

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH**

Merrimack Superior Court  
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**NOTICE OF DECISION**

**Daniel P. Dargon, ESQ  
Dargon Law Firm  
101 North State Street Suite 301  
Concord NH 03301**

Case Name: **Dargon Law Firm PLLC, et al v Peter C Hildreth, Commissioner**  
Case Number: **217-2010-CV-00162**

Enclosed please find a copy of the court's order of April 26, 2010 relative to:

**ORDER**

April 26, 2010

William S. McGraw  
Clerk of Court

(489)

C: Danielle L. Pacik, ESQ

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Dargon Law Firm PLLC  
and  
Daniel Paul Dargon, Esq.

v.

Commissioner Peter Hildreth  
and  
New Hampshire Banking Department

No. 10-E-162

**ORDER**

This proceeding was initiated by an *ex parte* petition for injunctive relief filed by the petitioners, Dargon Law Firm PLLC (the “law firm”) and Daniel Paul Dargon, Esq., against the respondents, Banking Commissioner Peter Hildreth and the New Hampshire Banking Department (the “department”). The petitioners sought an injunction restraining the respondents from enforcing a cease and desist order. On April 5, 2010, the court granted *ex parte* relief. The court then convened an April 12, 2010 hearing after notice. Upon review of the pleadings, offers and argument, the court finds and rules as follows.

The law firm represents clients with mortgage loans. Petitioner Daniel Paul Dargon, Esq. is a principal of the law firm. The department regulates loan modification services pursuant to RSA 397-A. On April 1, 2010, the respondents issued a cease and desist order restraining the petitioners from engaging in, *inter alia*, the unregulated practice of loan origination. The instant action followed.

RSA 397-A:3 provides, *inter alia*, that a person who “engages in the business of making or brokering mortgage loans” for compensation or gain must be licensed by the department as a “loan originator.” RSA 397-A:1, XVII(a) defines loan originator as, in pertinent part:

“Originator” or “mortgage loan originator” or “mortgage originator” or “loan originator” means an individual who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain, takes a mortgage application or offers, negotiates, solicits, arranges, or finds a mortgage loan or who assists a consumer in obtaining or applying to obtain a mortgage loan by, among other things, advising on loan terms (including rates, fees, and other costs), preparing loan packages, or collecting information on behalf of the consumer with regard to a mortgage loan or who offers or negotiates terms of a residential mortgage loan.

The statute includes the negotiation of a modification of existing mortgage loans within the definition. *See e.g.* RSA 397-A:14, IV(m). There are regulatory exemptions, one of which is pertinent to this proceeding. RSA 397-A:4, V exempts:

A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney’s representation of the client, provided that the attorney is not compensated, directly or indirectly, by a lender, a mortgage broker, mortgage servicer, or other mortgage loan originator or by any agent of such lender, mortgage broker, mortgage servicer, or other mortgage loan originator.

The petitioners assert that they are licensed attorneys whose practice falls within the exemption.

The respondents dispute the petitioners’ assertion the law firm’s practice falls within the exemption, but concede that if that is the case, the attorneys are not required to be licensed, nor are they otherwise subject to department regulation.

“Whether to grant an injunction is within the trial court’s sound discretion, exercised after consideration of all the circumstances and controlled by established principles of equity.” *Smith v. N.H. Bd. of Exam’rs of Psychologists*, 138 N.H. 548, 550 (1994). “The issuance of injunctions, either temporary or permanent, has long been considered an extraordinary remedy.” *Murphy v. McQuade*, 122 N.H. 314, 316 (1982).

As indicated above, the petitioners claim that they are exempt from department licensing because they are providing legal services to the law firm's clients. At hearing, the petitioners were more specific. They represented that clients affected by the cease and desist order fall into three categories. The first category, involving 75% of the clients affected by the cease and desist order, are borrowers who are in foreclosure. The second category, involving 23% of the clients affected by the cease and desist order, are borrowers who are not yet in foreclosure, but have missed payments on their mortgage and anticipate a resulting foreclosure. The third category, involving 2% of the clients affected by the cease and desist order, are borrowers who have not yet missed a payment, but anticipate doing so and are hoping to prevent eventual foreclosure. The petitioners have agreed that they can pursue redress through the department's administrative process, but seek a stay of the cease and desist order for the duration of the process so that the law firm may continue to serve its clients. The petitioners also object to the requirement to turn over files because they claim that they are subject to the attorney-client privilege.

As the April 12, 2010 hearing was based on offers of proof, the court lacks a firm evidentiary basis to make findings about the law firm's activities. The court also agrees with the parties that such an evidentiary record is most appropriately developed in the course of the department's administrative process. Thus, the only issues before the court at this time are: (1) whether the law firm should be subject to the cease and desist order during the pendency of the department's administrative process; and (2) whether the department will be able to examine the law firm's client records so that an appropriate evidentiary record can be developed. The court will address each issue in turn.

The first issue is whether the cease and desist order may be enforced during the pendency of the administrative process. For the purpose of exercising its discretion in fashioning equitable

relief, the court will accept the petitioners' representations about the services rendered to the law firm's clients. Accordingly, the petitioners' request for preliminary relief is GRANTED in part and DENIED in part, as follows:

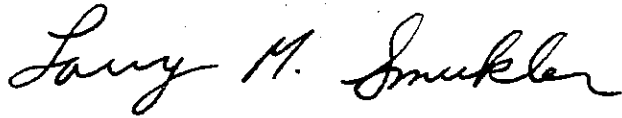
1. Pending the completion of the department's administrative process, the respondents are ENJOINED from enforcing the cease and desist order to the extent that it applies to persons who the petitioners represent are provided with mortgage loan renegotiation services as RSA 479-B pre-foreclosure and foreclosure prevention clients of any of the law firm's New Hampshire licensed attorneys and who (a) are subject to a pending foreclosure action; or (b) have missed mortgage payments to an extent that, absent renegotiation of the mortgage loan, a foreclosure action is likely. The relief provided in this paragraph applies only to clients who are individually identified by the petitioners in a list provided to the department.
2. All other compensated mortgage negotiation or renegotiation services provided by the petitioners shall remain subject to the cease and desist order. The petitioners shall provide a list of clients subject to the cease and desist order to the department upon its request.

The remaining issue is the department's access to the petitioners' records for the purpose of developing an evidentiary record in the course of its administrative process. The petitioners appropriately assert that they are generally foreclosed from disclosing privileged records of their clients by the rules of professional conduct. *See* N.H. R. Prof. Conduct 1.6. Such records may be disclosed, however, "to comply with other law or a court order." *Id.* at 1.6 (b)(4). By this order, the court requires the petitioners to provide the lists specified in ¶¶ 1 and 2 above and to comply with the department's request for disclosure of client records. Thus, disclosure no longer violates the rules of professional conduct. The respondents in turn are subject to the following restrictions with respect to disclosed records:

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1. Records must be sealed and cannot be disclosed to the public or any department personnel not directly involved department's RSA 397-A regulatory function and any RSA 541-A proceedings initiated pursuant thereto;
  2. Review and use of the records is strictly limited to the department's RSA 397-A regulatory function and any RSA 541-A proceedings initiated pursuant thereto; and

3. The department may not contact any of the petitioners' clients without going through the client's attorney or, alternatively, without first seeking and obtaining from this court an order authorizing such contact.

So ORDERED.

A handwritten signature in cursive script that reads "Larry M. Smukler".

Date: April 26, 2010

LARRY M. SMUKLER  
PRESIDING JUSTICE