

) Case No.: 10-234

1 In re the Matter of:)
)
 2 State of New Hampshire Banking)
)
 3 Department,)
)
 4 Petitioner,)
)
 5 and)
)
 6 Powder House Mortgage Company, Inc., Alan) Order to Show Cause and Cease and
) Desist
)
 7 Jay Nissenbaum, Jeremy David Nissenbaum,)
)
 8 and Michael J. DeKoster,)
)
 9 Respondents)

NOTICE OF ORDER TO SHOW CAUSE AND CEASE AND DESIST ("ORDER")

- 11 1. This Order commences an adjudicative proceeding under the provisions
 12 of RSA Chapter 397-A (including RSA 397-A:17, I, II and IX, RSA 397-
 13 A:16,IV, RSA 397-A:18, I and II, and RSA 397-A:20, IV) and RSA Chapter 541-
 14 A.
- 15 2. The Commissioner may impose administrative penalties of up to \$2,500
 16 for each violation. RSA 397-A:21, IV and V.
- 17 3. Respondents could be assessed a fine and penalty in an amount not to
 18 exceed \$25,000.00 for each violation or failure to comply with the
 19 requirements of the S.A.F.E. Mortgage Licensing Act of 2008. RSA 397-A:17,
 20 IX.

RESPONDENTS

22 4. Powder House Mortgage Company, Inc. ("Respondent Powder House") is a
 23 corporation formed in the State of Massachusetts on November 1, 1984 and
 24 registered to conduct business in New Hampshire with the New Hampshire
 25 Secretary of State on April 15, 1998 with a principal office location in

1 Somerville, Massachusetts. Respondent Powder House was administratively
2 dissolved/suspended in New Hampshire by the New Hampshire Secretary of State
3 on August 3, 2009. Respondent Powder House is a Person (RSA 397-A:1, XVIII).

4 5. Respondent Powder House was licensed as a Mortgage Banker with the New
5 Hampshire Banking Department ("Department") from January 1, 1997 (with an
6 amended license date of March 21, 2007) until its license expired on
7 December 31, 2009. According to the Nationwide Mortgage Licensing System &
8 Registry ("NMLS") records, Respondent Powder House is still licensed in
9 Massachusetts as a Mortgage Broker and Mortgage Lender.

10 6. Alan J. Nissenbaum ("Respondent AJ Nissenbaum") is the 50% direct
11 owner, control person and Secretary of Respondent Powder House. NMLS records
12 indicate Respondent AJ Nissenbaum was a licensed Massachusetts Mortgage Loan
13 Originator from October 31, 2008 to January 1, 2011. Respondent AJ
14 Nissenbaum is a Direct Owner (RSA 397-A:1,VI-a), a Principal (RSA 397-
15 A:1,XIX), Person (RSA 397-A:1,XVIII), and a Control Person (RSA 397-A:1,V-
16 a).

17 7. Jeremy David Nissenbaum ("Respondent JD Nissenbaum") is the 50% direct
18 owner, control person and President of Respondent Powder House. NMLS records
19 indicate Respondent JD Nissenbaum has been a licensed Massachusetts Mortgage
20 Loan Originator since September 12, 2008. Respondent JD Nissenbaum is a
21 Person (RSA 397-A:1, XVIII), Principal (RSA 397-A:1,XIX) and a Control
22 Person (RSA 397-A:1,V-a).

23 8. Michael J. DeKoster ("Respondent DeKoster") is an unlicensed New
24 Hampshire Mortgage Loan Originator with Respondent Powder House and was the
25 Chief Operating Office and Control Person of Respondent Powder House. NMLS

1 records indicate Respondent DeKoster was a Massachusetts Mortgage Loan
2 Originator whose license was issued on September 23, 2008, sponsored by
3 Respondent Powder House and expired on January 1, 2011. Respondent DeKoster
4 is a Person (RSA 397-A:1,V-a), a Principal (RSA 397-A:1,XIX), a Control
5 Person (RSA 397-A:1,V-a) and a Mortgage Loan Originator (RSA 397-A:1,XVII).

6 9. The above named Respondents are hereby collectively known as
7 "Respondents".

8 **RIGHT TO REQUEST A HEARING**

9 10. Respondents have a right to request a hearing on this Order. A hearing
10 shall be scheduled not later than ten (10) days after the Commissioner
11 receives the Respondent's written request for a hearing. Respondents may
12 request a hearing and waive the ten (10) day hearing requirement. The
13 hearing shall comply with RSA Chapter 541-A, RSA 397-A:17,I, and II, and RSA
14 397-A:18,I and II.

15 11. If any person fails to request a hearing within thirty (30) days of
16 receiving this Order, then such person shall be deemed in default, and the
17 Order shall, on the thirty-first (31st) day, become permanent, all
18 allegations may be deemed true, and shall remain in full force and effect
19 until modified or vacated by the Commissioner for good cause shown. RSA 397-
20 A:17,I and II, and RSA 397-A:18,I and II.

21 12. A default may result in administrative fines as described in
22 Paragraphs 2 and 3 above.

23 **STATEMENT OF ALLEGATIONS**

24 13. On November 16, 2009, the Department began an examination of
25 Respondent Powder House and discovered two major violations: a) unlicensed

1 mortgage loan originator activity by Respondent DeKoster in New Hampshire
2 regarding New Hampshire residential mortgage loans and New Hampshire
3 consumers and b) the failure of Respondents to facilitate the examination in
4 a timely manner.

5 **Unlicensed Mortgage Loan Originator: April 10, 2009 and April 30, 2009:**

6 **Respondent DeKoster (Unlicensed Mortgage Loan Originator)**

7 14. The Department discovered Respondent DeKoster transacted business in
8 New Hampshire as a mortgage loan originator by originating the Consumer A
9 loan on April 10, 2009 without a New Hampshire Mortgage Loan Originator
10 license, in violation of RSA 397-A:3,II. Consumer A was charged \$1,249.33 in
11 fees, which pursuant to RSA 397-A:16,IV should be returned to Consumer A.

12 15. The Department discovered Respondent DeKoster transacted business in
13 New Hampshire as a mortgage loan originator by originating the Consumer B
14 loan on April 30, 2009 without a New Hampshire Mortgage Loan Originator
15 license, in violation of RSA 397-A:3,II. Consumer B was charged \$5,347.00 in
16 fees, which pursuant to RSA 397-A:16,IV should be returned to Consumer B.

17 **Remaining Respondents**

18 16. All Remaining Respondents, including but not limited to Respondent
19 Powder House, violated RSA 397-A:3,III by employing, retaining or otherwise
20 engaging Respondent DeKoster, an unlicensed New Hampshire Mortgage Loan
21 Originator.

22 17. All Remaining Respondents, including but not limited to Respondent
23 Powder House, failed to supervise their one (1) unlicensed New Hampshire
24 mortgage loan originator in violation of RSA 397-A:6,I.

1 **Failure to Pay Fine for Late Filed Examination Materials:**

2 18. On October 16, 2009, the Department mailed via U.S. Certified Mail
3 Return Receipt requested, a notice of examination, which Respondents
4 received on October 19, 2009.

5 19. The Notice of Examination required a loan list be provided to the
6 Department within 7 days (October 26, 2009) and examination materials be
7 provided within 14 days thereafter. Examination materials were due on
8 November 14, 2009, but the Department did not receive the materials until
9 March 10, 2010, in violation of RSA 397-A:11,II.

10 20. Examination materials received by the Department after the 21 day
11 period shall subject the licensee to a fine of \$50.00 per days for each day
12 the item is not received. Respondents submitted the files 116 days late and
13 therefore owe \$5,800.00.

14 _____ /s/
15 Maryam Torben Desfosses
16 Hearings Examiner

_____ September 12, 2011
Date

17 **ORDER**

18 21. **I hereby find as follows:**

19 a. Pursuant to RSA 397-A:17,I, the facts as alleged above, if true,
20 show Respondents are operating or have operated in violation of RSA Chapter
21 397-A and form the legal basis for this Order;

22 b. Pursuant to RSA 397-A:20,VI, this Order is necessary and
23 appropriate to the public interest and for the protection of consumers and
24 consistent with the purpose and intent of New Hampshire banking laws;

25 c. The Department finds pursuant to RSA 397-A:17,II and RSA 397-
A:18,II, reasonable cause to issue an order to cease and desist; and

1 d. Pursuant to RSA 397-A:17 and RSA 397-A:18, if Respondents fail
2 to respond to this Order and/or defaults then all facts as alleged herein
3 are deemed as true.

4 **22. Accordingly, it is hereby ORDERED that:**

5 a. Respondents shall cease and desist from violating RSA Chapter
6 397-A and rules or orders thereunder;

7 b. Respondents shall show cause why Respondent Powder House's New
8 Hampshire Mortgage Banker license should not be revoked;

9 f. Respondents shall show cause why an administrative fine of up to
10 a maximum of \$2,500.00 per violation should not be imposed as follows:

11 (1). Respondent Powder House:

12 Violation #1: Employing, Retaining, Engaging Unlicensed
13 Mortgage Loan Originators (RSA 397-A:3,III) - 1 Count;

14 Violation #2: Failure to Supervise Mortgage Loan
15 Originator (397-A:6,I) - 1 Count;

16 Violation #3: Failure to Pay Late Fine for Examination
17 Materials (RSA 397-A:11,II) - 1 Count;

18 (2). Respondent AJ Nissenbaum (as Direct Owner, Principal and
19 Control Person):

20 Violation #1: Employing, Retaining, Engaging Unlicensed
21 Mortgage Loan Originators (RSA 397-A:3,III) - 1 Count;

22 Violation #2: Failure to Supervise Mortgage Loan
23 Originator (397-A:6,I) - 1 Count;

24 Violation #3: Failure to Pay Late Fine for Examination
25 Materials (RSA 397-A:11,II) - 1 Count;

1 (3). Respondent JD Nissenbaum (as Direct Owner, Principal and
2 Control Person):

3 Violation #1: Employing, Retaining, Engaging Unlicensed
4 Mortgage Loan Originators (RSA 397-A:3,III) - 1 Count;

5 Violation #2: Failure to Supervise Mortgage Loan
6 Originator (397-A:6,I) - 1 Count;

7 Violation #3: Failure to Pay Late Fine for Examination
8 Materials (RSA 397-A:11,II) - 1 Count;

9 (4). Respondent DeKoster (as Principal, Control Person and
10 Mortgage Loan Originator):

11 Violation #1: Unlicensed Mortgage Loan Originator Activity
12 (RSA 397-A:3,II) - 2 Counts;

13 g. In addition to Paragraph 22f. above, the following Respondent
14 shall show cause why a fine in an amount not to exceed \$25,000.00 for each
15 violation or failure to comply with the requirements of the S.A.F.E.
16 Mortgage Licensing Act of 2008 should not be imposed as follows:

17 (1). Respondent DeKoster:

18 Violation #1: Failure to be licensed as a Mortgage Loan
19 Originator in accordance with the S.A.F.E. Mortgage
20 Licensing Act of 2008 (NH RSA 397-A:17,IX) (2 Counts);

21 h. Respondents shall show cause why reimbursement to Consumers A
22 and B as described above should not be made; and

23 i. Nothing in this Order:

24 (1). shall prevent the Department from taking any further
25 administrative and legal action as necessary under New Hampshire law; and

