

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 11-142
)
 3 State of New Hampshire Banking Department,)
)
 4 Petitioner,)
)
 5 and) Order to Show Cause
) and Cease and Desist
)
 6 People's Choice Mortgage Inc. d/b/a TPC)
)
 7 Mortgage, and David M. Fasano,)
)
 8 Respondents)

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

10 1. This Order commences an adjudicative proceeding under the provisions
11 of RSA Chapter 397-A (including RSA 397-A:17,I RSA 397-A:18,I and RSA 397-
12 A:20,IV) and RSA Chapter 541-A.

13 2. The Commissioner may impose administrative penalties of up to
14 \$2,500.00 for each violation. RSA 397-A:21,IV and V.

15 3. Individual Respondents could be assessed a fine and penalty in an
16 amount not to exceed \$25,000.00 for each violation or failure to comply with
17 the requirements of the S.A.F.E. Mortgage Licensing Act of 2008. RSA 397-
18 A:17,IX.

19 RESPONDENTS

20 4. People's Choice Mortgage Inc. d/b/a TPC Mortgage ("Respondent People's
21 Choice") was incorporated with the Massachusetts Secretary of State on
22 September 4, 2001 with a principal office location of Randolph,
23 Massachusetts. Respondent People's Choice Mortgage is a "Person." RSA 397-
24 A:1,XVIII.

25 5. Respondent People's Choice Mortgage was licensed as a Mortgage Banker

1 by the New Hampshire Banking Department ("Department") from August 6, 2004
2 (with an amended license date of December 1, 2005) to December 10, 2010,
3 when it surrendered its New Hampshire Mortgage Banker license. Respondent
4 People's Choice's New Hampshire Mortgage Banker license was revoked
5 (February 20, 2011 revocation date) based on the default of an Order to Show
6 Cause issued by the Department on December 23, 2010. According to the
7 Nationwide Mortgage Licensing System & Registry ("NMLS"), Respondent
8 People's Choice Mortgage surrendered its Mortgage Correspondent Lender
9 license with Connecticut and its Loan Broker license with Rhode Island was
10 revoked on April 28, 2011. Respondent People's Choice is still licensed in
11 Massachusetts as a Mortgage Broker and Mortgage Lender.

12 6. David M. Fasano ("Respondent Fasano") is the 100% owner and President
13 of Respondent People's Choice. NMLS records indicate that Respondent Fasano
14 is also a licensed Mortgage Loan Originator in Massachusetts, authorized to
15 represent Respondent People's Choice. Respondent Fasano was also a licensed
16 New Hampshire Mortgage Loan Originator from April 1, 2009 for Respondent
17 People's Choice until January 1, 2010. Respondent Fasano's New Hampshire
18 Mortgage Loan Originator license was revoked on February 20, 2011 based on
19 the Department's December 23, 2010 Order to Show Cause. Respondent Fasano is
20 a Direct Owner (RSA 397-A:1,VI-a), a Control person (RSA 397-A:21,V-a), a
21 Principal (RSA 397-A:1,XIX) and a Person (RSA 397-A:1,XVIII).

22 7. The above-named Respondents are hereinafter collectively known as
23 "Respondents".

24 **RIGHT TO REQUEST A HEARING**

25 8. Respondents have a right to request a hearing on this Order. A hearing

1 shall be held not later than ten (10) days after the Commissioner receives
2 the Respondents' written request for a hearing. Respondents may request a
3 hearing and waive the ten (10) day hearing requirement. The hearing shall
4 comply with RSA Chapter 541-A, RSA 397-A:17,I and RSA 397-A:18,I.

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

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

13 **STATEMENT OF ALLEGATIONS**

14 **Failure to Facilitate:**

15 11. From December 10, 2010 to March 2011, the Department conducted an
16 examination of Respondent People's Choice.

17 12. On October 15, 2010, the Department sent Respondents a Notice of
18 Examination via U.S. Certified Mail, Return Receipt requested. Respondents
19 received the Notice of Examination October 25, 2010 and were required to
20 submit examination materials to the Department by November 5, 2010.

21 13. On December 2, 2010, the Department's Examiner emailed an Executive
22 Vice President of Respondent People's Choice, who replied that the loan list
23 would be provided by the end of that day. The Executive Vice President sent
24 a response later that day that indicated that since it only closed 3 loans
25 in New Hampshire in 2009 and had not produced any volume in 2010 that it did

1 not seem warranted to incur the cost of an additional banking examination
2 when Respondent Fasano had informed the Department he did not plan on
3 renewing Respondent's People's Choice's New Hampshire Mortgage Banker
4 license.

5 14. On December 6, 2010, the Department's Examiner wrote back via email
6 and explained that Respondents were still required to facilitate an
7 examination even if it planned on surrendering the license.

8 15. As described in Paragraphs 11 through 14, Respondents violated RSA
9 397-A:12,VII by failing to facilitate the examination and by failing to
10 provide examination materials as statutorily required of Respondents.

11 **Failure to Properly Surrender:**

12 16. On December 10, 2010, the Department's Examiner emailed the Executive
13 Vice President requesting all of the examination materials. The Executive
14 Vice President wrote back to indicate it has been dealing with the
15 Department's Legal Department to properly surrender its license.

16 17. To date, Respondents have failed to properly publish the notice of
17 surrender in a newspaper of general circulation and submit proof of the same
18 to the Department, in violation of RSA 397-A:10-a,I(a).

19
20 _____ /s/
21 Maryam Torben Desfosses
22 Hearings Examiner

_____ May 31, 2011
Date

22 **ORDER**

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

24 a. Pursuant to RSA 397-A:17,I, the facts as alleged above, if true,
25 show Respondents are operating or have operated in violation of RSA Chapter

1 397-A and form the legal basis for this Order;

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

5 c. Pursuant to RSA 397-A:17,I, if Respondents fail to respond to
6 this Order and/or defaults then all facts as alleged herein are deemed as
7 true.

8 **19. Accordingly, it is hereby ORDERED that:**

9 a. 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 People's Choice:

12 Violation #1: Failure to facilitate (RSA 397-A:12,VII): 1
13 Count;

14 Violation #2: Failure to properly surrender (RSA 397-A:10-
15 a,I(a)): 1 Count;

16 (2). Respondent Fasano (as Direct Owner, Principal and Control
17 person):

18 Violation #1: Failure to facilitate (RSA 397-A:12,VII): 1
19 Count;

20 Violation #2: Violation #2: Failure to properly surrender
21 (RSA 397-A:10-a,I(a)): 1 Count;

22 b. In addition to Paragraph 19a. above, Respondent Fasano shall
23 show cause why a fine in an amount not to exceed \$25,000.00 for each
24 violation or failure to comply with the requirements of the S.A.F.E.
25 Mortgage Licensing Act of 2008 should not be imposed as follows:

1 Violation #1: Violation #1: Failure to facilitate (RSA
2 397-A:12,VII): 1 Count;

3 c. Nothing in this Order:

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

6 (2). shall prevent the New Hampshire Office of the Attorney
7 General from bringing an action against the above named Respondents in any
8 New Hampshire superior court, with or without prior administrative action by
9 the Commissioner.

10 **SO ORDERED.**

11
12 _____ /s/

Dated: June 1, 2011

13 RONALD A. WILBUR
14 BANK COMMISSIONER
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