
[REDACTED]	4,184	Unsecured	N/A	0%
[REDACTED]	7,800	Equipment	12 months	18%
[REDACTED]	240,800	Unsecured	N/A	0%
[REDACTED]	33,000	Unsecured	Due	18%
[REDACTED]	215,000	Unsecured	N/A	0%

- 5000
- 250
- 250
+ 3200
+ 9720
30,000

*Preferred Shareholder

**Financial Resources of the Lakes Region, Inc.
Asset Schedule**

Name of Borrower	Principal Balance 12/31/02	Collateral	Term	Annual Interest Rate
[REDACTED]	3,900	Unsecured	N/A	0%
[REDACTED]	8,500	Unsecured	N/A	0%
[REDACTED]	2,000	Unsecured	5/03	24%
[REDACTED]	114,000	Real Estate	Due 12/02 Foreclosure-in- process	36%
[REDACTED]	1,259,930 [717,984]****	Real Estate, Equipment, Accounts Receivable	Default, judgment; attached assets	72%

* Preferred Shareholder

** Participation loan with one individual - represents Company's share of loans

**** Amount used for financial statements 12/31/02

+ 12000

- 500

- 0 -

- 18,000

126,140

**Financial Resources of the Lakes Region, Inc.
Asset Schedule**








Name of Borrower	Principal Balance 12/31/02	Collateral	Term	Annual Interest Rate
[REDACTED]	233,280 [152,00]****	Real Estate, Equipment, Accounts Receivable	Default	48%
*	95,108	Personal guaranty	Due 1/06	14%
GROSS TOTAL	\$2,330,949			

*** Related Party

**** Amount used for financial statements 12/31/02

283,820
- 0

**FINANCIAL RESOURCES
SCHEDULE OF PREFERRED HOLDERS/BORROWERS
AS OF 12/31/02**

Name	Number of Shares (\$1,000 par)	Approximate Loan Amount	
	143	\$ 110,000 <u>103,458</u>	- 500
	34	21,000 <u>9,989</u>	- 250
	22	13,000 <u>4,184</u>	- 250
	344	240,800	
	401	190,000 <u>215,000</u>	+ 30,000
	36	11,300 <u>3,900</u>	+ 12,000
	17	9,800 <u>8,500</u>	- 500
TOTALS	997	\$595,900 <u>585,831</u>	

Gallagher, Callahan & Gartrell, P.A.

P.O. Box 1415
Concord, NH 03302-1415

Phone (603) 228-1181
Fax (603) 224-7588

FAX TRANSMITTAL SHEET

Date: April 28, 2003

To: JEFFREY D. SPILL, ESQUIRE
Bureau of Securities Regulation

Fax#: 271-7933


From: Denis J. Maloney

Total Number of Pages: 6 Time Sent: 2:15 PM

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LISA TILLOTSON (603) 228-1181, ext. 238.

Remarks: In re Scott D. Farah and Financial Resources & Assistance of the Lakes
Region, Inc., INV 00-007 -

As discussed, for your review, draft motion to continue with added
undertakings/agreements of Farah Respondents. Please let me know if
acceptable to you, thank you



Signature of Fax Operator

The information contained in this facsimile message may be subject to the attorney client privilege and contain confidential information, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that reading the contents, or the dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (collect) at (603) 228-1181 and return the original message to us at the above address via regular mail. We will reimburse you for postage.

DRAFT
4/28/03

STATE OF NEW HAMPSHIRE
BUREAU OF SECURITIES REGULATION
DEPARTMENT OF STATE
CONCORD, NEW HAMPSHIRE

IN THE MATTER OF:)
)
Scott D. Farah and)
Financial Resources & Assistance)
of the Lakes Region, Inc.)
)
)
Respondents)

No. INV 00-007

JOINT MOTION FOR CONTINUANCE OF SCHEDULED HEARING

NOW COMES Scott D. Farah & Financial Resources and Assistance of the Lakes Region, Inc., respondents in the above-entitled matter (collectively, "the Farah Respondents"), by and through their undersigned attorney, and respectfully move as follows:

1. That a certain Staff Petition for Relief, matter No. INV 00-007, dated November 5, 2001, (the "Staff Petition") was initiated against the Farah Respondents and T. Gary Coyne, as an additional respondent, alleging among other things, violations of the New Hampshire Uniform Securities Act, RSA Chapter 421-B et seq. ("Uniform Securities Act"). An Order to Show Cause and Order to Cease and Desist in this matter was issued on November 11, 2001.

Page 2

2. That the Bureau of Securities Regulation filed a certain Staff Petition to Amend Staff Petition for Relief dated September 13, 2002 (the "Amended Petition") alleging additional and distinct violations of the Uniform Securities Act by the Farah Respondents.

3. That by Hearing Order dated on or about October 10, 2002, the Amended Petition was joined for hearing together with the Staff Petition.

4. A hearing in this matter was most recently scheduled for Tuesday, April 29, 2003.

5. That counsel for the Farah Respondents and Staff counsel to the Bureau continue to explore settlement of the alleged claims as well as appropriate remedies arising from the matters alleged in the Staff Petition and the Amended Petition; pending such final resolution, in consideration of the Bureau's consent to this motion, the Farah Respondents agree to take certain actions in lieu of proceeding with the subject administrative process, as follows:

- a) comply with the undertakings and agreements set forth in that certain letter from counsel to the Farah Respondents to the Bureau dated January 14, 2003, the provisions of which are incorporated by reference as if set forth in full herein;
- b) on or before June 20, 2003, provide the Bureau with

Page 3

- (I) a comprehensive business plan satisfactory to the Bureau which includes the value of any assets available to the Company and the planned liquidation or pledge of those assets to fund the payment of debt or rescission;
- (II) updated schedules of Company assets and capital/debt obligations in the form previously provided;
- (III) financial statements for the quarter ended March 31, 2003 in form compiled by Connor & Associates or other independent auditor approved by the Bureau.

6. That Jeffrey D. Spill, Staff counsel for the Bureau of Securities Regulation, and Phillip Brouillard, co-counsel for the Farah Respondents, have each been contacted and assents to the filing of this Joint Motion for Continuance of Scheduled Hearing. Further, I am authorized to state each such party is available for a rescheduled hearing on Tuesday, July 8, 2003.

NOW THEREFORE, the Farah Respondents respectfully move the Secretary of State as follows:

- A. To continue the hearing scheduled for April 29, 2003 until July 8, 2003;
and
- B. For such other relief as may be just and equitable under the circumstances.

Page 4

Respectfully submitted,

Scott D. Farah and Financial Resources &
Assistance of the Lakes Region, Inc.,

By and through their undersigned attorneys,
GALLAGHER, CALLAHAN & GARTRELL,
Professional Association

Dated: April 28, 2003

By: _____
Denis J. Maloney
P.O. Box 1415
Concord, NH 03302-1416
(603) 228-1181

Page 5

CERTIFICATION

I hereby certify that a copy of the Joint Motion for Continuance of Scheduled Hearing has been served this day to all interested parties in this proceeding, by mailing a copy of same, first class, postage prepaid, to Jeffrey Spill, Esquire, Staff Attorney for the Bureau of Securities Regulation; and Philip A. Brouillard, Esq., co-counsel for Scott D. Farah and Financial Resources & Assistance of the Lakes Region, Inc.

Dated: April 28, 2003

By: _____
Denis J. Maloney

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Gallagher, Callahan & Gartrell, P.A.

P.O. Box 1415
Concord, NH 03302-1415

Phone (603) 228-1181
Fax (603) 224-7588

FAX TRANSMITTAL SHEET

Date: May 22, 2003

To: JEFFREY D. SPILL, ESQUIRE Fax#: 271-7933
Bureau of Securities Regulation

From: Denis J. Maloney

Total Number of Pages: 15 Time Sent: 3:49pm

IF YOU DO NOT RECEIVE THIS FAX PROPERLY, PLEASE CONTACT
LISA TILLOTSON (603) 228-1181, ext. 238.

Remarks: In re Scott D. Farah and Financial Resources & Assistance of the Lakes
Region, Inc., INV 00-007

Final, signed audited financial statements for the year ended December
31, 2002, attached



Signature of Fax Operator

The information contained in this facsimile message may be subject to the attorney client privilege and contain confidential information, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that reading the contents, or the dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (collect) at (603) 228-1181 and return the original message to us at the above address via regular mail. We will reimburse you for postage.



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DENIS J. MALONEY
DAVID A. GARFUNKEL

DONALD J. PFUNDSTEIN
ANDREW B. EILLS
DONALD K. SAXON
SUSAN R. MOLLINGER
ANDREA K. JOHNSTONE
MICHAEL D. KANISDELL
DODD S. GRIFFITH
WALTER L. MARONEY
ARI B. POLLACK

SETH L. SHORTIDGE
LYNMARIE C. CUSACK
JEANNE B. HERRICK
CELIA LEONARD WAGNER
INGRID E. WHITE
JAMES D. KEROUAC
ROBERT E. KIRBY
1961-1966

May 22, 2003

**VIA FACSIMILE AND
FIRST CLASS MAIL**

Jeffrey Spill, Esquire
Bureau of Securities Regulation
Department of State
State of New Hampshire
State House, Room 204
Concord, New Hampshire 03301-4989

Re: In re Scott D. Farah, Financial Resources & Assistance of the Lakes
Region, Inc., Respondents
No. INV 00-007

Dear Jeffrey:

On behalf of Scott D. Farah and Financial Resources & Assistance of the Lakes Region, Inc. (the "Company"), attached please find the audited financial statements of the Company for the year ended December 31, 2002. Please call me directly with your questions and comments, thank you.

Very truly yours,

Denis J. Maloney

DJM/ldt

Enclosures

cc: Scott D. Farah
Financial Resources & Assistance of the Lakes Region, Inc.
Philip Brouillard, Esquire

HALIB\DOCS\F040\000\LTR\842218.DOC

GALLAGHER, CALLAHAN & GARTRELL, P.A.

214 NORTH MAIN STREET · P.O. BOX 1415 · CONCORD, NEW HAMPSHIRE 03302-1415

TEL 603-228-1181 · 800-528-1181 · FAX 603-224-7588 · 603-226-3477

gcglaw.com

FINANCIAL RESOURCES & ASSISTANCE
OF THE LAKE REGION, INC.

FINANCIAL STATEMENTS
DECEMBER 31, 2002
AND
INDEPENDENT AUDITORS' REPORT

FINANCIAL RESOURCES & ASSISTANCE OF THE LAKES REGION, INC.

DECEMBER 31, 2002

TABLE OF CONTENTS

	<u>Page (s)</u>
Independent Auditors' Report.....	1
Financial Statement:	
Balance Sheet.....	2 - 3
Statement of Income.....	4
Statement of Changes in Stockholders' Equity.....	5
Statement of Cash Flows.....	6
Notes to Financial Statement.....	7 - 11



Connor & Associates, P.C.

CONCORD
NEW HAMPSHIRE
10301

INDEPENDENT AUDITORS' REPORT

To the Board of Directors and Stockholders of
Financial Resources & Assistance of the Lakes Region, Inc.:

We have audited the accompanying balance sheet of Financial Resources & Assistance of the Lakes Region, Inc. (a New Hampshire corporation) as of December 31, 2002 and the related statements of income, changes in stockholders' equity and cash flows for the year then ended. The financial statement is the responsibility of the Corporation's management. Our responsibility is to express an opinion on the financial statement based on our audit.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statement is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statement. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statement referred to above presents fairly, in all material respects, the financial position of Financial Resources & Assistance of the Lakes Region, Inc. as of December 31, 2002, and the results of its operations and its cash flows for the year then ended in conformity with generally accepted accounting principles.

Manchester, New Hampshire
April 14, 2003

FINANCIAL RESOURCES & ASSISTANCE OF THE LAKES REGION, INC.

BALANCE SHEET

DECEMBER 31, 2002

2002

ASSETS

CURRENT ASSETS:

Cash and cash equivalents (Notes 1 and 3)	\$ 8,919
Current portion of notes receivable, unsecured (Note 4)	308,800
Participation notes receivable (Notes 4 and 5)	717,984
Allowance for loan losses (Note 4)	(125,000)
Current portion notes receivable, preferred shareholders (Note 7)	<u>45,482</u>
	<u>956,185</u>
Notes receivable, preferred shareholders less current portion shown above (Note 7)	541,349
Notes receivable, related party (Note 7)	<u>95,108</u>
	<u>636,457</u>
Property and equipment, at cost (Note 1)	22,588
Less - Accumulated depreciation	<u>16,924</u>
	<u>5,664</u>
	<u>\$1,598,306</u>

The accompanying notes to financial statements
are an integral part of these statements.

FINANCIAL RESOURCES & ASSISTANCE OF THE LAKES REGION, INC.BALANCE SHEETDECEMBER 31, 20022002LIABILITIES AND STOCKHOLDERS' EQUITY

CURRENT LIABILITIES:

Demand and short-term notes payable (Note 6)	\$ 519,346
Accounts payable	46,040
Accrued expenses (Note 8)	<u>193,295</u>
Total current liabilities	<u>758,681</u>

COMMITMENTS AND CONTINGENCIES (Note 8)

STOCKHOLDERS' EQUITY:

Common stock - \$1 par value, 15,000 shares authorized, 15,000 shares issued and outstanding	15,000
Preferred stock subscribed, \$1,000 par value, 994 shares pending	994,000
Preferred stock, \$1,000 par value, 0 shares authorized, 392 shares issued and outstanding (Note 9)	392,000
Additional paid-in capital	242,950
Retained earnings	<u>(804,325)</u>
	<u>839,625</u>
	<u>\$1,598,306</u>

The accompanying notes to financial statements
are an integral part of these statements.

FINANCIAL RESOURCES & ASSISTANCE OF THE LAKES REGION, INC.STATEMENT OF INCOMEFOR THE YEAR ENDED DECEMBER 31, 2002

	<u>2002</u>
REVENUE	<u>\$3,131,903</u>
OPERATING EXPENSES:	
Mortgage expense	918,459
Commissions	415,184
Interest expense	321,524
Client fees expense	114,893
Advertising and promotion	24,370
Salaries and related payroll taxes	210,441
Rent (Note 8)	77,450
Fees	49,424
Telephone	23,256
Insurance	34,548
Postage	13,108
Supplies	98,918
Maintenance	61,160
Professional expenses (Note 8)	109,833
Client refunds	24,788
Travel and entertainment	6,944
Utilities	7,576
Contributions	34,922
Office	39,246
Depreciation	2,701
Miscellaneous	3,733
Provision for credit losses (Note 4)	<u>125,000</u>
	<u>2,717,478</u>
INCOME FROM OPERATIONS	414,425
OTHER INCOME (EXPENSES):	
Interest income (Note 7)	<u>124,288</u>
INCOME BEFORE PROVISION FOR INCOME TAXES	538,713
PROVISION FOR TAXES (Note 2)	<u>4,000</u>
NET INCOME	<u>\$ 534,713</u>

The accompanying notes to financial statements
are an integral part of these statements.

FINANCIAL RESOURCES & ASSISTANCE OF THE LAKES REGION, INC.STATEMENT OF CHANGES IN STOCKHOLDERS' EQUITYFOR THE YEAR DECEMBER 31, 2002

	<u>Common Stock</u>	<u>Preferred Stock</u>	<u>Preferred Stock Subscribed</u>	<u>Additional Paid In Capital</u>	<u>Retained Earnings</u>
Balance, December 31, 2000	\$15,000	\$500,000	\$597,000	\$ -	\$(1,216,699)
Contributed capital	-	-	-	242,950	-
Shares issued/subscribed	-	-	333,000	-	-
Net income	-	-	-	-	85,784
Dividends	-	-	-	-	(41,803)
Shares redeemed	-	(41,000)	-	-	-
Balance, December 31, 2001	\$15,000	\$459,000	\$930,000	\$242,950	\$(1,172,718)
Shares issued/subscribed	-	-	64,000	-	-
Net income	-	-	-	-	534,713
Dividends	-	-	-	-	(166,320)
Shares redeemed	-	(67,000)	-	-	-
Balance, December 31, 2002	<u>\$15,000</u>	<u>\$392,000</u>	<u>\$994,000</u>	<u>\$242,950</u>	<u>\$(804,325)</u>

The accompanying notes to financial statements
are an integral part of these statements.

FINANCIAL RESOURCES & ASSISTANCE OF THE LAKES REGION, INC.STATEMENT OF CASH FLOWSFOR THE YEAR DECEMBER 31, 2002

	<u>2002</u>
CASH FLOWS FROM OPERATING ACTIVITIES:	
Net income	\$534,713
Adjustments to reconcile net income to net cash provided by operating activities	
Depreciation	2,701
Provision for credit losses	125,000
Increase (decrease) in the following liabilities:	
Accounts payable	19,321
Accrued expenses	<u>79,000</u>
Net cash provided by operating activities	<u>750,735</u>
CASH FLOWS FROM INVESTING ACTIVITIES:	
Purchase of capital assets	-
Payments (advances) on notes receivable	(83,100)
Payments (advances) preferred shareholders notes receivable	(48,018)
Payments received from related party notes receivable, net	<u>98,399</u>
Net cash used in investing activities	<u>(32,719)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:	
Advances (repayments) from short-term financing	(504,319)
Advances (repayments) on related party notes payable	(55,501)
Subscribed preferred stock	68,000
Preferred stock redeemed	(71,000)
Dividend paid	<u>(166,320)</u>
Net cash (used) provided by financing activities	<u>(729,140)</u>
NET INCREASE (DECREASE) IN CASH	(1,124)
CASH AND CASH EQUIVALENTS, beginning of year	<u>10,043</u>
CASH AND CASH EQUIVALENTS, end of year	<u>\$ 8,919</u>

SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION

	<u>2002</u>
CASH PAID DURING THE YEAR FOR:	
Interest	\$321,524
Income taxes	\$ 2,495

The accompanying notes to financial statements
are an integral part of these statements.

FINANCIAL RESOURCES & ASSISTANCE OF THE LAKES REGION, INC.

NOTES TO FINANCIAL STATEMENTS

DECEMBER 31, 2002

1. Summary of significant accounting policies:

Nature of operations - Financial Resources & Assistance of the Lakes Region, Inc. ("the Company") is a New Hampshire corporation that derives a significant portion of its income from commissions on the brokerage or mortgages with various unrelated third party finance companies. Additionally, the Company purchases and sells various notes, accounts and mortgages receivable on the secondary market and will occasionally provide financial funding on a short term financing basis to individuals and businesses. The primary geographic funding area is the Northeast with secondary revenue sources throughout the continental United States.

Cash and cash equivalents - For the purposes of the statement of cash flows, the Company considers all highly liquid investments with an initial maturity of three months or less to be cash equivalents.

Revenue recognition - Brokerage fees are recorded as revenue when due using the accrual method.

Depreciation - The Company for financial statement purposes provides for depreciation of its property and equipment based on the straight line method. The estimated useful lives used are as follows:

	<u>Years</u>
Furniture and fixtures	5 - 7
Equipment	5 - 7

Expenditures for repairs and maintenance are expensed when incurred and betterments are capitalized. Assets sold or otherwise disposed of are removed from the accounts, along with the related depreciation allowances, and any gain or loss is recognized.

Use of estimates - Preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from these estimates.

Advertising costs - The Corporation expenses all advertising costs as incurred in accordance with AICPA Statement of Position 93-7 "Reporting on Advertising Costs". Advertising and marketing expenses for the years ended December 31, 2002 amounted to \$24,370.

Fair values of financial instruments - The following methods and assumptions were used by the Company in estimating fair values of financial instruments as disclosed herein:

Cash and cash equivalents. The carrying amounts of cash and short term instruments approximate their fair value.

FINANCIAL RESOURCES & ASSISTANCE OF THE LAKES REGION, INC.

NOTES TO FINANCIAL STATEMENTS

DECEMBER 31, 2002

1. Summary of significant accounting policies (continued):

Notes receivable. All current notes receivable that have no significant change in credit risk are reflected at their carrying values. Fair values for impaired loans are estimated using the underlying collateral values.

2. Federal income taxes:

The Company for financial statement purposes provides for income taxes based on current financial income at current tax rates. The Company for tax purposes reports its income under the cash method of accounting. Due to significant tax loss carry forwards, a deferred tax liability is not warranted in the accompanying financial statements. The Company at December 31, 2002 had federal net operating loss carry forwards that amounted to approximately \$745,000 that begin to expire in the year 2012. Additionally, the Company, at December 31, 2002 had state net operating loss carryforwards that amounted to approximately \$110,000 that begin to expire in the year 2005.

3. Bank accounts:

The Company's bank balance at December 31, 2002 was \$78,889 and was fully covered by federal depository insurance.

4. Notes receivable:

Notes receivable, included in the accompanying financial statements, are reported at their outstanding unpaid principal balances reduced by any charge off or specific valuation accounts and net of any deferred fees or costs on originated loans or unamortized premiums or discounts on purchased loans. Management intends to hold the included notes for the foreseeable future or until maturity.

Notes receivable at December 31, 2002 represent amounts due from individual and business loans that have been advanced or purchased from unrelated parties. The notes bear interest at various rates and \$42,800 of the notes were unsecured. The remaining notes receivable were secured by first mortgages on real estate. The secured notes receivable were in technical default by the mortgagees, and the Company was pursuing the collection or refinancing of these mortgages. These mortgages, for financial purposes are no longer accruing interest. As the fair market value of these mortgages exceeds the face amounts of the underlying secured mortgage, an allowance for non-performance has not been recorded in these financial statements.

FINANCIAL RESOURCES & ASSISTANCE OF THE LAKES REGION, INC.NOTES TO FINANCIAL STATEMENTSDECEMBER 31, 20024. Notes receivable (continued):

Allowance for loan losses is increased by charges to income and decreased by chargeoffs (net of recoveries). Management's periodic evaluation of the adequacy of the allowance is based on the Company's past loan loss experience, known and inherent risks in the portfolio, adverse situations that may affect the borrower's ability to repay, the estimated value of any underlying collateral and current economic conditions. As noted above, the fair market value exceeds the face amounts of these notes receivables. However, management has recorded a \$125,000 allowance for loan losses due to the fact that these and the participation notes receivable, discussed below, are in default and will take time and resources to collect the full face amounts of the notes.

The following is a schedule of principal payments scheduled for notes receivable for the year ended December 31:

2003	<u>\$308,800</u>
------	------------------

5. Participation note receivable:

The participation note receivable reflects the Company's net receivable after reduction for other participants portions of the note. The Company's participation note receivable at December 31, 2002 was interest bearing and secured by various real estate and assets of the payees. The participant note receivable had matured at December 31, 2002 and the Company had obtained a judgement against the payee and a co-maker. The Company is negotiating extension terms as of the date of these financial statements.

6. Demand notes payable:

Various individuals have advanced funds on an unsecured demand basis. The notes bear interest ranging between 14% and 25%. Interest is paid or accrued monthly at the discretion of the note holder.

Certain of the demand notes totaling \$383,000 from unrelated individuals contain default provisions entitling the holder, upon default, to be issued preferred stock amounting to 384 shares in the Company.

7. Related party transactions:

The Company has advanced funds on an unsecured, 14% interest bearing basis to a related corporation that is owned by the Company's common stock shareholder. Payments amounting to \$120,203 including interest of \$21,804 were paid back on behalf of the related party during the year ended December 31, 2002. The note receivable balance from this related corporation at December 31, 2002 amounted to \$95,108.

FINANCIAL RESOURCES & ASSISTANCE OF THE LAKES REGION, INC.NOTES TO FINANCIAL STATEMENTSDECEMBER 31, 20027. Related party transactions (continued):

The Company's common stockholder has advanced funds to the Company on an unsecured basis. At December 31, 2001, this common stockholder elected to contribute to additional paid in capital amounting to \$242,950.

Certain notes receivable have been advanced to related subscribed or issued preferred shareholders. Subscribed preferred shareholders accounting for 994 shares or \$994,000, have also outstanding notes receivable to the Company amounting to \$586,831. The majority of these notes receivable are unsecured and non-interest bearing or contain provisions allowing the offset of interest due the Company against preferred dividends payable to the respective shareholder.

Interest income reflects \$21,804 of interest received from a related party and \$101,045 offset from related preferred shareholder notes receivable.

8. Commitments and contingencies:

Rent - The Company is a tenant at will and leases its office facilities at a monthly rent of approximately \$6,500. Additionally, the Company is obligated to pay utilities and upkeep of the property. The lease is between the Company and a related trust and allows the tenant to terminate the tenancy by providing the lessor with a 30 day written notice. Rent expense for the year ended December 31, 2002 amounted to \$77,450.

Office machine rental - The Company leases various office equipment requiring payments of \$321 through October 2003.

Lawsuits - During the year ended December 31, 2002, a judgement was awarded to a plaintiff in the amount of \$118,600. The Company is appealing the judgement and is currently negotiating to settle this case for less than the judgement amount.

Additionally, the State of New Hampshire's Bureau of Securities Regulation issued a Staff Petition for Relief on November 8, 2001 alleging, among other things, that the issuance and sale of certain promissory notes constitute the unregistered sale of securities and that the Company was not licensed under New Hampshire law to engage in such activities. The Company is presently gathering and assembling the necessary information to respond to the Bureau's Order and a range of possible loss, if any, is not estimatable at this time.

FINANCIAL RESOURCES & ASSISTANCE OF THE LAKES REGION, INC.NOTES TO FINANCIAL STATEMENTSDECEMBER 31, 20029. Preferred stock:

The Company has issued 392 shares of \$1,000 par value, preferred stock. Additionally, the Company has 994 shares of \$1,000 par value preferred stock that has been subscribed for, but not issued as of December 31, 2002. The issued and subscribed preferred securities accrue and pay cash distributions at a rate of 12% per annum. Dividends paid on these shares for the year ended December 31, 2002 amounted to \$166,320.

Protecting Children with Children

Matter ID/Client Sort

Matter Description

Initials

Event Date

Notes

20046149 / Criminal Justice
IOD Investigator of the Day -

GMB

10/3/2005 9:56:09

██████████, ████████ NH, ████████ alleged that ROBERT FARRAH, minister of the CENTER HARBOR CHRISTIAN CHURCH and his son, STEVE FARRAH, both own FINANCIAL SERVICES (FS) and are diverting monies from members of the church to FS and then back thru the church to themselves and its a fraud.

CAMPBELL indicated that Atty CHRIS CARTER in Concord represents ██████████ against FARRAH in a civil suit in Belknap SS for \$250k.

██████████ said that he would fwd any new information.

On 10/3/05, Bob Carey and I called Carter. Carter adv it is his believe that criminal violations exist and will fwd NH Supreme Court brief and complaints.

Protecting Children with Children

Matter ID/Client Sort

Matter Description

Initials

Event Date

Notes

20046149 / Criminal Justice
IOD Investigator of the Day -

GMB

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██████████ said that he would fwd any new information.

On 10/3/05, Bob Carey and I called Carter. Carter adv it is his believe that criminal violations exist and will fwd NH Supreme Court brief and complaints.

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: Hildreth, 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 playing 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. 2006.
- [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

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=5200936c>

██████████ 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

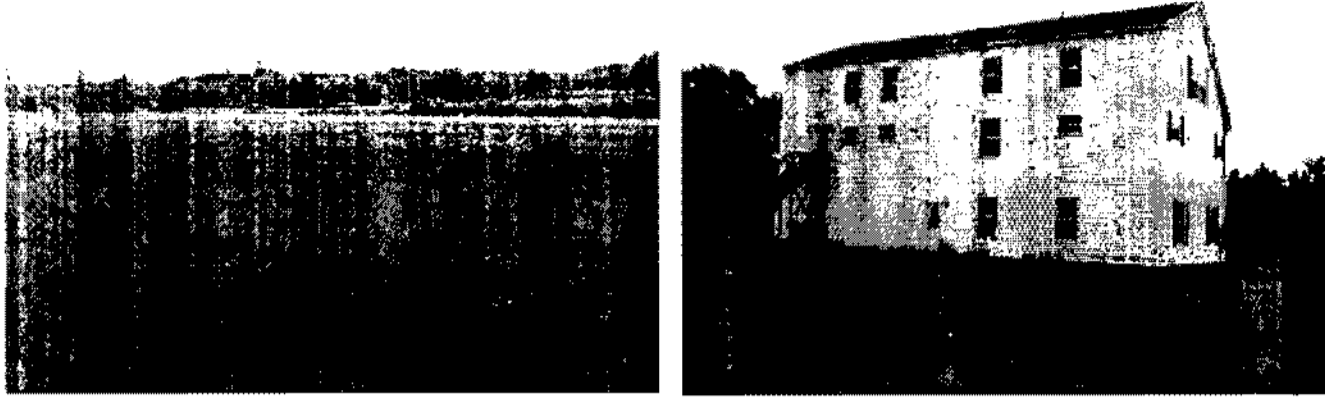
occupy this property. This new loan will be paid off when the surgery is operating and conventional financing is put in place.

██████ 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 \(PDF\) - 0.29mbView Full Package](#)

Subject Land & Rear View



ITEM	SUBJECT PROPERTY	COMPARABLE NO 1	COMPARABLE NO 2	COMPARABLE NO 3
Address	[REDACTED] Concord, NH 03301	[REDACTED]	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	\$ 3,500,000
Price per acre	\$	\$ 272,727	\$ 642,986	\$ 291,045
Data Source	Inspection	MLS# 2647328	MLS# 2766022	MLS# 2777448
Date of Sale and Time Adjustment	N/A	09/05/07	Current Listing	Current Listing
Location	Good	Good	Good	Good
Site/View	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
Net Adj. (Total)		<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
Indicated Value of Subject		\$ 1,743,250	\$ 1,643,250	\$ 4,543,250

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 Reconciliation: 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 DEFINED OF SUBJECT PROPERTY AS OF June 26, 2009 to be \$ 2,844,050

Philip J. Korkosz [Signature] Did Did Not Physically Inspect Property
 Appraiser Review Appraiser (if applicable)

STATE OF NEW HAMPSHIRE BANKING DEPARTMENT

FACSIMILE TRANSMITTAL SHEET

TO: MS. LAURIE DORGAN FROM: ANDREA J SHAW
 COMPANY: DATE: THURSDAY, APRIL 27, 2006
 FAX NUMBER: 603-224-8120
 PHONE NUMBER:
 RE: FINANCIAL RESOURCES &
ASSISTANCE OF THE LAKES REGION



FAXED

URGENT PLEASE COMMENT PLEASE REPLY PLEASE ACKNOWLEDGE RECEIPT

NOTES/COMMENTS:

Commissioner Hildreth requested that I fax you a copy of the Order to Show Cause in the above captioned matter.

Sincerely,

 
 Andrea J. Shaw
 Staff Attorney

ashaw@banking.state.nh.us

www.nh.gov/banking/ (Click on Consumer Credit Division)

The information contained in this facsimile message is intended solely for the individual(s) named above. If you are not the intended recipient, or are not designated to deliver to the intended recipient, you are hereby notified that this information is privileged and confidential. Any dissemination, distribution, or copying of this information is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone at (603) 271-3561.

64B OLD SUNCOOK ROAD - CONCORD - NH 03301
 PHONE: (603) 271-3561 LICENSING: (603) 271-8675 FAX: (603) 271-0750

Both pages

TRANSMISSION VERIFICATION REPORT

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TEL :
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STATE OF NEW HAMPSHIRE BANKING DEPARTMENT

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INTEROFFICE MEMORANDUM

*Att/Chair
Communications*

TO: PETER C. HILDRETH, BANK COMMISSIONER
 FROM: ANDREA J. SILLAW, STAFF ATTORNEY
 SUBJECT: FINANCIAL RESOURCES & ASSISTANCE OF THE LAKES REGION
 DATE: 4/27/06
 CC: MARY JURTA

License Type: Mortgage Banker
 Licensed Since: 1997

Complaints:

- 8 total (9 originally reported, but a duplicate entry was discovered)
- Mortgage, Application = 3 (*1 of these complaints the response is in, but NIBD is still analyzing response).
- Mortgage, Closing Costs = 2 (* 1 closing costs complaint filed by ██████████ - this property is an INN that he also planned to live in. I met with ██████████ to interview him contemplating an enforcement action. As part of the action we needed to prove that his business plan would have succeeded but for Financial Resources allegedly bad acts. ██████████ represented that he had a solid business plan at home that would support his allegations. I requested he provided said business plan. He didn't provide the business plan in a timely manner (it took months) and my evaluation of the business plan was it was insufficient to prove ██████████ allegations. **I declined to take an enforcement action.**)
- Mortgage, Other = 1
- Mortgage, Misrepresentation = 1 (*still open, response due 05/02/06)
- Mortgage, Unlicensed = 1
- * 3 of the complaints we lacked jurisdiction to provide a remedy:
 - ██████████ was a NJ property and referred to NJ Department of Banking; the other
 - ██████████
 - █ ██████████
- * 2 complaints are still open

* indicates confidential information

INTEROFFICE MEMORANDUM

TO: PETER C. HILDRETH, BANK COMMISSIONER
FROM: ANDREA J. SILAW, STAFF ATTORNEY
SUBJECT: FINANCIAL RESOURCES & ASSISTANCE OF THE LAKES REGION - ENFORCEMENT ACTIONS
DATE: 4/27/06
CC: MARY JURTA

NHBD Actions: Docket No. 05-071

Source: anonymous tip and examination (exam on 10/11/2006)

Issues: Gramm-Leach-Bliley Act violations – “Safeguard Rules” (16 CFR 314)

- Whether Respondent had a written consumer information safeguard policy in place
- Whether Respondent failed to implement a program to safeguard consumer information
- Whether Respondent failed to facilitate an examination (this was later dropped)

Procedural Posture:

- Order to Show Cause issued 12/20/05 (signed by RAF) (asks for \$17,000 penalties) (April 13, 2006 we received a request from James D. Rosenberg, Esq. from Shaheen & Gordon P.A for a copy of the Order to Show Cause)
- Response to Order to Show Cause and Request for Hearing received 01/13/06
 - *See attached Statement of Allegations for which facts Respondent disputed/admitted after first response to Order to Show Cause
- Notice of Hearing issued 01/19/06 (by RAF)
- Hearing Scheduled for: 03/09/06
- Respondent's Motion for Continuation: received 03/07/06
- Presiding Officer Wells granted Continuation for 30 days on 03/09/06 and stated if no settlement was reached the hearing would be rescheduled
- The Parties reached a tentative settlement – Respondent is awaiting draft of consent order - \$15,000 in penalties (undetermined if Respondent will request a payment plan)

Summary of Law:

- NHBD RSA 397-A:2 requires all licensees to abide by NH and Federal laws and regulations
- Federal Trade Commission (FTC) promulgated Safeguard Rules (16 CFR 314) implementing proper disposal of consumer information under the Fair and Accurate Credit Transactions Act of 2003 (FACT ACT). (*FACT ACT amended section 628 of the Fair Credit Reporting Act (FCRA) at 15 USC 1681w).
- 5 Main Elements to GLBA:
 - info security program coordinator (16 CFR 314.4(a))
 - identify potential risks (16 CFR 314.4(b))
 - safeguards to control risks (16 CFR 314.4(c))
 - oversee service providers (16 CFR 314.4(d))
 - evaluate & adjust program (16 CFR 314.4 (d))

- Additional Details of Requirements of the Safeguard Policy:
 - Written Safeguard Policy
 - Designated employee(s) to coordinate program)
 - Risk Assessment
 - Design, implementation and testing
 - Service Provider monitoring/contracts
 - Evaluations and adjustments to policy

Securities Enforcement Actions: Docket No. INV00-007

Named Parties: Schott D. Farah, Financial Resources and Assistance of the Lakes Region Inc.(FRALR), and Gary T. Coyne

Source: Unknown

Issue(s): alleged violation of RSA 421-B

Procedural Posture:

- Order to Show Cause and Order to Cease and Desist issued – on or about November 11, 2001
- Respondent Farah and FRALR Request for Hearing received on December 5, 2001.
- Respondent Coyne's Request for Hearing received December 12, 2001
- Hearing Ordered on December 20, 2001
- Hearing Postponed (request of all Respondents) until January 31, 2002.
- Hearing Postponed at the request of the Staff of the Bureau for 60 days
- Hearing Respondents jointly requested the May 28, 2002 hearing be postponed until July 30, 2002
- Hearing Respondents jointly requested the hearing be postponed until September 10, 2002.
- During postponements Cease and Desist Order remained in effect.