



MEMORANDUM

TO: File #201083027 -- Financial Resources Mortgage, Inc.

FROM: J. Christopher Marshall
Richard W. Head

DATE: April 27, 2010

RE: Interview of James Shepard on April 26, 2010

Richard Head and I interviewed James Shepard at the Banking Department. Mr. Shepard was the staff attorney for the Consumer Credit Division from September 2006 until the Summer of 2008 when he left Banking to become a hearing officer at the Department of Safety.

Mr. Shepard received a BA degree from Rutgers in 1995. He worked as a part-time police officer for the town of Haverhill until he assumed a full-time position as a policeman for the Town of Littleton where he also became the town prosecutor. He attended the University of Maryland Law School from which he graduated in 2005. He served as a clerk for a trial court judge in Maryland and was admitted to the New Jersey and Pennsylvania bars.

He heard about an opening at the Consumer Credit Division of the Banking Department when taking the New Hampshire bar exam in July of 2006. Andrea Shaw was taking the exam at the same time and mentioned to him that the position she previously held as a lawyer for the Consumer Credit Division was open. Mr. Shepard applied for the position in early September and started work by the end of September. The position had been open since July when Ms. Shaw transferred to Banking. By the time Mr. Shepard interviewed for the position, both the Consumer Credit Division and Banking Division had openings in the staff attorney position because Ms. Shaw left the Banking Department altogether within a few weeks of taking the bar exam in order to move to Maine.

Membership in the NH Bar was not a prerequisite to the position of Staff Attorney. He received referrals for enforcement actions from examinations and from consumer complaints. The two sources of enforcement actions raised different legal issues. Examinations or audits often raised "petty" issues such as the full name of the organization had been truncated in advertisements. The Department assigned one examiner on a rotating basis to act as an investigator for the Staff Attorney. When he started, Lorry Cloutier was the assigned investigator.

Mr. Shepard decided which cases he would pursue. If a referral arose from an examination, he took guidance from Mary Jurta. Shortly after he was hired, Banking hired a paralegal to assist him. The paralegal facilitated processing legal actions for the collection of fees and penalties.

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When he started, the position of Staff Attorney had been open for at least three months. It seemed to him that there were numerous pending enforcement actions. His files consumed four or five cabinets.

Collection of fees for the late filing of annual reports or financial statements became somewhat routine and were handled by a paralegal. Once late filing fees hit the maximum, say \$2500, Licensing forwarded them to him for an enforcement action. He obtained orders to show cause, which prompted payment or a default and collection against the licensee's bond.

Substantial cases also occupied his time. Ameriquest was a multi-state action in which Andrea Shaw had been extensively involved. She was on the negotiating committee for a multi-state consent order. The case started for her in 2003 and was substantially concluded by the time she left in 2006. A second time consuming, messy and substantial case was MAK Investments. It started with three or four consumer complaints, which yielded three or four more complaints, and required a multi-day hearing in 2007.

By the end of 2007, the banking industry was coming under stress. The Department had weekly meetings to address increased caseload. Mr. Shepard was involved in nationwide conference calls with bankers such as Bear Stearns and with other regulators and investors to prepare for the effects of the emergency financial crisis.

Mr. Shepard left in the summer of 2008 to accept a job as a hearing examiner at the Department of Safety.

At the time Mr. Shepard started, several departures affected his training. Andrea Shaw, who had transferred to Banking, left in October or November of 2006, so she was no longer available as a resource for him. The lawyer in the Banking Division was out on maternity leave. His immediate supervisor, Donna Soucy, who was General Counsel to the Department, left in November or December of 2006. He and the Commissioner became the only lawyers in the Department. After Donna Soucy left, his immediate supervisor was Abby Shane.

Mr. Shepard's first contact with FRM was through the investigation of consumer complaints. His recollection was that he determined that the Department had no jurisdiction over the initial matter that he investigated. The Department had a set procedure for dealing with consumer complaints. They were sent within ten days of receipt to the licensee, which was required to respond within thirty days. If no response was received, a cease and desist order would issue, which usually prompted a response. The process had a built-in 45-day delay from the date of receipt to the date the Department obtained information about the complaint. The Staff Attorney had discretion to close the matter or request additional documentation from the licensee or request an examination and site visit.

In the early stages of reviewing complaints and exams, Mr. Shepard was skeptical of violations of Gramm, Leach, Bliley. He had very little understanding of the operation or reason for the

requirements, plus the requirements were new to the examiners and to the licensees. Eventually, Mr. Shepard viewed GLB violations as more serious because they were symptoms of failure to abide current regulations or of sloppiness in record keeping. Once trained on the requirements, the examiners looked for violations and found them in large quantities. Violations of the Good Faith Estimate (“GFE”) of the Yield Spread Premium (“YSP”) were also common. Because there were so many of these types of violations and the practices varied, he thought that loan originators should be individually licensed.

Many of the complaints against FRM were outside the Banking Department’s jurisdiction. Many of them related to commercial loans or mobile home loans. He said that there were an unusual number of complaints not within Banking’s jurisdiction.

An October 2006 memorandum referred the May 18, 2006 examination to him for enforcement. The memorandum described the violations and included a hand-written note from Mary Jurta instructing or suggesting that Mr. Shepard review a pending enforcement action and that he commence proceedings to revoke the license. Further correspondence suggested that Susan Leduc of Gallagher, Callahan & Gartrell was involved. Mr. Shepard welcomed her involvement because he had dealt with her before, respected her and thought that she would be helpful in addressing the FRM issues.

No formal list summarized pending enforcement proceedings when he started. Andrea Shaw provided a list that she created of items about which she was concerned, such as MAK and Ameriquest. He did not know the number of such items, but he estimated that there were at least ten. It seemed that there were “tons and tons of pending enforcement actions.” He prioritized these by dealing with the easy ones first. There was “way too much in the pipeline.”

No one at the Department had a formal mechanism for tracking pending enforcement actions. The Staff Attorney did not have a docket control mechanism for enforcement action nor was he required to take action on a pending matter under any particular deadlines. Likewise, the hearing officer, who was usually a senior examiner from the Banking Department, did not impose deadlines.

A notation in the file indicates on February 9, 2007 that JAS recommends closing the FRM enforcement action because the licensee had fixed the violations. (The timing of the entry is puzzling because the 2006 exam had prompted a referral, there was an express direction from the Director of Consumer Banking to take action, there was a pending action that had been prompted by the 2004 exam, the April 2006 article had prompted action and the 2007 Exam had not yet taken place.) Mr. Shepard said that Ms. Leduc was proactive in calling him and describing the problems of her client.

Andrea Shaw told Mr. Sheppard that there was a special relationship between Chris Gallagher and the Banking Commissioner and that he had to be careful as to what he did with clients of Gallagher, Callahan & Gartrell. He did not have the details as to what she based her comments

on, but his impression was that something had happened in a case involving the Gallagher office where Andrea Shaw was not satisfied with the outcome. Her warning to him was to be careful as to how he handled clients of the Gallagher office.

It was not unusual for the Commissioner to inquire about cases but he tended to be more focused in his inquiries on cases that involved the Gallagher office. At one point, the Commissioner inquired of Mr. Shepard about a particular company that the Gallagher office was representing to which Mr. Shepard told the Commissioner that the individuals involved were disreputable. That was the only occasion in which Mr. Shepard recalled a specific inquiry. At some point Chris Gallagher would call Mr. Shepard directly and inquire about activities. He thought that Mr. Gallagher's dealings with him were "above board." He also liked dealing with Susan Leduc because she was good at what she did and was helpful in advising her clients.

Mr. Shepard volunteered that the real problem for FRM was not with Banking but with Securities. He talked to Mary Jurta at some point about FRM and it came up as an aside that she thought FRM had a Securities problem. Most of what FRM was doing under the Banking jurisdiction was "stupid little things" such as not shredding documents or not locking up documents. Mr. Shepard never had the impression that FRM was abusing its customers or consumers by putting people in loans that were created just to obtain a commission. Some of the more corrupt practices of other lenders and brokers were not visible in FRM's transactions.

Mr. Shepard thought that he did not see the October 4, 2006 memo referring the examination for enforcement action until late 2006 or early 2007. He had just started and was still working his way through the pending enforcement actions. His immediate supervisor was Donna Soucy who left shortly after he started. Her replacement, Abby Shane, became his successor supervisor. In the absence of them, he reported to Mary Jurta who was the Director of the Consumer Credit Division. Either the General Counsel or the Director of the Consumer Credit Division could push for enforcement action. Examiners generally were not in a position to push for a certain action. However, they would become irritated if they were asked to do an exam while an enforcement action was pending or if they had previously recommended an enforcement action and none had been taken before the next exam commenced. It was not uncommon to find that a subsequent exam showed that violations cited in a previous exam had been cured. In this instance, while the successor exam had not been done, by February of 2007 Susan Leduc had been retained, she was knowledgeable in her field, and had brought other companies into compliance. "Plus, he did not think much of the case in the first instance."

Mr. Shepard pursued cases where documents had been altered or disclosures had not been made at the time of closing or disclosures had been forged or placed in files after the closing. Whenever it appeared that a borrower had been purposely misled, he would be concerned. He was always very concerned if fraud were indicated. Complaints that a consumer was not aware that an interest rate would vary or change were common, but those complaints often were undercut by valid disclosures. Lenders could set whatever terms they wanted so long as the disclosures complied with the requirements.

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Mr. Shepard thought that either the Staff Attorney or the General Counsel should have better experience or background in banking and enforcement actions before undertaking those positions. For him, the caseload was so large and there was so much to do that it was hard to respond to the volume and variety of enforcement actions. He said there was no effective filter between examiners and referrals for enforcement, resulting in too many non-substantive cases referred.

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