N.H. Bureau of Securities Regulation

Response to the August 31, 2010 Proposed Report of the Joint Legislative Committee to Review the State's Regulatory Oversight Over Financial Resources Mortgage, Inc.

October 8, 2010

INTRODUCTION

The Bureau of Securities Regulation ("the Bureau" or "BSR") respectfully submits this report as a response to the *Proposed Report of the Joint Legislative Committee to Review the State's Regulatory Oversight over Financial Resources Mortgage, Inc.* submitted on August 31, 2010. The BSR Report provides a critical analysis of the issues addressed in Section VII of the Proposed Report and focuses on the facts and legal analysis related to the oversight of the Bureau of Securities Regulation.

I. THE BUREAU'S OBJECTION TO SPECIFIC POINTS IN SECTION VII OF THE PROPOSED REPORT

In reviewing Section VII of the Proposed Report, the BSR Report addresses with specificity various important misunderstandings, inaccuracies, and errors of fact and law. The BSR Report also notes various opinions in the Proposed Report that do not contribute to the intent of the report to "provide an overview of the statutory authority of the three agencies that had contact with or regulatory oversight over FRM" and "make...recommendations regarding legislative action to better protect the citizens of New Hampshire from this type of behavior in the future."

The BSR notes with particular concern the conclusion in the proposed report that the bureau took an unduly restrictive view of its authority based on information in its possession. The report also concludes that a more aggressive approach in investigating FRM should have been taken by the Bureau. Few facts which support these conclusions are offered. It seems to ignore the actual evidence that the BSR had available in pursuing its case against Financial Resources and Scott Farah. It does not distinguish between allegations of fraudulent activity, "notice of" fraudulent activity, or actual *evidence* of fraudulent activity. An in-depth discussion of the evidence that the BSR had to act on is critical to any discussion of the BSR's role in this matter. As a result, the findings of the Proposed Report often appear to reach conclusions inadequately supported by concrete facts.

Moreover, the Proposed Report appears to rely extensively on the factual and legal analysis of the BSR's role provided by another state agency that has offered a view quite different from the view of the BSR. Given the issues that have been raised both at hearing and in public regarding potential conflicts of interest, it would seem more appropriate to have conducted an independent review of the facts and law. In addition, with all due respect to other regulatory agencies, the expertise for determining the proper jurisdiction of the BSR lies within the BSR itself and not with agencies that have little or no expertise in the complexities of securities law. In this regard, the report does not adequately acknowledge the analysis and conclusions of N.H. Bureau of Securities Director Joseph Long. He examined the work of Bureau staff in handling the FRM matter; the documents which are alleged to have been securities; New Hampshire law; and the New Hampshire securities statutes. His conclusion, under the facts known to the Bureau at the time is that the documents in question were not, and are not, securities.

Finding 1: **BSR failed to appropriately pursue FRM after receiving notice of fraudulent and illegal activities.**

Bureau's Response to Finding #1

The Bureau takes issue with several statements in the discussion of Finding 1. The finding makes a broad and unsupported allegation. In the first sentence the Report asserts, "The Bureau's most obvious regulatory failure was its failure to appropriately pursue the company after receiving notices in 2005 and 2006 that FRM had advertised a fraudulent investment opportunity." As support, the paragraph cites the Transcript of the May 21, 2010 Hearing at p. 27, which records the testimony of Associate Attorney General Richard Head. Accepting the testimony of Mr. Head at face value, nowhere in Mr. Head's testimony does it suggest that the Bureau had become aware of advertising related to FRM.

What did in fact happen was that the Bureau received a phone call in late 2005 from Ron Stone, who had initiated a lawsuit against FRM. Mr. Stone said he did not wish to file a complaint and would handle the matter through his attorney and the Attorney General's Office. Since no complaint was filed and the Attorney General's Office had been contacted by Christopher Carter, Mr. Stone's attorney, the Bureau reasonably believed that the matter was being handled by the Attorney General's office. It was only upon the release of the Attorney General's Report in April 2010 that the Bureau discovered that the matter had allegedly been referred informally to the FBI and no further action was taken on the matter. It is also important to note that the Bureau later inquired with FRM's counsel about the Stone matter and learned that the civil case brought by Mr. Stone was settled, and subject to a confidentiality agreement. This calls into question the specific characterization of this matter as "(t)he Bureau's most obvious regulatory failure."

The Bureau also acknowledges that in May 2006 it had received a request for a joint examination from the Banking Department. However, as noted, the Bureau did not join in the examination because the Bureau had no examination authority. In addition, any visitation to FRM required notice of such visitation from the Bureau, which would have compromised the Banking Department's planned surprise examination. However, the Bureau did in fact visit the offices of FRM shortly following the Banking Department's examination.

The first paragraph of Finding 1 also asserts, "In 2006, the Bureau also received evidence that FRM had committed new violations of its administrative order." While the Bureau acknowledges it became aware of additional securities issued during 2002-2003, it is important to note that the Consent Order that made the Bureau's original cease and desist order binding was not actually issued until January 2007. Therefore, the Bureau's original cease and desist order of 2001 was still the subject of an adjudication and no final action had been taken.

In the same paragraph, the Report asserts, "(The Bureau) knew at this point that FRM was in financial trouble." On the contrary, the audited financial statements submitted to the Bureau in 2006 indicated that FRM had substantial assets to draw from in providing relief to investors. Inherent in this statement from Finding 1 is the belief that the Bureau should have looked beyond the financial statements and conducted its own audit of FRM's finances. The Bureau receives

thousands of financial statements annually and does not inquire into the underlying accounts and transactions unless proof is presented that the financial statements are untrustworthy. In this case, the Bureau had no reason to believe that the trustworthiness of the financial statements was in question since they were produced and submitted by FRM's state-licensed CPA and attorney. The report presents no evidence that the Bureau had reason to believe the financial statements were questionable.

Finally, the first paragraph of Finding 1 ends with a troubling assertion "Rather than pursue the new matters aggressively, the Bureau concentrated its efforts on wrapping up its 2001 case in a belated 2007 Consent Agreement." The Bureau has elsewhere addressed the reason why this matter was not concluded until January 2007. The Bureau strongly objects to the characterization of its efforts as lacking in aggressiveness. On the contrary, the Bureau acted to insure that all the investors who were the victims of unlicensed sales of unregistered securities received full restitution of their moneys. From the standpoint of January 2007, this was a commendable result in which the Bureau did exactly what it was charged with doing – protecting investors in securities.

In the second paragraph of Finding 1, the report states, "The Bureau allowed more than eighteen (18) months to pass from the time it received the initial complaint from Attorney Latici to the time it issued an administrative order against Scott Farah, Gary Coyne and FRM." The Bureau objects to this characterization, noting that complex cases can often take substantial amounts of time to move from complaint through investigation and to the initiation of an enforcement action. Given the complexity of the case, and that the Bureau was contending with the exit of its prior staff attorney and the introduction of a new one, some delay, while unfortunate, was unavoidable, and to be expected. This paragraph also states, "Another fourteen (14) months passed before a hearing was held on the violations giving rise to the order." Again, this is not an unreasonable amount of time in a complex case, particularly given the Bureau's interest in protecting investors by arranging full restitution. During this period, the Bureau was dealing with FRM's refusal to provide banking documents, reviewing extensive documents produced by FRM, and attempting to settle the matter.

During the later part of September, 2002, the Bureau met with the Attorney General's office to discuss a proposed written Undertaking between Financial Resources and the Bureau. This Undertaking included among other things assurances from Financial Resources that it would not issue additional securities, would reduce its debt position, and repay investors. The Attorney General's office believed the Undertaking process was acceptable. In June, 2003 the Bureau returned to the Attorney General's office and advised them of Financial Resources' non-compliance with the undertaking and at that time requested its assistance to perform an asset freeze. The Attorney General's office was provided with a copy of Financial Resources financial statement and additional supporting documents.

The second paragraph of Finding 1 closes with the statement, "No decision was ever rendered by the Hearing Examiner and the case was administratively resolved in 2007 *with funds that seemingly appeared from out of nowhere.*" (Emphasis added). The Report provides no citation or other support for the allegation that the funds seemingly appeared out of nowhere. In fact, if the record had been independently reviewed, it would have been clear that the financial statements

provided by the accountants and attorney for FRM demonstrated the existence of significant assets that would allow investors to be made whole. This unsupported allegation unfairly impugns the investigative abilities of the Bureau, which have been demonstrated over and over again in the many cases that the Bureau has taken to a successful conclusion in the last nine years.

The third paragraph of Finding 1 in the Proposed Report begins with the statement, "To be fair, there is certainly evidence that the Bureau attempted to address violations committed by FRM within the perceived limits of its authority." The Bureau questions the necessity of the phrase "to be fair" and would hope that the whole report is being fair, not only to the Bureau but also to the Banking Department, the Department of Justice, and, most importantly, to the victims of FRM. Moreover, the Bureau notes that, within the proper bounds of its jurisdiction, it actually did address the securities violations committed by FRM. For example, the Bureau inspected in May 2006 additional notes issued by FRM, contacted the Attorney General's Office regarding the delay in a decision on the prior hearing, and sought information related to the phone call from Ron Stone. As noted elsewhere, it did not and could not have addressed securities violations of which it could not have been aware of violations that indeed were not securities violations.

Later in the third paragraph, the Report states, "It is unclear why the Bureau's efforts were less robust in 2005 and 2006 when additional reports of fraud and non-compliance were received." The Bureau strongly objects to the unsupported allegations that its efforts in 2005 and 2006 were lacking in robustness. In fact, the Bureau is puzzled by the reference to "additional reports of fraud." The one and only arguably additional report of questionable activity was related to Mr. Stone's phone call. In relation to that, the Bureau proactively took steps to address potential securities violations, including:

- Researching and investigating National Inspection and Repair, the firm in which Mr. Stone was involved.
- Obtaining documents from the state of Kansas related to National Inspection and Repair
- Obtaining a copy of the judgment for Scott Farah against National Inspection and Repair
- Interviewing Scott Farah and discussions with his attorney.
- Encouraging Mr. Stone to file a complaint with the Bureau (which he declined to do)
- Attempting to obtain and being refused a copy of the Stone settlement from FRM's counsel

Again, from the standpoint of 2005 and 2006 and relying on the information that was available to the Bureau, the Bureau's efforts were sufficiently robust to win rescission for affected investors in the unregistered securities of FRM in January 2007. As noted, any additional report of fraud in 2005 and 2006 had been referred to the Attorney General's Office for criminal action and the alleged victim of the fraud never submitted a complaint to the Bureau. Not knowing the details of Mr. Stone's issue, the Bureau was dealing with an amorphous, non-specific complaint. To adequately pursue a potential violation, the Bureau needs to have evidence and not vague statements. It is important to note that evidence of new securities violations would not have caused the Bureau to expand its investigation into areas it did not regulate. In addition, the new violations did not indicate or suggest the existence of CL&M, Donald Dodge, the trusts, Greatland Development Company, and private lending activities. Many of these matters were

under the jurisdiction of the Banking Department. Given this background, the Bureau acted strongly in this case, and questions why the robustness of its efforts in this case is being questioned.

The next sentence in the third paragraph states, "While there is agreement that constraints on the Bureau's ability to audit FRM existed prior to 2007, it seems clear that, as of 2006, the Bureau had actual evidence of new violations of the New Hampshire Securities Act."[1] This is another instance among several where the report refers to examination authority before and after 2007. The Bureau notes that HB 889 of 2007 did not take effect until July 1, 2007, nearly six months after the Consent Order was signed with FRM. If the implication is that the perceived expanded authority under HB 889 allowed the Bureau to conduct examinations of FRM after July 1, 2007, we believe this is a mistaken assumption. While after July 1, 2007, the Bureau had the authority to examine the records of an issuer-dealer "licensed or required to be licensed," the Bureau had no information suggesting that FRM was required to be licensed after signing the Consent Order in January 2007. The Bureau would have at least required evidence – if not an actual finding or order – that FRM should be licensed in order to conduct an examination. In any event, the further sales of securities discovered in 2006 were subject to the cease and desist order contained within the Consent Order of January 2007. The amendments to the law enacted in 2007 by HB 889 had no bearing on this situation.

The Report concludes by stating, "BSR does not appear to have lacked resources, as it aggressively pursued enforcement actions against licensed entities. More than anything else, BSR appeared to be constrained in pursuing FRM based upon perceived limitations of its authority." The Bureau has never asserted that it was lacking in resources and concurs that it aggressively pursued enforcement actions. Relative to the Report's assessment of the Bureau's actions as lacking in robustness, a brief review of the record will demonstrate that the Bureau has continuously and aggressively pursued wrongdoers on behalf of the state's investors and is responsible for securing over $55 million in fines, penalties, and restitution. Why on this one case the Bureau would have decided not to be aggressive is never fully explained in the report. The statement that "the BSR appeared to be constrained based upon perceived limitations" is an unfair assessment that presents no evidence of error on the part of the Bureau. The Bureau notes that inherent in the delegation of authority from the legislature to an administrative agency are built-in constraints and jurisdictional limitations, as well as prosecutorial discretion. Therefore, the last statement in this paragraph merely states the obvious without indicating why the Bureau was wrong in the way it perceived its legislatively-granted authority. The issue of authority was addressed at length by Director Long in writing and in testimony before the Committee.

In sum, the Report appears to be trying to replace the judgment of the Bureau with someone else's opinion. In its investigation of FRM, the Bureau evaluated the evidence and developed a responsible solution. Nowhere does the author of the Report state specifically what the Bureau should have done differently, or how it failed to carry out its duties under the statutory provisions of RSA 421-B.

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[1] For clarification purposes, the Bureau notes that the violations it became aware of in 2006 were not new. In 2006 the Bureau became aware of further notes that were issued in 2002 and 2003.

Finding 2: BSR's arguably narrow view of its investigative and enforcement authority prevented it from taking effective action.

Bureau's Response to Finding #2

The Bureau takes issue with the Report's Finding 2, on p.44, for many reasons. First, the Bureau strongly objects to the first sentence of the report which reads:

> The Bureau appeared to take a very narrow view with respect to its investigation and enforcement authority, which explains why it simply pursued securities violations in 2001 when confronted with evidence of fraud and commingling of funds.

This quote "finding" is objectionable for any one of a number of reasons.

The first objection is relevance. What do the activities of the Bureau in 2001, have to do with the present investigation?

The securities involved in the 2001 administrative action of the Bureau were *preferred stock* and *unsecured promissory notes*, which by anyone's definition, are securities. The instruments in question, *beginning sometime in 2004 or 2005* were *secured promissory notes, secured by real property mortgages on residential and commercial real property.*[2] As the Bureau's Statement of Policy, which is being released contemporaneously with this Response demonstrates, the 2004 secured promissory notes *are not securities* under either New Hampshire law or under the *Reeves* test which the Committee Report recommends the Legislature statutorily adopt.

The 2001 incident and the 2004 incident have nothing in common, except that they involve the same company.[3] Therefore, the conduct of the Bureau in connection with the earlier violation is not relevant to its conduct in the later alleged violation of the securities act beginning in 2004. Most importantly, the Committee's Proposed Report ("Committee Report" or simply "Report") makes no attempt to explain how the 2001 action is relevant. Instead, it simply, uncritically, accepts the Attorney General's position that it is relevant in some way.

The second objection to this finding is the claim that the Bureau was "confronted with evidence of fraud and commingling of funds." The statement as to "fraud" simply is not supported by the record, and the comment about "commingling" is legally insignificant. As to the statement concerning "fraud", the Report cites no authority for this claim except a vague reference to the Attorney General's Report in Footnote 119, in which Mr. Spill of the Bureau disputes any claim of fraud. There is *no evidence* that the 2001 incident involved fraud in the Hearing Record.

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[2] The fact that the lenders never received their real property mortgages is irrelevant to the classification of the notes coupled with the notes as securities. In many securities frauds, the investors never receive the securities promised them. The *key point is what were the investors promised*, not what the investors received.

[3] To be more exact, the 2001 company did not exist in 2004, but had been replaced with a new company. The two companies, however, have a common history.

What is in the Hearing Record, is an indication that a private attorney in a civil action against FRM *claimed that FRM had committed fraud.* There is a tremendous difference between a *claim of fraud by an advocate in an adversarial setting* or pleading and proof fraud. This claim again represents another unwarranted reliance by the Committee on the Attorney General's Report as establishing "facts", when either none exists, or, if it exists, has not been made a part of the Hearing Record.

As to the claim that "commingling of funds" is somehow legally significant, the Report makes no attempt to explain why this somehow should have triggered action by the Bureau. Commingling, in and of itself, has no relevance to securities classification. For example, a group of families join together to buy a vacation home which all families will share in the use of. Such purchase, alone, does not involve the purchase of a security. The same is true of a group of investors who buy a piece of undeveloped land as tenants-in-common or joint tenants, with no intent to develop the land. Again, there is no security, but a pooling of investor funds to purchase the land.

As indicated above, the 2001 incident involved unsecured promissory notes, more properly labeled as debentures, and preferred stock of FMR. Of course, in both incidents, the Bureau would expect to find a commingling of investor funds. When an investor buys a bond or debenture from Ford Motor Company, what happens?

In the case of the bond or debenture, the money becomes *the property of Ford Motors* and commingled with other assets of Ford, to be used by Ford as it sees fit. The same is true of the purchase of a certificate of deposit or savings account in a bank. The investor or depositor becomes a *creditor* of Ford or the Bank, but has no ownership interest in either's' assets. If the debt is a bond, the creditor's debt interest is secured by a mortgage on some asset of Ford or the bank.

In the case of a preferred stock, the investor is buying an *equity interest* in Ford or the bank. The money paid for the interest becomes part of the general assets of Ford or the Bank. Again, the investor has no claim on any particular asset of Ford or the bank.

The Report may have attached some significance to commingling in the case of the 2004 incident as one branch of the test for investment contracts developed by the Supreme Court in SEC v. W.J. Howey Co., 328 U.S. 293, 66S.C.T. 1100(1946)[4] does consider commingling or "pooling of investor funds" significant to the determination whether a transaction might constitute an investment contract. However, "investment contracts" are an entirely different form of security from either preferred stock or debentures or unsecured promissory notes. While the Attorney General's Report posed some *hypotheticals* concerning whether the transactions involved in the 2004 incident *could have been* investment contracts, no evidence was offered that the *hypothetical's actually occurred.* Further, the Committee's Report does not address this issue.

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[4] This test indicates that an investment contract involves: (1) The investment of money; (2) In a common enterprise; (3) With expectation of a profit; (4) With the profit coming solely through the efforts of the promoter or some third party. See 12 Joseph C. Long Blue Sky Law § 2:44 – 2:79 (2010). Element two has been held by certain courts to require the commingling of investor funds. See id. § 2:54.

In summary, the "commingling" issue represents another example of the Proposed Report accepting the Attorney General's Report and statements therein as "evidence," when in fact the statements are not evidence and are merely unsupported claims.

The Bureau takes exception to the second sentence of the finding which claims that the Bureau failed to use its investigative power "when presented with allegations and evidence of fraud prior to 2007." The Bureau notes that there is no citation to any part of the record before the Committee made to support this finding. The reason is simple. There are no such allegations or evidence in the record which supports this finding. T*he Bureau received no communication from the general public, the Department of Banking, or the Attorney General's Office, suggesting any such fraudulent or unregistered securities activity by FRM after 2003.* No one, other than by drafting Finding 2, has suggested otherwise, or, more importantly, offered any proof to support such claim.

The Bureau can only guess that the unidentified reference is to the *Stone* case and the communications which arose there from. The Bureau is more than ready to provide evidence that the transaction in *Stone* involved transactions which took place *in 2003 and before* and involved unsecured promissory notes, similar or identical to those which were the subject of the 2001 Cease and Desist Action by the Bureau.[5]

Further, contrary to the suggestion of Finding 2, the Bureau requested that FRM provide a list of these transactions, which had not previously been disclosed. Counsel for FRM complied. The Bureau had no reason to doubt, that counsel, as an officer of the court, disclosed *all* such promissory notes.[6] These notes were then made a part of the 2001 Action against FRM, and repayment was made before the Consent Order closed the action in 2007. Thus, contrary to the assertion of Finding 2, the Bureau did act on the *Stone* complaint.[7] The *Stone* letter and suit in no way provided the Bureau with knowledge or information about the subsequent 2004 violations involving the secured real estate notes.

The Bureau also objects to the last portion of the first paragraph of Finding 2, in its suggestion that the 2007 amendment to Section 421-B:9(I), adding the authority of the Bureau to audit broker-dealers "required to be licensed under this Chapter...." substantially alters the enforcement power of the Bureau, and that, as a result, the Bureau would have had the necessary authority to investigate FRM. Its objection is three fold.

First, the key to the application of this section *again is knowledge*. The Bureau has to have some knowledge or information that FRM is conducting business as an unlicensed broker-dealer

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[5] See footnote 101 of the Report on p. 40.

[6] The documents attached as Appendix 3 show how the various attorneys were trying to deflect the FRM matter from the Bureau to the banking department.

[7] The settlement negotiations in the Stone case, attached as Appendix 4 reflect the attempts of the FRM firm to prevent the Bureau from receiving information concerning the Stone matter.

before it can act. In the case of *licensed broker-dealers,* the Bureau is aware of the existence of these broker-dealers, because of the licensing process. However, the Bureau has no similar internal source for discovering the existence of *unlicensed* broker-dealers. Therefore without such information or knowledge coming from sources outside the Bureau, the Bureau cannot exercise the audit powers granted by the 2007 amendment.

The Bureau has consistently maintained that it received no such outside information or complaint[6] *about FRM selling the secured promissory notes during the period of 2004 until FRM failed in 2009 except for the Stone complaint.*[7] As indicated above, no evidence to the contrary has been produced. Only the Committee's proposed Report wrongfully *assumes* such knowledge.

Second, the audit power of Section 421-B:9(I) is based upon the requirement that the broker-dealer is required to be licensed, but is not. However, the requirement to be licensed is dependent upon the person or entity being a statutory broker-dealer under Section 421-B:2(III). This definition *only applies* to persons "effecting transactions in *securities....*" The Bureau, as the exclusive administrative agency charged with defining the definition of "securities."[8] *The Bureau has consistently taken the position that the FRM secured promissory notes were not securities.*

As the Statement of Policy to be issued in the near future will outline in detail, this was the law from, at least the early 1950's through 2009, remains the law, and will remain the law in the future, unless overruled by the Courts or changed by the Legislature.[9]

The Bureau has determined the FRM secured promissory notes *were not, and are not,* securities. FRM would not have had to be licensed as a broker-dealer in New Hampshire. Therefore, the Bureau could not have exercised its investigatory authority granted under Section 421-B:9(I).

Third the Proposed Report fails to note that language in the 2007 amendment to Section 421-B:9(I) is a paper tiger. The language of the amendment was borrowed from the Uniform Securities Act (2002), but the amendment did not include the enforcement provisions found in

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8 *The Attorney General has admitted that it received a number of complaints about FRM after* 2004, but these complaints were forwarded, not to the Bureau, but to the Banking Department. The Committee should ask itself: unlicensed broker-dealer, then why were the complaints sent to the Banking Department rather than the Bureau?

9 *As pointed out elsewhere in this response, the Stone* complaint involved *unsecured* promissory notes purchased around 2003. Therefore, Stone has nothing to do with the sales of the *secured* promissory notes in the period from 2004 through November 2009.

10 The Committee Report discusses this issue at great length and appears to accept the Attorney General's analysis on the issue. But, while the Attorney General's opinion might be relevant in drafting a change to the Securities Act, it is totally irrelevant in determining what the definition of securities covered at the time of the FRM case. Such decision at the administrative level was *solely within the jurisdiction of the Bureau. The Attorney General had no authority to second guess the Bureau on this issue.*

11 This position removed any obstacle for the Consumer Affairs Division to take action against FRM under the Consumer Protection Act. Yet the Attorney General did not act.

the Uniform Act. When Section 421-B:9(I) is applied to a *licensed* broker-dealer and the broker-dealer does not submit to the audit, such failure to cooperate is grounds for immediate summary suspension of the entity's license. However, when applied to an *unlicensed* broker-dealer, the Bureau has no license to revoke, if the target refuses to submit to the audit. The only remedy available to the Bureau is to use the normal enforcement remedies or request the Attorney General or the County Attorney to file misdemeanor charges under Section 421-B:(9)(III)(f).

Finally, the Bureau objects to the second paragraph of Finding 2. It, again, *assumes without citation of supporting evidence, that the Bureau had knowledge of complaints of wrongdoing in the period after 2004. The Bureau did not.* Failure to join with the Banking Department is not as the Attorney General's office claims the defining or pivotal moment in the FRM case.

As the Bureau has noted on many occasions, its power to investigate unlicensed broker-dealers *before* 2007 was limited. As outlined above, that power was not substantially changed by the 2007 amendment to Section 421-B:9(I). In either case, in order to exercise its investigative power, the Bureau *has to have some information that violations of the securities act have, or are about, to take place.*

Finding 3: BSR's arguably narrow view of which of FRM's investment and lending vehicle constitute a security under NH law appeared to make it easier for FRM to perpetrate its illegal behavior.

Bureau's Response to Finding #3

This finding is pure conjecture. The Bureau properly applied and interpreted the N.H. Securities Act based on the financial instruments known at the time of its review.

Reflection on the changes to the securities act in 2007 is in order. The report makes the assertion that these changes conferred on the Bureau authority to investigate entities which should be licensed under the act. While this is true in some sense, the report fails to address the need for specific facts upon which to justify investigation and the need for jurisdiction over the entity. Time and again reference is made to investigating not based upon current activity of the entity and current knowledge available to regulators but rather upon any prior improper activity by an entity, without consideration as to when the activity occurred or the nature of the specific activity. This may in fact be what some have referred to as "regulatory curiosity." In any case the term regulatory curiosity is nonexistent as a standard of conduct in any jurisdiction. Using it as a standard of legal conduct by regulators would render legal process and regulatory function in the state unworkable.

Finding 4: BSR Failed to manage and supervise the work of its hearings officer.

Bureau's Response to Finding #4

The Bureau has some objections to Finding 4.[10] The present Director of the Bureau agrees with the Report and the Attorney General that the Bureau does have the power of general supervision over its hearing officers. The present Director has changed that policy.

Former Director Connolly and Deputy Director Jeff Spill both acted in good faith and had a reasonable basis for their conclusion[11]. All would agree that it is paramount of the administrative process to run correctly that the hearings officer's not be subject to any influence from the agency as to the running and outcome of an administrative hearing. Enforcement of this rule is a major concept of New Hampshire. Therefore, both Connolly's and Spill's actions in refusing to pressure the hearing officer was an error in favor of protecting a fundamental right.

Further, as footnote 120 on p. 45 of the Committee Report indicates, they sought advice of the Attorney General on the issue and were provided none over an extended period. Therefore, they were left to their own devices in making the decision, which should not be second guessed at this point.

Finally, as to the actions of the hearing officer's actions in not rendering a decision, it was made in good faith and in what was clearly the best interest of the New Hampshire investors. He believed that he lacked authority to order rescission by the FRM over a period of time rather than in a single payment. The repayment of their entire investment to all investors in a single payment would bankrupt the company.

It is the opinion of the present Director that such remedy by an *imposed* order might well be beyond his authority. However, as the present Director is well aware, such time payments would be allowed in a *consent* order. What the hearing officer did was enter into a de facto consent order. FRM would repay the investors over time, and the Bureau would supervise FRM to see that the payments were made. If FRM did not live up to its obligations under the agreement, the case would be returned to an active status, and an order of adjudication entered.

The only fault of the Bureau and the hearing officer was that they did not reduce the de facto settlement order to writing. Under present policy of the Bureau, a formal settlement order similar to that found in *Commonwealth of Virginia ex rel. State Corp. Comm'n v. Trust Alliance,*

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[12] The draft report fails to provide facts or analysis indicating what substantive error was made by the hearings officer. Specifically RSA 421-B: 26-a XIV allows the hearing officer to regulate and control the course of the hearing, determine credibility or weight of evidence in making findings of fact and conclusions of law, render oral and written decisions, reports or recommendations as authorized by statute or rule, and take any action in a proceeding necessary to conduct and complete the case, consistent with applicable statutes, rules and precedents.

[11] At no point in either the working report or the Attorney General's report is consideration given to RSA 421-B: 26-a XXV. This statute contains a specific prohibition as to communication by any party with either the presiding officer or the secretary of state concerning the merits of the case except upon notice to all parties. It further prohibits any party to cause another person to make such communications. These requirements and prohibitions attach once a hearing notice has been issued commencing an adjudicatory proceeding.

Given this statute, communicating with the hearings officer for the purpose of appropriate control and exercising supervision in the manner implied by the working report could have been interpreted by some parties as an effort to influence the outcome of the adjudication whether the communication was made in writing or not. The result would have simply been more procedural infighting, not more clarity.

et al., 2006 WL 3519471 (Va. Corp. Comm. Nov. 29, 2006), attached as Attachment 5, will be entered which will state the undertakings of the violator. The Bureau will retain jurisdiction to see that the undertakings are complied with. If so, a final order of dismissal will be entered. See *Commonwealth of Virginia ex rel. State Corp. Comm'n v. Trust Alliance, et al.*, 2010 WL 1920241 (Va. Corp. Comm. May 5, 2010), attached as Attachment 6. If not, then the consent order is voided, and the case proceeds.

Mr. Spill was correct in concluding that when the Bureau issued its Final Order in the FRM case in 2007, the Bureau lost jurisdiction in that matter. As the Virginia Order indicates, the case is dismissed. As the Virginia Order also notes, the obligations of FRM under the Order continue. However, if the Bureau receives information that the obligations are not being honored, the Bureau must open a *new investigation* under Section 421-B:22(I). Again, as with all investigations, the key is knowledge or information that the Order is being violated. The Bureau did not receive any such knowledge or information until after the collapse of FRM in November 2009. No evidence has been introduced to the contrary.

The Bureau objects to any suggestion in the Committee Report that the Bureau did not act diligently either in bringing the action against FRM or bringing such action to a close.
The Report contains no indication as to what is considered a reasonable time for such actions by the SEC or other state securities agencies. In fact, many SEC actions are not filed for several years after the agency first obtained information that there might be a violation. A substantial period may also elapse before a final disposition of the case is made. Further, the statement in paragraph two of Finding 4 is misleading. The FRM case was resolved in 2007 with a consent order. *In the case of a consent order, no decision of the hearing officer is required.* The consent is a substitute for such finding.

In summary, while the Bureau's and Hearing Officer's actions may not have followed the literal documentation requirements of the Act, their actions were taken in good faith and with the intent to further the public interest. The public interest was served in that the investors received a complete return of their money.

II. THE BUREAU'S COMMENTS AND OBJECTIONS TO RECOMMENDATIONS IN SECTION VII OF THE PROPOSED REPORT

Recommendation #1

> **The Legislature should clarify what constitutes a security under the New Hampshire Securities Act.**

Bureau's comments on Recommendation #1

There are two separate issues involved in this Recommendation. The first issue is; what is the existing law in New Hampshire as to whether secured promissory notes are securities. The proposed Report on pp. 45-46 contains a discussion of the differences between the present Director of the Bureau and the Attorney General's and Legislative Counsel's view on this point.

The Bureau does not oppose Recommendation 1 as it proposes legislative action to change the definition of a "security" as it applies to secured promissory notes. It agrees that the present statutory scheme is flawed, and must be replaced. Likewise, the Bureau agrees that the transactional exemption found in Section 421-B:17(II)(d) for non-issuer sales of promissory notes sold together with the whole mortgage on the property to a single buyer in a single sale must be repealed. The problem is what should replace it, if anything. The Bureau does not believe that the exemption proposed in Recommendations #2(a) and #2(b) is the appropriate solution.

Section 421-B:28(I)(d) gives the Secretary of State clear authority to define terms, including the definition of a "security". This power has been delegated to the Bureau. In a Statement of Policy which is being issued contemporaneously with this response, the Bureau has outlined its position as to when *under current law* such secured promissory notes will, and will not, be treated as securities. This Policy Statement should end any debate on this issue as neither the Attorney General nor legislative counsel should attempt to second guess the Bureau on its interpretation as authorized by the Legislature.

The second issue is whether the Legislature is willing to accept the Bureau's position, which controls the disposition of the FRM case, or wishes to *prospectively* change the Bureau's position by legislative enactment.

Recommendations #2(a) and 2(b)

> **The Legislature should adopt the whole mortgage exemption found in the Uniform Securities Act (2002) along with the Maine statutory addition.**

<u>Bureau's objection to Recommendations #2(a) and 2(b)</u>

The Bureau disagrees with legislative counsels' proposed amendments to the Securities Act found in Recommendations #2(a) and 2(b). The following discussion *is based upon two assumptions. First, it assumes that the present law has been changed to make clear that promissory notes coupled with a mortgage are securities.* The second assumption is that there has been a determination that public policy requires some type of exemption from the registration provisions for, at least some, sales of these promissory notes and mortgage. The Bureau has some question as to the validity of both these *assumptions.*[1] Further, it is important

[1]The Bureau would agree that the borrower, as the issuer-seller, should be afforded some relief from the consequences of declaring these notes to be securities. The borrower will become issuer-dealer under Section 421-B:6(I-b). Further, the promissory notes and the accompanying mortgages will be subject to the securities registration requirements of Section 421-B:11(I) unless exempt. Should this relief take the form of an exclusion from the definition of a security, in which case the anti-fraud and the broker-dealer-agent licensing requirement would not apply? Or an exemption from the registration requirements would not apply, but the anti-fraud and issuer dealer provisions would?

to realize the public policy interest of two separate groups are involved: (1) the borrowers and (2) now that the interests are clearly securities, the investors.[2]

From the Borrower's Point of View:

Looking first at the problem from the borrower's standpoint, the borrowers need protection from fraudulent and predatory practices by the mortgage banks and mortgage dealers, as well as the ultimate purchaser of the promissory note and mortgage. Under Section 421-B:3, unlike some other Uniform Securities Acts, it provides general anti-fraud protection for both the *seller* and the borrower of a security. However, the borrower is essentially a "consumer". Protection here might more readily be provided by the Consumer Protection Act, than the Securities Act, because protection under the securities act comes at a cost to the borrower.

The borrower is the issuer of the securities (the promissory note coupled with the mortgage). Unless the transaction is exempt, the borrower will have to register the promissory note and would have to register as an issuer-dealer under Section 421-B:6(I-b). Further, if the borrower employs natural persons to sell the promissory note and mortgage, these natural persons will have to register as issuer-agents. See §§421-B:2(II) and B:6(I). However, if the borrower employs a company, such as FRM, to sell its securities, since FRM is not a natural person, it will have to register as a securities broker-dealer. See §§431-B:2(III) and B:6(I).

However, requiring firms like FRM to register as securities broker-dealers or individual sellers to register as Issuer-Broker agents, raises its own problems. Under Section 421-B:21(I-a)(b)(1), the Bureau is given exclusive authority and jurisdiction to license Broker-dealers, Issuer-dealers, and agents, "[n]othwithstanding any other provisions of law". This grant of exclusive jurisdiction runs contrary to the claimed exclusive jurisdiction by the Banking Department over mortgage banks and mortgage brokers. The Legislature needs to address this conflict and decide which agency is to have exclusive jurisdiction or whether jurisdiction should be shared. If the latter, then a clause similar to Section 421-B:(I-a)(b)(2) needs to be inserted.

The above requirements appear extremely onerous for the normal homeowner who wants to finance the purchase of his home or borrow money upon his equity in his house. The Bureau believes, in the case of single family residential property, that the proper solution would be an exclusion from the definition of a security, carefully drawn to limit sales to professional or commercial lenders only. This exclusion should be similar to Sections 421-B:2(XX)(b)-(c). The result is essentially that reached by the Bureau through its implied exclusion theory.

The Policy reasons for such an exclusion for single family residences, the Bureau believes, do not exist for promissory notes and mortgages on commercial real property. Therefore, the Bureau believes that no new exclusion or exemption should be created for these promissory notes. Therefore, such notes and mortgages would remain securities and would have to be registered or exempt under some other exemption. The existing Section 421-B:17(II)(g)

[2]These investors range from the sophisticated banks, insurance companies, and private lending companies and individuals (the distinction between lender and investor is no longer recognized) and the totally unsophisticated senior citizen or mentally handicapped individual.

exemption, covering sales to institutional investors, is a likely candidate as is the private place or limited number of offerees or purchasers' exemptions, i.e., SEC Regulation D, Rule 506, or Section 421-B:17(II)(h). Another alternative might be to develop a new exemption based upon the "matching service" transactional exemption found in Section 421-B:17(II)(s).

From the Investor's Point of View:

Securities regulation is geared primarily to the protection of investors. In this case, the people who purchase the promissory notes coupled with the mortgages. The goal of securities regulation is two-fold: (1) To provide the investor with the necessary information to make an informed investment decision; and (2) to protect investors from fraudulent and ill-conceived schemes. Normally, these goals are met by requiring the use of a registered prospectus, and taking action after the fact, if the seller of the securities does not make full disclosure or provides fraudulent or misleading information.

In the case of promissory notes coupled with mortgages, the registration process is not efficient except for large commercial offerings being sold to the general public. Therefore, either of two things must be done. The most preferable is to prohibit the sales of these notes, or interests therein, to the general public because the general public simply does not have sufficient knowledge or expertise to make an intelligent investment decision. The second alternative is to be sure that the general public has sufficient information outside of the registered prospectus format and regulatory review.

The exemption proposed by the Committee Report does neither. It simply uses the de minimis approach. Allow a limited number of sales because the injury to the public is not sufficiently great to warrant the regulatory effort required. Such an approach is simply not acceptable to the Bureau and should not be acceptable public policy for the State of New Hampshire.

As the FRM and similar cases indicate, these promissory notes coupled with mortgages are increasingly becoming a major national problem. Many of the commercial lending deals are simply too risky for the standard financial institutions. If you cannot sell to the big boys because the deal has too strong an odor, sell it to the general public which does not have the knowledge or experience to recognize the deal is rotten.

Private equity financing is becoming a major issue with what has been referred to as "people to people" lending. This involves firms like FRM signing up both residential or commercial borrowers who need money, but cannot secure it through the normal lending channels, for various reasons.[3] Then the firm matches the borrower with one or more private investors to fund the loan. In such cases, unsophisticated members of the general public become the lenders of last resort. These investors do not rely upon their own due diligence to determine whether the project is a "good deal". They rely upon firms like FRM to provide those "good deals" to them. No wonder that many of these deals turn out to be fraudulent with massive losses to the small unsophisticated members of the general public, often who are taken for their life savings.

[3]Usually poor credit or riskiness of the project for which funding is sought.

The Bureau has a number of specific objections to the exemption offered by the Committee. First, the exemption is far too broad. It should be limited to residential transactions only. Further, it should not be available for use in the case of commercial loans. Second, it should be limited only to promissory notes, and not to bonds and debentures. Debentures are unsecured debt instruments, and, therefore, their inclusion is inappropriate. Second, the inclusion of bonds might open the exemption to the various types of interests which almost caused the collapse of Wall Street, when sub-par loans were collateralized.

Similarly, the present New Hampshire and the 1956 Uniform Act is limited to a "whole mortgage". The proposed exemption simply says mortgage. Can the mortgage be fractionalized, be a second or third mortgage?

Further, there are no limitations as to whom the notes can be sold. Any member of the general public is fair game. Likewise, there is no limitation as to how small denominations the units may be sold in. Requiring large units to be purchased, limits disposition to small investors because they do not have the capital to invest. Finally, there is no limitation as to whether the exemption can be used in primary only or primary and secondary sale. The Bureau believes that this type of exemption has some merit when limited to primary transactions because it gives the small residential borrower access to the market. On the other hand, the Bureau believes that this type of exemption does not serve the goals of investor protection when it allows secondary transactions.

Finally, the basic exemption presented is nothing more than a watered down private placement exemption. Why is there a need for a specialized private placement exemption for notes of this type?

As to the Maine addition contained in Recommendation #2(b), at first glance it seems like a good idea. The problem is enforcement. As it stands now, enforcement will come only after the fact. Unfortunately, this is after the losses have all ready been suffered. Further, who is going to make the determination that the standard has been met? Appraisers for the issuer? What check is there on the accuracy of such evaluation? The Bureau staff does not include an appraiser who has the knowledge or experience to verify the accuracy of the appraisals. Nor are the appraisals reviewable before the offers are made. At a minimum, a pre-filing before offering requirement should be added. If the appraisals do not pass a very minimum smell test, the Bureau should be given a minimum of 15 to 30 days to withdraw the exemption and prevent the offering from going forward.

At present, the Bureau has no magic bullet solution as to what should be adopted in place of the exemption contained in Recommendations #2(a) and (b). As was announced this week, the Bureau plans to conduct an investigatory hearing to gather information to formulate such an alternative recommendation. The Bureau believes that New Hampshire has a chance to be proactive in this area and develop a proper regulatory program which could serve as a model for the rest of the country. But that model is not available presently.

Recommendation #3

> **The Legislature should adopt the *Reves* test to determine what promissory notes should be excluded from coverage under the Securities Act.**

__Bureau's objection to Recommendation #3__

The Bureau does not agree with legislative counsels' proposed amendments to the Securities Act found in Recommendation #3. As discussed on pages 48-51 of the Proposed Report, the *Reves* "family resemblance test" is a *judicially*-created test to exclude certain promissory notes from coverage under the federal Securities Acts. The test was created by the Supreme Court in *Reves v. Ernst & Young*, 494 U.S. 56 (1990). Under the *Reves* test certain promissory notes are automatically excluded from the definition of a security. The test then provides a four-step test to exclude additional promissory notes which have a "family resemblance test" to the already excluded notes.

The Bureau's objections to recommendation #3 are numerous. The first and most important objection is that *it will not make the secured promissory notes in the FRM case securities.* The second category of excluded promissory notes under *Reves* involves "notes secured by a home mortgage". Clearly the FRM transactions involving home mortgages would remain non-securities.

Treatment of the FRM notes secured by mortgages on commercial property is admittedly not as clear. The last *Reves* category excludes notes evidencing loans by *commercial banks* for *current operations*. If read literally the reference to "commercial banks" and "current operations" in this exclusion *might* cause the FRM transactions involving promissory notes secured by mortgages on commercial real estate not to be covered by the exclusion. In which case, these notes would remain securities under the general presumption that notes are securities.

However, the two limitations in the exclusion have not been literally applied. Instead this exemption has been treated as applying to loans and loan participations made by a commercial or professional lender, such as an insurance company, which is secured by a mortgage on commercial real estate. So interpreted, the FRM commercial loan transactions would continue to be excluded from the definition of a security. If the Bureau is correct, the legislative adoption of the *Reves* test would not cure the FRM problem.

The Bureau's second objection to the *Reves* test is that it is a federally-created test. Legislative counsel is incorrect in suggesting that *Reves* has been widely-accepted by the states for use under the state securities acts. The Bureau's review of the court decisions reflects that *state* courts, as opposed to *federal* courts attempting to predict what a state *might* do, have adopted the *Reves* test in only approximately fifteen states. Since *Reves* was adopted twenty-years ago, acceptance of the test by only fifteen states is hardly a ground-swell of acceptance. The Bureau's research indicates that no state has adopted the Reves test by legislative amendment.

The Bureau's third objection is that the Reves test is a *judicially-created* test. As such, the courts do not have the flexibility of the legislature to fashion an appropriate remedy. The courts cannot

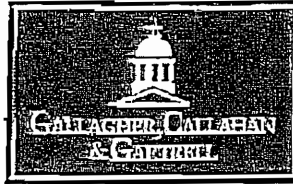
create *exemptions to the registration requirements.* Instead, as in the *Reves* case, they have to create *implied* exclusions from the statutory definition of a security.[12] Contrary to the position of the Attorney General's expert witness, the Bureau disagrees that the introductory phase in the statute "unless the context otherwise requires..." gives the courts or the securities agencies license to consider the factual surroundings of the transaction to determine whether something is a security. Such license will create chaos and mean that the same instrument when sold to one person is a security, while not a security when sold to a second.

In conclusion, while the Bureau agrees that some change in the Securities Act *must be made* to deal with the FRM problem. However, it does not believe that the legislative adoption of the *Reves* test is the appropriate solution.

Respectfully submitted,

Joseph Long, Director
N.H. Bureau of Securities Regulation

[12]The Bureau finds it ironic that house legislative counsel apparently strongly objects to the implied exclusion urged by Director Long, but champions the adoption of the *Reves* test based upon the same type of implied exclusion. Both the *Reves* test and Director Long's exclusion are, at least partly based, upon the introductory words to the definition "Unless the context otherwise requires...."



MEMORANDUM

To: DSG

From: DJM DJM

Date: May 13, 2004

Re: **Securities Issue - Financial Resources - F04O-0001**

Attached is a form of draft letter from Scott Farah, the principal of Financial Resources of Meredith, New Hampshire, a client of ours that is subject to a cease and desist order issued by the Bureau last year [the Bureau's presiding officer has yet to issue his opinion = guess that works for the Bureau in c&d'ing this fellow]. In the underlying Bureau proceeding, the client issued a series of promissory notes to third parties in order to raise funds to invest in mortgages. The notes were issued by Financial Resources; the mortgages were granted to Financial Resources and recorded in the company's name. Financial Resources would then make ordinary payments under its note - apparently, some investors in the notes were lead to believe that they were investing directly in real estate mortgages and not in Financial Resources.

The client is licensed as a first mortgage broker under New Hampshire banking statutes. The client has asked whether it can essentially "table fund" a mortgage utilizing a third party's funds where the mortgage would be granted in the name of the third party. The client's money is made on fees for locating the borrower and closing the loan, as I understand. Attached is a proposed letter that the client would like to send out to certain parties identified as potential investors in mortgages. The material legal question is whether the use of this type of letter to identify outside investors for mortgages raises any issues as to whether a security is being issued by the client, whether any other securities license is required, or whether such activities are properly within the powers of a first mortgage licensee. You thoughts are welcomed.

DJM/kll

Attachment

No attachments 1 or 2 Attachment 3

FINANCIAL RESOURCES INC.

15 Northview Drive ~ P.O. Box 1158 ~ Meredith, NH 03253
(603) 279-1133 ~ Fax (603) 279-5912

May 10, 2004

Mr. Reed
Country Club Road
Gilford, NH 03249

Re: Mortgages

Dear Mr. Reed,

Financial Resources is the largest, privately held, mortgage company in the State of New Hampshire. We have been in business for more than 15 years and have offices in 10 states. We process hundreds of applications per month for mortgages secured by ~~residential and~~ commercial real estate.

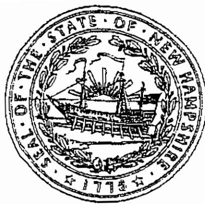
I am aware, from my research at the County Registry of Deeds, that you already own a mortgage. We have found that other people, who are aware of the benefits of owning a mortgage, are often interested in lending additional funds if the terms are attractive and the securing real estate property is of good quality and value.

Please give me a call if you are interested in being put on our notification alert list and/or if you would like some additional information.

I look forward to hearing from you and would welcome the opportunity to get together to explore possibilities that would be good for you as well as our clients.

Sincerely,

Scott Farah, President



State of New Hampshire

Banking Department

53 Regional Drive, Suite 200
Concord, New Hampshire 03301
Telephone: (603) 271-3561
FAX: (603) 271-1090 or (603) 271-0750

PETER C. HILDRETH
BANK COMMISSIONER

ROBERT A. FLEURY
DEPUTY BANK COMMISSIONER

RECEIVED
OCT 15 2009
NEW HAMPSHIRE BUREAU OF SECURITIES REGULATION

October 13, 2009

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

Dear Mr. Farah,

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

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

Sincerely,

Mary L. Jurta
Director, Consumer Credit

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

Web site taken down.
J.S
10/21/09
File in INV06-049

DENIS J. MALONEY

214 North Main Street
P.O. Box 1415
Concord, NH 03302-1415

Ph: (603) 228-1181
Fax: (603) 226-3334
maloney@gcglaw.com

October 20, 2009

HAND DELIVERED

RECEIVED

OCT 2 0 2009

NEW HAMPSHIRE BUREAU
OF SECURITIES REGULATION

Mary L. Jurta
Director, Consumer Credit
New Hampshire Banking Department
53 Regional Drive, Suite 200
Concord, New Hampshire 03301

Re: Financial Resources Mortgage, Inc.

Dear Ms. Jurta,

We have been retained to represent Financial Resources Mortgage, Inc. ("FRM") with respect to your letter dated October 13, 2009. Please be advised that effective Friday, October 16, 2009, FRM disabled its supplemental web site, www.privateloanopportunities.com.

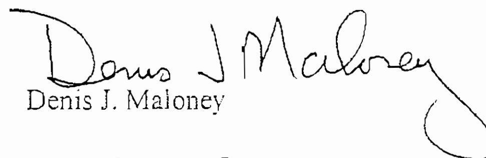
FRM's supplemental web site was developed in order to provide a listing of available for sale commercial loan opportunities. The web site, however, also mistakenly included information with respect to mortgage loans subject to the provisions of revised RSA 397-A, as well as fractional interests therein.

FRM presently plans to re-activate the supplemental closed-access web site for investors; the site will not include information with respect to loans subject to RSA 397-A, or fractional interests in any loans.

Finally, Scott Farah is currently completing the required RSA 397-A training classes, and is in the process of filing for a loan originator license. Mr. Farah will not transact New Hampshire residential mortgage business until he is properly licensed as a mortgage loan originator.

Please feel free to contact me with any questions or concerns.

Sincerely,



Denis J. Maloney

cc: Scott D. Farah, President, Financial Resources Mortgage, Inc.
Barry Glennon, Esq., NH Bureau of Securities Regulation

State of New Hampshire

Department of State
Bureau of Securities Regulation

Mark Connolly
Director

107 North Main Street, State House Rm. 204
Concord, NH 03301-4989
Telephone: (603) 271-1463
Fax: (603) 271-7933

10/29/2009

Denis Maloney
Gallagher, Callahan & Gartrell
PO Box 1415
Concord, NH 03302-1415

Re: Financial Resources Mortgage, Inc.

Dear Mr. Maloney;

Reference is made to your letter dated 10/20/2009 copied to Mr. Glennon. Your letter was in response to that of Ms. Jurta from Banking. Under the authority in RSA 421-B, describe the fractional interests in mortgages offered for sale on the web site of the above named business and submit copies to the Bureau of the web site offering said interests. I look forward to your response within 20 days from the date of this letter.

If you have any questions, please call.

Sincerely,

Jeffrey Spill
Deputy Director

cc:file

DENIS J. MALONEY

214 North Main Street
P.O. Box 1415
Concord, NH 03302-1415

Ph: (603) 228-1181
Fax: (603) 226-3334
maloney@gcglaw.com

October 30, 2009

HAND DELIVERED

Jeffrey Spill, Esquire
Deputy Director
Bureau of Securities Regulation
Department of State
State of New Hampshire
State House, Room 204
Concord, NH 03301-4989

RECEIVED

OCT 30 2009

NEW HAMPSHIRE BUREAU
OF SECURITIES REGULATION

Re: Financial Resources Mortgage, Inc.

Dear Mr. Spill:

This is written on behalf of Financial Resources Mortgage, Inc., a New Hampshire corporation ("Company") and the holder of a 'mortgage banker' license issued by the New Hampshire Banking Department ("Department"). This matter arose pursuant to the Department's letter dated October 13, 2009 to the Company particularly referencing an internet-based advertisement addressing mortgage funding opportunities. Following initial discussion, you have asked for a copy of such a recent Company advertisement for your review; a copy of the 'advertisement' materials is attached hereto, together with a copy of the Department's letter and the Company's response thereto. Also enclosed for your ease of reference is a copy of RSA 397-A, a recently amended statute entitled "Licensing of Non-Depository First Mortgage Bankers and Brokers" (the "Licensing Act") reference in the Department's letter.

In the subject advertisements, the Company is generally soliciting third party funding of proposed mortgage loans. For example, on page 1 of the attached, the Company is offering third parties the opportunity to invest a minimum amount of $100,000 (the 'minimum participation') in a loan **to be funded** secured by land and three commercial buildings. At the closing, if any, the (a) mortgage loan documents would be executed **in the name of the actual third party lenders** and these third party lenders would contemporaneously fund the subject loan; or alternatively, (b) the loan would be funded by a **contemporaneous** advance of loan funds and an assignment of the loan to the person advancing the funds (see definition of "table funding" taken from the Licensing Act, below).

The Company therefore offers proposed loans for "funding" by third party lenders at the closing table (i.e., table funding). Similarly to the many mortgage bankers who 'regularly' fund loans through and in the name of correspondent banks/lenders, the Company works to fund loans on behalf of proposed borrowers though third parties. As stated, the loans are funded and originated in the name of the actual lender, or alternatively, funded contemporaneously by the lender with an assignment of the loan documents to the lender, as distinguished from the case where the funds are loaned by the 'lender/investor' directly to the Company which then originates the loan in the Company's name.

The following material terms are defined in the Licensing Act:

(1) "**Lender**" means any person that provides the initial funding for a mortgage and includes any legal successor to the rights of the lender. **For the purpose of a table-funded transaction, the lender is the person who actually provides the funds for the transaction.**

(2) "Licensee" means a person, whether mortgage banker, mortgage broker, or mortgage originator, duly licensed by the commissioner pursuant to the provision of this chapter.

(3) "Mortgage banker" means a person not exempt under RSA 397-A:4 who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly:

(a) Makes or originates mortgage loans as payee on the note evidencing the loan;

(b) Advances, or offers to advance, or makes a commitment to advance the banker's own funds for mortgage loans, or closes mortgage loans with the banker's own funds; and

(c) Otherwise engages in the business of funding mortgage loans.

(4) "**Mortgage broker**" means a person not exempt under RSA 397-A:4 who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly:

(a) **Acts as an intermediary, finder, or agent of a lender or borrower for the purpose of negotiating, arranging, finding, or procuring mortgage loans, or commitments for mortgage loans;**

(b) **Offers to serve as agent for any person in an attempt to obtain a mortgage loan**; and

(c) **Offers to serve as agent for any person who has money to lend for a mortgage loan**.

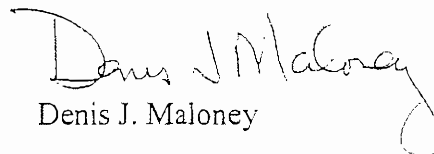
(5) "Mortgage lender" means a mortgage banker.

(6) "Table funding" means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of a loan to the person advancing the funds. A table-funded transaction is **not** a secondary market transaction.

In our view, the Company is acting in the capacity of a Mortgage Broker in the advertisements, seeking sources of funding on behalf of the borrowers. The Company is seeking lenders to fund mortgage loans to be originated in the name of the lender, or assigned to the lender contemporaneously with such funding. Analyzed under RSA 421-B, the New Hampshire Uniform Securities Act, in distinction, through and pursuant to the advertisements the Company is: (1) **not** issuing a note in its name, likely a security, to raise funds to originate a loan, and (2) **not** offering to sell a participating interest in an existing funded loan, also likely a security, but only a loan to be prospectively funded. As such, the Company has not engaged in the offer and sale of a security under the Uniform Securities Act.

Please call me with any questions or comments with respect to the foregoing. For the benefit of our records, kindly acknowledge receipt of this letter and its enclosure by signing and dating or date-stamping the enclosed receipt acknowledgement copy of this letter and return it to me in the enclosed self-addressed envelope.

Very truly yours,



Denis J. Maloney

DJM:baf
Enclosures

cc: Scott Farah
Mary L. Jurta, Director
Consumer Credit
New Hampshire Banking Department

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LAW OFFICE OF GOULD AND BURKE
15 NORTHVIEW DRIVE
P.O. BOX 666
MEREDITH, NEW HAMPSHIRE 03253

TEL 603-279-6502 FAX 603-279-1062

Michael E. Gould, Esquire
Admitted in New Hampshire and Massachusetts
megouldlaw@earthlink.net

Michael Burke, Esquire
Admitted in New Hampshire and Maine
mburkelaw@earthlink.net

COPY

6/02 DJM COMMENTS

May 31, 2006

Denis J. Maloney, Esq.
Gallagher, Callahan and Gartrell, PA
214 N. Main Street
Box 1415
Concord, NH 03302

Re: Financial Resources and Assistance of the Lakes Region, Inc. – Stones Lawsuit

Dear Attorney Maloney:

I am writing to you at the request of Scott Farah, President of Financial Resources.

It is my understanding from Mr. Farah that the ~~Banking Commission~~ has made inquiry as to the ~~nature~~ of the lawsuit by Howard and Ronnie Stone versus Financial Resources, Inc., Scott Farah, Robert Farah and the Center Harbor Christian Church in the Belknap County Superior Court, Docket No. 5-C-0071. I ~~was~~ counsel for both Scott Farah individually and Financial Resources ~~and Assistance of the Lakes Region, Inc.~~, sometimes known as Financial Resources, Inc.

The matter has been settled and the settlement is subject to a confidentiality agreement. Without violating that agreement I can tell you that essentially the lawsuit was a business dispute between Financial Resources and the Stones. ~~Attorney Christopher Carter, who represented the plaintiffs,~~ made allegations in his pleadings that a conspiracy to defraud existed between Financial Resources and Scott Farah and his father Robert Farah and the Center Harbor Christian Church, of which Robert Farah was the pastor. As you may be aware, the matter was all over the news and press and that is directly attributable to Attorney Carter. When the suit was initially brought in March of 2005, Channel 9 set up camp outside the Center Harbor Christian Church showing pictures of the church and repeating the fraud allegations. Subsequently the Stones were interviewed by Channel 9. This was entirely orchestrated by Attorney Carter. I accused him of arranging for Channel 9 to be ~~there, and after a long pause he acknowledged that he did in fact do that.~~

In my judgment, Attorney Carter would not have been able to prove a fraud, because none existed. It was a business arrangement with Ronnie Stone and with Ronnie Stone on behalf of his father that, unfortunately, went bad for a variety of reasons. Ronnie Stone was advised on February 27, 2005 that the funds were available to pay him and would clear the Financial Resources account on March 3 or 4, 2005. Plaintiff's Writ was dated March 1, 2005 and the bank account was attached

LfraZdm053106.doc

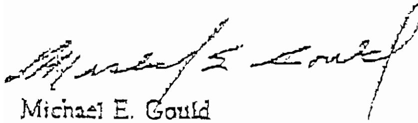
Attachment 4

on March 3, 2005. Funds to pay Howard Stone were deposited in my trust account shortly after the suit was brought and they were offered to the Plaintiffs and were not accepted. The Plaintiffs were interested in maximizing their damages under a 358-A claim. These statements can be verified by a review of the early pleadings in the case in which the Defendant Financial Resources attempted to pay the money into Court and the Plaintiffs objected to the payment of their funds into Court.

I hope this letter is ~~some help~~ of assistance to you in ~~answering the inquiry of the State of New Hampshire Banking Commission. If I can be of further service, please feel free to call me.~~

Sincerely yours,

LAW OFFICE OF GOULD AND BURKE, PLLC



Michael E. Gould

(1) discuss settlement status w Stones to extent possible, timing

(2) to your knowledge, discuss settlement of Gudrun Hannington "matter"

CC: Scott Farah
MEG/sa

LAW OFFICE OF GOULD AND BURKE
15 NORTHVIEW DRIVE
P.O. BOX 666
MEREDITH, NEW HAMPSHIRE 03253

TEL 603-279-6502 FAX 603-279-1062

Michael E. Gould, Esquire
Admitted in New Hampshire and Massachusetts
megouldlaw@earthlink.net

Michael Burke, Esquire
Admitted in New Hampshire and Maine
mburkelaw@earthlink.net

COPY

May 31, 2006

Denis J. Maloney, Esq.
Gallagher, Callahan and Gartrell, PA
214 N. Main Street
Box 1415
Concord, NH 03302

Re: *Financial Resources and Assistance of the Lakes Region, Inc. – Stones Lawsuit*

Dear Attorney Maloney:

I am writing to you at the request of Scott Farah, President of Financial Resources.

It is my understanding from Mr. Farah that the Banking Commission has made inquiry as to the nature of the lawsuit by Howard and Ronnie Stone versus Financial Resources, Inc., Scott Farah, Robert Farah and the Center Harbor Christian Church in the Belknap County Superior Court, Docket No. 5-C-0071. I was counsel for both Scott Farah individually and Financial Resources and Assistance of the Lakes Region, Inc., sometimes known as Financial Resources, Inc.

The matter has been settled and the settlement is subject to a confidentiality agreement. Without violating that agreement, I can tell you that essentially the lawsuit was a business dispute between Financial Resources and the Stones. Attorney Christopher Carter, who represented the plaintiffs, made allegations in his pleadings that a conspiracy to defraud existed between Financial Resources and Scott Farah and his father Robert Farah and the Center Harbor Christian Church, of which Robert Farah was the pastor. As you may be aware, the matter was all over the news and press and that is directly attributable to Attorney Carter. When the suit was initially brought in March of 2005, Channel 9 set up camp outside the Center Harbor Christian Church showing pictures of the church and repeating the fraud allegations. Subsequently the Stones were interviewed by Channel 9. This was entirely orchestrated by Attorney Carter. I accused him of arranging for Channel 9 to be there, and after a long pause he acknowledged that he did in fact do that.

In my judgment, Attorney Carter would not have been able to prove a fraud, because none existed. It was a business arrangement with Ronnie Stone and with Ronnie Stone on behalf of his father that, unfortunately, went bad for a variety of reasons. Ronnie Stone was advised on February 27, 2005 that the funds were available to pay him and would clear the Financial Resources account on March 3 or 4, 2005. Plaintiff's Writ was dated March 1, 2005 and the bank account was attached

on March 3, 2005. Funds to pay Howard Stone were deposited in my trust account shortly after the suit was brought and they were offered to the Plaintiffs and were not accepted. The Plaintiffs were interested in maximizing their damages under a 358-A claim. These statements can be verified by a review of the early pleadings in the case in which the Defendant Financial Resources attempted to pay the money into Court and the Plaintiffs objected to the payment of their funds into Court.

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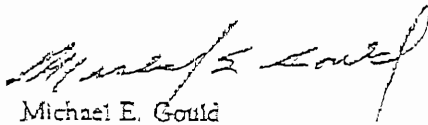

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June 2, 2006

Mr. Jeffrey Spill, Esquire
Deputy Director
Bureau of Securities Regulations
Department of State
State of New Hampshire
Statehouse Room 204
Concord, NH 03301-4989

Re: *Financial Resources and Assistance of the Lakes Region, Inc. – Stone Lawsuit*
Estate of Gudrun Hanington

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TIMING 05 - 06 ?

There was no "settlement" with the Estate as there was never a dispute between Financial Resources and Gudrun Hanington and the Estate of Gudrun Hanington. No legal proceeding of any kind was ever brought against Financial Resources, only the demand for the payment of the funds placed ~~with Financial~~ Resources that was honored upon its receipt. The matter was concluded in June of 2004.

I hope this letter is of assistance to you.

Sincerely yours,

LAW OFFICE OF GOULD AND BURKE, PLLC

? July 23, 2004 letter to you and Scott from Bickford w demand

Michael E. Gould

P.S. - Scott tells me Atty Bickford later disputed computation of interest owed and Scott sent him a further check (< 1000$)

MEG/sa

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June 2, 2006

Mr. Jeffrey Spill, Esquire
Deputy Director
Bureau of Securities Regulations
Department of State
State of New Hampshire
Statehouse Room 204
Concord, NH 03301-4989

Re: *Financial Resources and Assistance of the Lakes Region, Inc. – Stone Lawsuit*
Estate of Gudrun Hanington

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Sincerely yours,

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MEG/sa

Trudy Renfors

From:	Denis Maloney
Sent:	Friday, June 02, 2006 11:30 AM
To:	'megouldlaw@earthlink.net'
Subject:	Financial Resources/Scott Farah

Michael,

Thank you for speaking with me this morning regarding the above listed parties and a continuing inquiry from the NH Bureau of Securities Regulation.

I have reviewed your letter of May 31st to me that addresses the Howard and Ronnie Stone matter; in our conversation we also discussed Ms. Gudrun Hanington's relationship with Financial Resources and Scott Farah and his father, Robert Farah.

As an initial comment, please address your letter directly to the attorney involved with the Bureau, as follows:

Jeffrey Spill, Esquire
Deputy Director
Bureau of Securities Regulation
Department of State
The State of New Hampshire
State House Room 204
Concord, New Hampshire 03301-4989

Simply put, in his letter to me, Attorney Spill asked for a copy of any "settlement documents filled out to conclude the Stone's legal claims, and that of Gudrun Hanington." Your letter to me states that the Stone[s] matter has been settled and the settlement is subject to a confidentiality agreement – in today's conversation I learned that the matter has not been finally settled, but that terms of a 'liability contingency fund' [my terms] have not been finalized. That said, I think we need to best inform the Bureau of the status of the matter and the remaining contingency to the fullest extent you are able consistent with your confidentiality obligations. Further, as my comments on your letter to me indicate [see below], the Bureau is not looking for an advocacy discussion in this regard but just the factual present reality between the parties. As mentioned today, it would also be appreciated if you could also address the settlement/conclusion of the Gudrun Hannington relationship with the Farah parties to the best of your knowledge.

My further comments are contained on attached document – let me know if problem opening.

Thank you Michael – will speak on Monday morning

Denis J. Maloney
email: maloney@gcglaw.com
phone: 603.228.1181 (ext. 229)
toll free: 800.528.1181
facsimile: 603.224.7588
http://www.gcglaw.com

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Augusta Boston Concord

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any use, dissemination, distribution or reproduction of this communication is strictly prohibited. If you have received this communication in er
immediately notify Denis J. Maloney by calling 1.800.528.1181 (extension 229), or by email to maloney@gcglaw.com.

Trudy Renfors

From:	Susan Andersen [susana.mburkeslaw@earthlink.net]
Sent:	Friday, June 02, 2006 4:36 PM
To:	Denis Maloney
Cc:	megouldlaw@earthlink.net
Subject:	Financial Resources/Scott farah
Attachments:	Lfra2js060206.doc

Dear Attorney Maloney:

At the request of Mr. Gould, attached is a proposed letter to Jeffrey Spill for your review and comment. I will be in the office all day on Monday, June 5.

Sue Andersen, Secretary
Law Office of Gould and Burke, PLLC
P.O. Box 666
15 Northview Drive
Meredith, NH 03253
603-279-6502
603-279-1062 (fax)

LAW OFFICE OF GOULD AND BURKE
15 NORTHVIEW DRIVE
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June 2, 2006

Mr. Jeffrey Spill, Esquire
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Statehouse Room 204
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Re: Financial Resources and Assistance of the Lakes Region, Inc. – Stone Lawsuit
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LAW OFFICE OF GOULD AND BURKE, PLLC

Michael E. Gould

MEG/sa

Trudy Renfors

From:	Denis Maloney
Sent:	Monday, June 05, 2006 2:15 PM
To:	'susana.mburkeslaw@earthlink.net'
Cc:	'megouldlaw@earthlink.net'
Subject:	RE: Financial Resources/Scott farah
Attachments:	A84454.PDF

Michael,

Attached are my marked thoughts on latest draft of letter – in particular, received partial file from Scott Farah that has July 23, 2004 dated letter from Atty Bickford to you and to Scott [HAND DELIVERED AT BELKNAP COUNTY SUPERIOR COURT . . .] so perhaps it's a July vs June 2004 payment date.

I will call you shortly to discuss - ?DO YOU HAVE COPIES OF ANY OF THE ACCOUNT OPENING AGREEMENT[S] OR PARTICIPATION AGREEMENTS INVOLVING THE HANINGTONS?? Or the Stones??

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-----Original Message-----
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IV

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Letter Sent to Bureau

June 5, 2006

Mr. Jeffrey Spill, Esquire
Deputy Director
Bureau of Securities Regulation
Department of State
State of New Hampshire
Statehouse Room 204
Concord, NH 03301-4989

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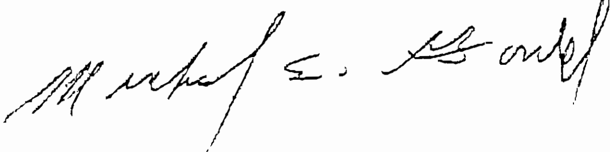

Michael E. Gould

MEG/sa

Trudy Renfors

From: Denis Maloney
Sent: Monday, June 05, 2006 5:25 PM
To: 'Jeff Spill'
Subject: Scott Farah; Financial Resources

Jeff,

With respect to your letter of May 22, 2006 to my attention regarding the above parties, I have just faxed a copy of my initial response letter to you, together with copy of letter from outside counsel to Farah/FRA with respect to the Stone(s) and Hannington matters. I did not fax the remaining production deliveries, including copies of several 'Account' agreements and related correspondence. The original of my letter and ALL attached materials will be hand delivered to your attention on Tuesday morning, 6/06. As noted in my letter to you, we continue to work to assemble copies of all relevant 'pay-off' correspondence, as well as information with respect to FRA's participation agreements.

Please contact me with any questions or comments, thank you

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Denis Maloney

From: Susan LeDuc
Sent: Wednesday, December 20, 2006 2:22 PM
To: Denis Maloney; Christopher Gallagher
Cc: Susan Hollinger; W. John Funk
Subject: RE: Strategy/SNL Hildreth thoughts

Re: Financial Resources & Assistance: I think the "confusion" surrounding how Andrea Shaw and Donna Soucy have let the file languish since the 2004 exam plays to our advantage. The October 4, 2006 letter from Kim Griffin states that, "The observations in the report are significant enough that we are referring the file to our attorney for evaluation and possible enforcement action." I am not sure when Jim Shepard will pick up this file. Based on his handling of the Traditional Mortgage – Buccieri complaint, and FR&A's filing of a letter with Kim Griffin saying that they have hired us to help, I would expect that Shepard would call us when/if he gets to the file, and/or we are forced to file notice of a settlement with the Securities Div.

Until we have both a Data Security Risk Assessment and a compliance program document completed (which I am working on now), I don't think we want to bring FR&A to Peter's attention.

As far as other Banking Department issues:

- Traditional Mortgage – Buccieri: I will be completing a proposed 397-A response to the complaint after I finish FR&A.
- Traditional Mortgage – conversion to mortgage banker. Once the Buccieri complaint is settled, Traditional wants to change status which will involve a new application.
- Five M's Autogroup, Inc. – a retail sales finance application is pending at DOB.
- DFC of Maine, Inc. – waiting for Peter's response to characterization of exam disaster and sloppy business practices as "botched dissolution" between business partners. If OK's, then we will prepare a License Termination filing.

From: Denis Maloney
Sent: Wednesday, December 20, 2006 1:39 PM
To: Christopher Gallagher
Cc: Susan LeDuc; Susan Hollinger
Subject: FW: Strategy/SNL Hildreth thoughts

Hildreth –

1) I am not certain if the NHBD would start a proceeding to yank license, providing us with opportunity to be heard, as with Securities folks; OR just yank it and we have to talk them back into issuing new license. Much different situations – would like to be informed prior to yank, name of this client is Financial Resources of the Lakes Region, Inc. and for right

now, I believe things are quiet so probably best to let this one lie quiet. **SNL – do you agree??**

2) Other matters – presume you have looped in with john on pending business to come before Peter, I am particularly aware of:
   1) Bow Mills acquisition – we will be filing for merger approval, need to form 'phantom bank' to get there, good work should be no political issues
   2) The Nashua Bank – this is new bank to be formed, John Stabile Sr involved $$$s. We are presently raising organizational expense capital for organizing entity [BTBE Corporation] and will be filing for new trust company charter in early 2007 together with application for federal deposit insurance. Organizers could be more bank savvy as is Joe Reilly/lucy Gobin of Centrix team but these are our guys so . . .

Thanks for efforts

Denis

From: Susan LeDuc
Sent: Wednesday, December 20, 2006 1:20 PM
To: Christopher Gallagher; Dodd Griffith; Susan Hollinger; Denis Maloney
Subject: RE: Strategy/SNL

SBH's calendar indicates that she will not be in the office until tomorrow.

From: Christopher Gallagher
Sent: Wednesday, December 20, 2006 12:45 PM
To: Dodd Griffith; Susan Hollinger; Denis Maloney; Susan LeDuc
Subject: RE: Strategy/SNL

Thanks for "replying to all", Dodd, it now looks like we will have to wait until tomorrow .but keep in mind that I meet with the Commissioner tomorrow AM so if there are any issues for his attention I need to know today, what they are. We may also be able to meet effectively without you since this is the mortgage practice group but if you can join us as the leader of the broader group, that would helpful.

From: Dodd Griffith
Sent: Wednesday, December 20, 2006 12:08 PM
To: Christopher Gallagher; Susan Hollinger; Denis Maloney
Cc: Donald Pfundstein
Subject: RE: Strategy/SNL

4 is fine with me. I have a client meeting at 2, which could take awhile, but I think it should be over by then.

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Michael Burke, Esquire
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March 18, 2005

Peter Doyle, Esquire
Shaines & McEachern
25 Maplewood Avenue
PO Box 360
Portsmouth, New Hampshire 03802

Re: Scott Farah
Ronnie Stone and Howard Stone v. Scott Farah, et al
Belknap County Superior Court Docket #05-C-071

Dear Peter:

Thank you for taking the time to speak with me today concerning Scott Farah and the litigation in which he is presently embroiled. As I indicated on the telephone Mr. Farah is the owner of Financial Resources and Assistance of the Lakes Region, Inc. (FRA). FRA is a mortgage brokerage that procures commercial and residential mortgages and loans. Frequently, the principal Scott Farah has transactions involving private investors who are looking to obtain a return on their money in excess of the prevailing stock market or banking rates. It was in this context that Mr. Farah accepted funds from Howard Stone and Ronnie Stone in the late spring of 2003. Howard is the father of Ronnie, but Ronnie is overseeing the investments of Howard. It is my understanding that Mr. Farah accepted $125,000.00 from Howard Stone and had agreed to pay a rate of return of 13%. The interest was to be and has been paid monthly to Howard Stone. Mr. Farah also accepted $109,635.14 from Ronnie Stone and had agreed to pay a rate of return of 12%. Ronnie Stone's money was to be invested in a vehicle that qualified as an IRA. The interest was retained and reinvested on Ronnie Stone's money. There are no written agreements for either of these investments. I understand that the time period for the investment was open-ended, but Mr. Farah made it clear to Ronnie Stone that the money would not be immediately returned on demand due to the nature of the investment.

Some time in October 2004 Ronnie Stone began asking Mr. Farah for the return of both his and his father's money. Mr. Farah explained at the time that the money would take some time to free up. Ronnie Stone renewed his requested during the months of December 2004 and January and February 2005. On occasion Mr. Farah explained that he was working on freeing up the money, but that it would take some time. Finally, on February 25, 2005 Ronnie Stone made a renewed request for the funds. Mr. Farah explained that the money would be available by the end of the following week. Mr. Farah, mindful that Ronnie Stone was unemployed at this point, offered to give him a $10,000.00, interest free loan in the event Ronnie Stone had pressing

financial issues. Stone did not accept or reject the offer immediately, but indicated he would call Farah back. When Ronnie Stone called Scott Farah back he indicated that he had just received his tax refund and the following week would be acceptable.

On March 3, 2005 Mr. Farah, FRA, Mr. Farah's father Pastor Robert Farah and the Farahs' church the Center Harbor Christian Church were served with the enclosed pleadings. The case brought by Christopher H.M. Carter, Esquire on behalf of Ronnie Stone and Howard Stone alleges that the defendants used a deceitful scheme to induce the plaintiffs and other members of the church "to entrust hundreds of thousands of dollars of their retirement funds and savings' with FRA. The plaintiffs allege that the defendants obtained these funds through misrepresentation, never invested the funds in legitimate investments and refused to return the funds upon demand. As the pleadings indicate Mr. Carter alleges a number of transaction that do not bear on the Stones. These transactions were raised peripherally in prior litigation involving FRA and a defendant represented by Attorney Carter. Those allegations were not relevant in the prior litigation and bear on the Stones' transaction only to the extent that Mr. Carter is alleging a pattern of deceitful and illegal conduct. Mr. Carter has alleged on behalf of the Stones breach of contract against Scott Farah and FRI (FRA) (Count I), fraud and misrepresentation against Scott Farah and FRI (FRA) (Count II), conspiracy to defraud against all defendants (Count III), violation of the consumer protection statute RSA 358-A against Scott Farah and FRI (FRA) (Count IV), conspiracy to violate of the consumer protection statute RSA 358-A against all defendants (Count V); conversion against Scott Farah and FRI (FRA) (Count VI) and unjust enrichment against Scott Farah and FRI (FRA) (Count VII).

The plaintiffs also sought to attach by ex parte petition the land and bank accounts of all defendant. FRA's business account was trustee process. At the time of service it contained $140,000.00; $130,000.00 was to be used to pay Ronnie Stone that day. Mr. Carter took the position with the bank's attorney Ed Philpot that his attachment of the bank account should operate to prevent the defendant FRA from having access to any funds deposited after the time of service as well. This required us to file an ex parte motion with the Court to free up funds deposited subsequent to the time of service. I believe Mr. Farah's personal joint bank account with his wife was frozen. The plaintiffs have sought attachments of $500,000.00 against each defendant.

My partner Michael Gould has filed a Motion in Limine with the Court in an effort to limit the extent of the attachment on FRA's bank account. Our intent is to pay Ronnie Stone from the business account the sum of $129,000.00, which we agree he is owed. We have conveyed this offer to Mr. Carter along with our offer to return the amount of $125,000.00 owed to Howard Stone from non-attached sources. Mr. Carter's response was condition his acceptance of these funds on the provision to request all documentary evidence relevant to the Stones' claims. As a result we will be paying Howard Stone's money into the Court on March 18, 2005 and Ronnie Stone's money into the Court on the day of the hearing on the ex parte attachment, provided the Court releases those funds.

Robert Farah is represented by David Bownes, Esquire of Laconia, New Hampshire. I believe David is in the process of preparing pleadings to object to the attachment of Robert Farah's property. The Church's interest may be represented by David for purposes of the attachment hearing, but the intent is to get the Church its own counsel in this matter.

In viewing the pleading one would think this is a complicated matter, but at its heart it is a somewhat embellished collection action. The willingness of FRA to pay the plaintiffs the sums they are due under contract should resolve the contract issues. But for Mr. Carter's fees, I cannot see at

this point what damages the plaintiffs have suffered as they have been given or will be given all amounts due them under the contract. As for the consumer protection action, once the funds are returned to the plaintiffs, it would appear that the plaintiffs' statutory damages will be limited in the absence of actual damages.

After you have had an opportunity to review the enclosed material, please feel free to call me or my partner Michael Gould if you have any questions. Mr. Farah can be reached at 279-1133. Mr. Farah would like to set up a time to meet with you at your office at your earliest convenience.

Sincerely,

LAW OFFICE OF GOULD AND BURKE

Michael Burke
MB/tbm

Enclosure

cc: S. Farah

11fra0317.doc

LAW OFFICE OF GOULD AND BURKE
15 NORTHVIEW DRIVE
P.O. BOX 666
MEREDITH, NEW HAMPSHIRE 03253
TEL 603-279-6502 FAX 603-279-1062

Michael E. Gould, Esquire
Admitted in New Hampshire and Massachusetts
megouldlaw@earthlink.net

Michael Burke, Esquire
Admitted in New Hampshire and Maine
mburkelaw@earthlink.net

May 1, 2006

Christopher H.M. Carter, Esq.
Hinckley Allen Snyder, LLP
43 North Main Street
Concord, NH 03301

Re: Ronnie P. Stone and Howard Stone v. Financial Resources, Inc., Scott Farah, Center Harbor Christian Church, and Robert Farah

Via Fax to: 545-6105 and 224-8350

Dear Attorney Carter:

Pursuant to our discussion this afternoon relative to your clients' settlement offer, please accept this facsimile as confirmation of the following:

1. Financial Resources will pay Ronnie Stone, individually and as Power of Attorney for Howard Stone, a lump sum payment of $550,000.00. This payment can be paid either directly to your law firm as attorneys for both the Plaintiffs, or separated into Howard Stone's portion with Ronnie Stone's portion being paid to his new self-directed IRA. This alternative should help all parties by limiting any potential IRS penalties or assessments. Before Financial Resources pays any amount to Ronnie Stone on Howard Stone's behalf, Ronnie Stone will have to produce the Power of Attorney.

2. Financial Resources will post a bond to satisfy the amount of Mr. Stone's IRS penalty. If Mr. Stone elects to amend his personal tax return, the bond will be available to pay his penalty. Alternatively, if Mr. Stone elects to have his money paid directly to his self-funded IRA, and the IRS does not challenge this transaction, then after the applicable statute of limitation has run, the parties will share the bond equally, each party receiving 50% of the proceeds.

3. Financial Resources will disclose the source of the funds after the parties have agreed to all settlement terms. However, as I stated to you on the telephone, I am confident that there will not be an issue regarding the source of the funds.

4. Neither Party Docket Markings will be filed with respect to the Stones, Financial Resources and Scott Farah. The Plaintiffs will voluntarily non-suit their claims against, Robert Farah and CHCC, with prejudice.

5. All parties, including CHCC and Robert Farah, will enter into a standard Confidentiality Agreement prohibiting disclosure of the settlement terms to any third party, including federal, state or local agencies or authorities. This Confidentiality provision will also run to Jackie Stone and will require her signature. In the event the parties are asked about the settlement, they will answer only, "The matter has been settled" or, "The matter has been resolved to the satisfaction of the parties."

6. Scott Farah will forward a letter of apology, which shall be subject to the terms of the Confidentiality Agreement.

Please review the enclosed and if you have any questions, call me. I am hopeful we can resolve this matter as soon as possible as trial is looming.

Sincerely yours,

LAW OFFICE OF GOULD AND BURKE, PLLC

Michael E. Gould

MEG/sa

HinckleyAllenSnyder LLP
ATTORNEYS AT LAW

43 North Main Street
Concord, NH 03301-4934
TEL: 603.225.4334
FAX: 603.224.8350
www.haslaw.com

Christopher H.M. Carter
ccarter@haslaw.com
Direct Dial: (603) 545-6104
Direct Fax: (603) 545-6105

May 1, 2006

VIA FACSIMILE

Michael E. Gould, Esquire
Law Office of Gould and Burke
15 Northview Drive, P.O. Box 666
Meredith, NH 03253

Re: Ronnie P. Stone, et al. v. Financial Resources, Inc., et al.
Docket No. 05-C-0071

Dear Attorney Gould:

Thank you for your May 1, 2006 letter regarding settlement of this case. I have reviewed your counter-proposal with my clients, and can provide the following response to the numbered paragraphs in your letter.

1. This appears acceptable, subject to reaching complete agreement on addressing the IRS penalty (discussed below).

2. This appears acceptable as well. As I understand your letter, Ron Stone still has the option of reporting the mismanagement of his 401K to the IRS, allowing the IRS to disclose the amount of the penalty, and allowing Defendants to pay the full amount of the penalty. Please confirm this point. I will discuss your alternative proposal with Mr. Stone.

3. Please advise the intended source of funds to cover the settlement payment, so that we can confirm that Plaintiffs have no objection to the same.

4. Acceptable.

5. Plaintiffs will not accept a confidentiality agreement, and therefore must reject your counter-offer as stated. As you and I have discussed, the ability to uncover the truth about their treatment by the Farahs, CHCC, and FRI has been, for Plaintiffs, the most important goal of this litigation.

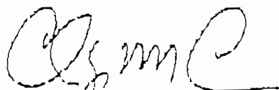
HinckleyAllenSnyder LLP
ATTORNEYS AT LAW

Having said this, however, it would appear that Defendants would be far less concerned about disclosure of the settlement terms (which standing alone would not speak directly to issues of fault/guilt), than about the continued disclosure of far more damaging facts during discovery, depositions, and trial.

6. Plaintiffs would require a written apology from Scott Farah and Robert Farah. In addition, while Plaintiffs will not accept a confidentiality agreement, they would consider certain reasonable limitations on the disclosure and/or duplication of the apology letter, such as limitations against disclosing the apology or its contents to federal, state, or local agencies or authorities.

I remain hopeful that the remaining issues can be resolved. I will attempt to reach you this evening at your office, or on your cell phone.

Sincerely,



Christopher H.M. Carter
CHMC/sc

cc: Ronnie and Jackie Stone
Daniel M. Deschenes, Esq.

#580142

HinckleyAllenSnyder LLP
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Christopher H.M. Carter
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Direct Dial: (603) 545-6104
Direct Fax: (603) 545 6105

May 2, 2006

VIA FACSIMILE

Michael E. Gould, Esquire
Law Office of Gould and Burke
15 Northview Drive, P.O. Box 666
Meredith, NH 03253

Re: Ronnie P. Stone, et al. v. Financial Resources, Inc., et al.
Docket No. 05-C-0071

Dear Attorney Gould:

This letter shall confirm that the parties have reached an agreement to settle this case. A draft Settlement Agreement is attached. The central terms of the agreement are as follows:

1. Defendants shall pay Plaintiffs $600,000 in full satisfaction of all of Plaintiffs' claims. Plaintiffs will advise how the $600,000 shall be paid, i.e., whether it shall be paid as a lump sum to Ron Stone, individually and as Power of Attorney for Howard Stone, or whether a portion of the funds shall be directed to an approved self-directed IRA fund for Ron Stone, or such other investment directed by Plaintiffs.

2. Financial Resources will post a bond sufficient to cover any penalty from the IRS relating to the mismanagement of Ron Stone's 401K. The amount of the potential penalty will be determined by an objective third party acceptable to Plaintiffs and Defendants. After Financial Resources posts the bond, Ron Stone may elect to: (a) report the matter to the IRS; or (b) wait for the statutory period to run on any enforcement action by the IRS relating to Mr. Stone's 401K. If, at the end of the statutory period, no demand has been made against the bond, an amount equal to the face amount of the bond will be divided equally between Financial Resources and Mr. Stone. For example, if the bond was for $70,000, Financial Resources and Ron Stone would each receive $35,000.

3. You have advised that $525,000 of the settlement funds will derive from the sale of real estate owned by Susan Farah. Defendants will provide confirmation of this, as well as evidence of the source of $75,000 balance of the settlement payment.

4. Neither Party Docket Markings will be filed.

5. The enclosed draft Settlement Agreement contains a confidentiality provision binding on all parties as well as Jackie Stone. As indicated, the Settlement Agreement absolutely bars any party from disclosing the terms of the settlement, including the amount of the settlement payment, or from making any public statement that would otherwise reflect on the settlement terms or amount.

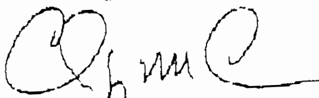
6. Plaintiffs will not require an apology from any Defendant.

In reliance on this agreement, I have cancelled the depositions of Robert Farah and Scott Farah, scheduled for May 3 and May 4. Please contact me immediately if there is any disagreement as to the terms of the settlement outlined above. In addition, please forward any comments or revisions on the draft Settlement Agreement.

Finally, Ron Stone will arrive in New Hampshire this afternoon, and will be able to provide all information needed from Plaintiffs to consummate the settlement. I'm sure you and your clients share our desire to conclude this matter promptly. Likewise, the Superior Court will appreciate knowing that this matter has been resolved. Accordingly, I would hope that all components of the settlement could be concluded within the next 2-3 days. Please let me know if you anticipate any difficulty in exchanging executed settlement documents, and the settlement funds, within this timeframe.

Thank you for your cooperation.

Sincerely,



Christopher H.M. Carter
CHMC/sc

cc: Ronnie and Jackie Stone
Daniel M. Deschenes, Esq.

#580224

DRAFT
5/2/06

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into this ____ day of May 2006, by and between Plaintiffs Ronnie Stone and Howard Stone ("Plaintiffs") and Jackie Stone, on one hand, and Defendants Scott Farah, Financial Resources, Inc., d/b/a Financial Resources and Assistance of the Lakes Region ("FRI"), Robert Farah, and Center Harbor Christian Church ("CHCC") ("Defendants"), on the other. Plaintiffs, Jackie Stone, and Defendants are referred to collectively herein as "the Parties".

WHEREAS, Plaintiffs filed a civil action against Defendants captioned Ronnie P. Stone and Howard W. Stone v. Robert Farah, Scott Farah, Financial Resources, Inc. and Center Harbor Christian Church, Docket No. 05-C-0071, in the Belknap County Superior Court in the State of New Hampshire (the "Litigation"); and

WHEREAS, Defendants have appeared in the Litigation and denied liability; and

WHEREAS, the Parties recognize the burden, expense and delay of litigation and the uncertain outcome of proceedings, and have concluded that it is in their mutual best interests to resolve the Litigation on the terms set forth below; and

NOW, THEREFORE, in consideration of the promises and covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto expressly agree as follows:

1. Settlement Payment. Defendants agree to pay Plaintiffs the sum of Six Hundred Thousand Dollars ($600,000.00) ("Settlement Amount"). The Settlement Amount is due and payable at the time of the execution of this Agreement by the Parties.

2. No Admission Of Liability. It is expressly understood and agreed by the Parties that this Agreement is entered into solely for the purpose of terminating the Litigation as

between the Parties. Neither this Agreement nor any other communication concerning this Agreement shall be deemed, construed or treated in any respect as an admission of liability or a breach of duty on the part of any Party.

3. **Dismissal Of The Litigation With Prejudice**. The Parties agree that, upon payment in full of the Settlement Amount, counsel for the Parties shall execute and cause to be filed with the Court a Stipulation of Dismissal With Prejudice and Without Costs as to Plaintiffs' claims against Defendants in the Litigation.

4. **Release Of Defendants**. Plaintiffs, in their own right and on behalf of their past, present and future agents, successors and assigns, do hereby expressly, voluntarily and immediately release and discharge Defendants and their past, present and future agents, heirs, executors, successors, and assigns from any and all actions, causes of action, suits, debts, charges, complaints, claims, liabilities, contracts, obligations, damages and expenses of any kind or nature whatsoever that Plaintiffs may have had or claimed to have had, or now have or claims to have, or hereafter may have or assert to have, which arose out of or are in any manner whatsoever, directly or indirectly, connected with or related to the Litigation, the subject matter thereof, or any claims or causes of action that were or which could have been asserted in the Litigation.

5. **Confidentiality**. The Parties, and Jackie Stone, represent and agree that they will keep the terms of this Agreement and the Settlement Amount completely confidential, and will not hereafter make any public statements tending to quantify the size of the Settlement Amount, or otherwise disclosing any information concerning this Agreement or the Settlement Amount, except: (a) as may be ordered by a court of appropriate jurisdiction or required by law by a duly constituted governmental body or tax authority; (b) as necessary for the purpose of the

enforcement of this Agreement; or (c) as necessary for the purpose of arranging for the investment of any portion of the Settlement Amount, preparing tax returns reflecting the receipt of the Settlement Amount, or addressing any penalty or violation assessed by the IRS as a result of FRI's handling of Ronnie Stone's 401K fund, as alleged in the Litigation. Before any disclosure is made under the circumstances cited above, the Party disclosing information shall provide notice to the other Parties before the disclosure is made.

The Parties acknowledge that it is absolutely essential that the terms of this Agreement, including the Settlement Amount, remain strictly confidential. Any Party may seek a court order compelling compliance with the terms of this confidentiality provision, which may also result in the court imposing equitable relief, additional monetary damages and/or sanctions, including but not limited to the payment of costs and attorneys' fees associated with any court action to enforce the confidentiality violation. The Parties further acknowledge that, in the event of a violation of this confidentiality provision, damages may be difficult to quantify. Accordingly, the Parties agree that upon the adjudication by a court of competent jurisdiction that a breach of this confidentiality provision has occurred, the breaching Party will have an obligation to pay damages in the liquidated amount of $10,000 for each violation.

6. **Indemnification as to IRS Penalty**. Within five (5) days of the execution of this Agreement, FRI will deposit into a designated escrow account opened in the name of the Parties' counsel an amount sufficient to cover any penalty from the IRS relating to FRI's handling of Ronnie Stone's 401K, as alleged in the Litigation (the "Escrowed Amount"). The amount of the potential penalty to be used to determine the Escrowed Amount will be determined by an objective third party acceptable to Plaintiffs and Defendants. After FRI establishes the Escrowed Amount, Ronnie Stone may elect to report the matter to the IRS. However, if, at the end of the

statutory period for enforcement action by the IRS, no penalty has been assessed which requires payment of the Escrowed Amount, the Escrowed Amount, together with interest earned on the same, will be divided equally between FRI and Ronnie Stone.

7. **Voluntary and Informed Consent**. Each Party to this Agreement warrants that no promise or inducement to enter into this Agreement has been offered, except as herein set forth. Each Party also acknowledges that it has acted with the advice of such counsel in executing this Agreement. Each Party hereto and each person executing this Agreement acknowledges that the terms and conditions of this Agreement have been completely read, and that the terms and conditions are fully understood and voluntarily accepted.

8. **Applicable Law**. This Agreement shall be deemed to be made and entered into in the State of New Hampshire, and shall in all respects be interpreted, enforced and governed under its laws. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties.

9. **Successors And Assigns**. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, successors and assigns.

10. **Severability**. In the event any part of this Agreement is deemed unenforceable for any reason, the remaining provisions of this Agreement shall remain in full force and effect.

11. **Execution**. This Agreement may be executed by each Party on separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which taken together constitute but one and the same instrument. Counterparts may be transmitted by the Parties to their counsel via telecopier, if convenient to do so, and such counterparts and copies thereof shall be deemed originals, for all purposes.

12. Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements, discussions and statements. No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the Party or Parties to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provisions hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.

AGREED AND ACCEPTED:

RONNIE STONE

______________________ Witness:______________ Dated: ________

HOWARD STONE

______________________ Witness:______________ Dated: ________
By Ronnie Stone, acting pursuant to
Power of Attorney from Howard Stone

JACKIE STONE

______________________ Witness:______________ Dated: ________

FINANCIAL RESOURCES, INC.

______________________ Witness:______________ Dated: ________
By:
Its:

DRAFT
5/2/06

CENTER HARBOR CHRISTIAN CHURCH

_________________________ Witness:_________________ Dated: ___________
By:
Its:

SCOTT FARAH

_________________________ Witness:_________________ Dated: ___________

ROBERT FARAH

_________________________ Witness:_________________ Dated: ___________

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into this ____ day of May 2006, by and between Plaintiffs Ronnie Stone and Howard Stone ("Plaintiffs") and Jackie Stone, on one hand, and Defendants Scott Farah, Financial Resources and Assistance of the Lakes Region, Inc. d/b/a Financial Resources, Inc., ("FRI"), Robert Farah, and Center Harbor Christian Church ("CHCC") ("Defendants"), on the other. Plaintiffs, Jackie Stone, and Defendants are referred to collectively herein as "the Parties".

WHEREAS, Plaintiffs filed a civil action against Defendants captioned *Ronnie P. Stone and Howard W. Stone v. Robert Farah, Scott Farah, Financial Resources, Inc. and Center Harbor Christian Church*, Docket No. 05-C-0071, in the Belknap County Superior Court in the State of New Hampshire (the "Litigation"); and

WHEREAS, Defendants have appeared in the Litigation and denied liability; and

WHEREAS, the Parties recognize the burden, expense and delay of litigation and the uncertain outcome of proceedings, and have concluded that it is in their mutual best interests to resolve the Litigation on the terms set forth below; and

NOW, THEREFORE, in consideration of the promises and covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto expressly agree as follows:

1. Settlement Payment. Defendants Financial Resources and Assistance of the Lakes Region, Inc. d/b/a Financial Resources, Inc. and Scott Farah individually agree to pay Plaintiffs the sum of Six Hundred Thousand Dollars ($600,000.00) ("Settlement Amount"). The

Settlement Amount is due and payable at the time of the execution of this Agreement by the Parties.

2. <u>No Admission Of Liability</u>. It is expressly understood and agreed by the Parties that this Agreement is entered into solely for the purpose of terminating the Litigation as between the Parties. Neither this Agreement nor any other communication concerning this Agreement shall be deemed, construed or treated in any respect as an admission of liability or a breach of duty on the part of any Party.

3. <u>Dismissal Of The Litigation With Prejudice</u>. The Parties agree that, upon payment in full of the Settlement Amount, counsel for the Parties shall execute and cause to be filed with the Court a Stipulation of Dismissal With Prejudice and Without Costs as to Plaintiffs' claims against Defendants in the Litigation.

4. <u>Release Of Defendants</u>. Plaintiffs, in their own right and on behalf of their past, present and future agents, successors and assigns, do hereby expressly, voluntarily and immediately release and discharge Defendants and their past, present and future agents, heirs, executors, successors, and assigns from any and all actions, causes of action, suits, debts, charges, complaints, claims, liabilities, contracts, obligations, damages and expenses of any kind or nature whatsoever that Plaintiffs may have had or claimed to have had, or now have or claims to have, or hereafter may have or assert to have, which arose out of or are in any manner whatsoever, directly or indirectly, connected with or related to the Litigation, the subject matter thereof, or any claims or causes of action that were or which could have been asserted in the Litigation.

5. <u>Confidentiality</u>. The Parties, and Jackie Stone, represent and agree that they will keep the terms of this Agreement and the Settlement Amount completely confidential, and will

not hereafter make any public statements tending to quantify the size of the Settlement Amount, or otherwise disclosing any information concerning this Agreement, except: (a) as may be ordered by a court of appropriate jurisdiction or required by law by a duly constituted governmental body or tax authority; (b) as necessary for the purpose of the enforcement of this Agreement; or (c) as necessary for the purpose of arranging for the investment of any portion of the Settlement Amount, preparing tax returns reflecting the receipt of the Settlement Amount, or addressing any penalty or violation assessed by the IRS as a result of FRI's handling of Ronnie Stone's 401K fund, as alleged in the Litigation. Before any disclosure is made under the circumstances cited above, the Party disclosing information shall provide notice to the other Parties before the disclosure is made. The Parties also agree not to seek out the media to comment on the case and, in the event that they are contacted by the media, will state that the matter is settled and that they are satisfied with the settlement and refer all further inquiries to their counsel.

The Parties acknowledge that it is absolutely essential that the terms of this Agreement, including the Settlement Amount, remain strictly confidential. Any Party may seek a court order compelling compliance with the terms of this confidentiality provision, which may also result in the court imposing equitable relief, additional monetary damages and/or sanctions, including but not limited to the payment of costs and attorneys' fees associated with any court action to enforce the confidentiality violation. The Parties further acknowledge that, in the event of a violation of this confidentiality provision, damages may be difficult to quantify. Accordingly, the Parties agree that upon the adjudication by a court of competent jurisdiction that a breach of this confidentiality provision has occurred, the breaching Party will have an obligation to pay damages in the liquidated amount of $10.000 for each violation.

6. Indemnification as to Possible IRS Penalty. FRI will deposit into a designated escrow account opened in the name of the Parties' counsel an amount sufficient to cover any penalty from the IRS relating to FRI's possible mishandling of Ronnie Stone's 401K, as alleged in the Litigation. The amount of the escrow account (the "Escrowed Amount") shall be agreed upon by the parties. If at the end of the statutory period for enforcement action by the IRS, no penalty has been assessed which requires payment of the Escrowed Amount, the Escrowed Amount, together with interest earned on the same, will be divided equally between Susan G. Farah, Trustee of the Northview Drive Trust of 1995, as Lender, and Ronnie Stone.

7. Voluntary and Informed Consent. Each Party to this Agreement warrants that no promise or inducement to enter into this Agreement has been offered, except as herein set forth. Each Party also acknowledges that it has acted with the advice of such counsel in executing this Agreement. Each Party hereto and each person executing this Agreement acknowledges that the terms and conditions of this Agreement have been completely read, and that the terms and conditions are fully understood and voluntarily accepted.

8. Applicable Law. This Agreement shall be deemed to be made and entered into in the State of New Hampshire, and shall in all respects be interpreted, enforced and governed under its laws. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties.

9. Successors And Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, successors and assigns.

10. Severability. In the event any part of this Agreement is deemed unenforceable for any reason, the remaining provisions of this Agreement shall remain in full force and effect.

11. <u>Execution</u>. This Agreement may be executed by each Party on separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which taken together constitute but one and the same instrument. Counterparts may be transmitted by the Parties to their counsel via telecopier, if convenient to do so, and such counterparts and copies thereof shall be deemed originals, for all purposes.

12. <u>Entire Agreement</u>. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements, discussions and statements. No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the Party or Parties to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provisions hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.

AGREED AND ACCEPTED:

RONNIE STONE

_______________________________ Witness:_____________________ Dated: ____________
Ronnie Stone

JACKIE STONE

_______________________________ Witness:_____________________ Dated: ____________
Jackie Stone

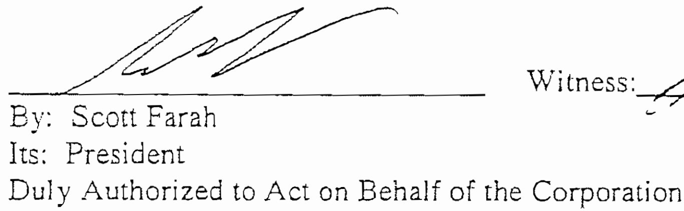
HOWARD STONE

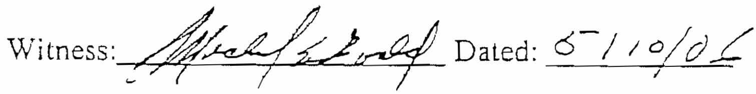
Witness: Dated:

By Ronnie Stone, acting pursuant to
Power of Attorney from Howard Stone

FINANCIAL RESOURCES, INC.

A/K/A FINANCIAL RESOURCES AND ASSISTANCE OF THE LAKES REGION, INC.

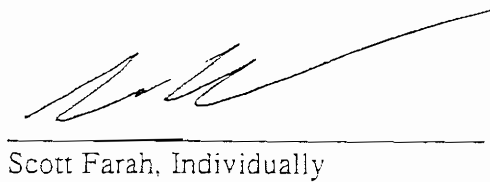


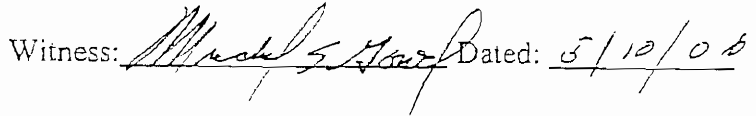


Witness: Dated: 5/10/06

By: Scott Farah
Its: President
Duly Authorized to Act on Behalf of the Corporation

SCOTT FARAH

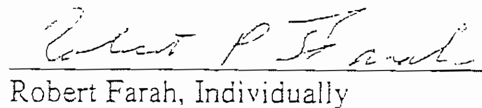


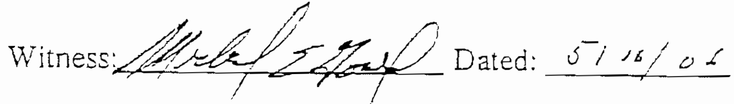


Witness: Dated: 5/10/06

Scott Farah, Individually

ROBERT FARAH





Witness: Dated: 5/16/06

Robert Farah, Individually

CENTER HARBOR CHRISTIAN CHURCH

________________ Witness: ________________ Dated: 5/10/06

By: Robert Farah
Its: Pastor and President
Duly Authorized to act on behalf of the Center Harbor Christian Church

________________ Witness: ________________ Dated: 5/10/06

By: John Demakowski
Its: Deacon
Duly Authorized to act on behalf of the Center Harbor Christian Church

________________ Witness: ________________ Dated: 5/10/06

By: Steve Woodman
Its: Elder
Duly Authorized to act on behalf of the Center Harbor Christian Church

State Corporation Commission
Commonwealth of Virginia

*1 COMMONWEALTH OF VIRGINIA, EX REL. STATE CORPORATION COMMISSION
v.
TRUST ALLIANCE, THE REAL ESTATE INVESTMENT COMPANY, LLC, TRUST ALLIANCE SAVINGS, LLC, AND JOERG MEYER, DEFENDANTS
Division of Securities and Retail Franchising
Case No. SEC-2006-00067
November 29, 2006
SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that: (1) Joerg Meyer violated § 13.1- 504 A of the Virginia Securities Act ("Act"), § 13.1-501 et seq. of the Code of Virginia, by acting as an agent of the issuer without being registered with the Division; (2) Trust Alliance, The Real Estate Investment Company, LLC ("TA REI") and Trust Alliance Savings, LLC ("Trust Alliance") violated § 13.1-504 B of the Act by employing an unregistered agent, Joerg Meyer; and (3) TA REI, Trust Alliance, and Joerg Meyer violated § 13.1-507 of the Act by offering or selling securities that were not registered under the Act or exempt from registration.

The State Corporation Commission ("Commission") is authorized by § 13.1-506 of the Act to revoke the Defendants' registration, by § 13.1-519 of the Act to issue temporary or permanent injunctions, by § 13.1-518 A of the Act to impose costs of investigation, by § 13.1-521 A of the Act to impose certain monetary penalties, and by § 12.1-15 of the Code of Virginia to settle matters within its jurisdiction.

The Defendants neither admit nor deny these allegations but admit to the Commission's jurisdiction and authority to enter this Settlement Order.

As a proposal to settle all matters arising from these allegations, the Defendants have made an offer of settlement to the Commission wherein the Defendants will abide by and comply with the following terms and undertakings:

(1) The Defendants agree to continue to make payments, including interest, to the investors who may still be owed funds on existing investment contracts, with the final payment to be made no later than January 1, 2010.

(2) The Defendants agree that until they reorganize as a Real Estate Investment Trust or hire a professional financial consultant to ensure that proper accounting

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Attachment 5

controls are put in place and are registered with the Division to sell securities or claim an exemption from registration, they will not solicit new investors.

(3) On or before January 1, 2010, the Defendants will provide an affidavit to the Division certifying the status of payments to the investors as detailed under item (1) and the status of any reorganization or financial controls as detailed under item (2).

(4) The Defendants will not violate the Act in the future.

The Defendants have established with the Division that they are financially incapable of paying penalties and costs in this matter.

The Division has recommended that the Commission accept the offer of settlement of the Defendants.

***2** The Commission, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Division, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS THEREFORE ORDERED THAT:

(1) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted;

(2) The Defendants fully comply with the aforesaid terms and undertakings of this settlement; and

(3) The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding, or taking such other action it deems appropriate, on account of the Defendants' failure to comply with the terms and undertakings of the settlement.

Mark C. Christie, Chairman

Theodore V. Morrison, Jr.

Judith Williams Jagdmann

Commissioners, State Corporation Commission

ADMISSION AND CONSENT

The Defendants, Trust Alliance, The Real Estate Investment Company, LLC, Trust Alliance Savings, LLC, and Joerg Meyer, admit to the jurisdiction of the State Corporation Commission ("Commission") as to the party and subject matter hereof, neither admit nor deny the allegations made herein by the Division of Securities and Retail Franchising, and hereby consent to the form, substance and entry of the

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foregoing Settlement Order.

The Defendants further state that no offer, tender, threat or promise of any kind whatsoever has been made by the Commission or any member, subordinate, employee, agent or representative thereof in consideration of the foregoing Settlement Order.

November 10, 2006

Trust Alliance, The Real Estate Investment Company, LLC

Trust Alliance Savings, LLC

By: Joerg Meyer

2006 WL 3519471 (Va.Corp.Com.)

END OF DOCUMENT

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Westlaw

State Corporation Commission
Commonwealth of Virginia

*1 COMMONWEALTH OF VIRGINIA, EX REL. STATE CORPORATION COMMISSION
v.
TRUST ALLIANCE, THE REAL ESTATE INVESTMENT COMPANY, LLC, TRUST ALLIANCE SAVINGS, LLC, AND JOERG MEYER, DEFENDANTS
Division of Securities and Retail Francnising
Case No. SEC-2006-00067
May 5, 2010
FINAL ORDER

On November 29, 2006, the State Corporation Commission ("Commission") entered a Settlement Order ("Order") in this case. The staff of the Division of Securities and Retail Franchising has now reported to the Commission that the Defendants have fulfilled the requirements of the Order.

Accordingly, IT IS ORDERED THAT:

(1) This case is dismissed.

(2) All undertakings and provisions of a continuing nature set forth in the prior Order remain in full force and effect.

(3) Entry of this Final Order shall not affect any duty or obligation to disclose the existence or nature of this matter or of any order entered herein.

(4) The papers herein shall be filed among the ended cases.

James C. Dimitri, Chairman

Mark C. Christie

Judith Williams Jagdmann

Commissioners, State Corporation Commission

2010 WL 1920241 (Va.Corp.Com.)

END OF DOCUMENT

Attachment 6

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