

State of New Hampshire
Banking Department

In re:)	Case Nos.: 12-233 & 12-253
)	
State of New Hampshire Banking)	
)	
Department,)	Order to Show Cause
)	
 Petitioner,)	
)	
 and)	
)	
BayBurg Financial, Inc. and Adam M.)	
)	
Bayer, President of BayBurg Financial, Inc.,)	
)	
 Respondents)	
)	

Now comes the petitioner, the State of New Hampshire Banking Department (the “Department”), commencing an adjudicative proceeding under the provisions of RSA Chapter 397-A and RSA Chapter 541-A against the respondents, BayBurg Financial, Inc. (“BayBurg”) and Adam M. Bayer, as president of BayBurg.

JURISDICTION

The Department licenses and regulates persons “engage[d] in the business of offering, originating, making, funding, or brokering mortgage loans from the state of New Hampshire or mortgage loans secured by real property located in the state of New Hampshire.” RSA 397-A:2. Under RSA 397-A:17, I, the State of New Hampshire Bank Commissioner (the “Commissioner”) “may issue an order requiring a person to whom any license has been granted or any person under the commissioner’s jurisdiction to show cause why . . . penalties [should not be] imposed.”

FINDINGS

Pursuant to RSA 397-A:17, I, the Commissioner finds as follows:

1. On November 29, 2011, the Department sent a Notice of Examination to Mr. Bayer. The Notice of Examination advised Mr. Bayer that BayBurg “has been selected for examination of its licensed mortgage activity in the state of New Hampshire.” The Notice of Examination also requested that Mr. Bayer complete an “Officer Questionnaire” which was enclosed with the Notice of Examination.
2. On December 6, 2011, Mr. Bayer responded via email, stating that “BayBurg Financial Inc has conducted **NO** business in NH.” Additionally, Mr. Bayer stated that BayBurg had “not originated, processed, funded, closed, denied, withdrawn, canceled, foreclosed, or serviced any files since [BayBurg] became licensed.” On December 7, 2011, the Department’s Assistant Regulatory Analyst responded via email that “[e]ven though there are no loans and you will not be renewing your license . . . the examination is still ongoing and we will need the Officer Questionnaire submitted to the Department.”
3. Subsequently, on December 31, 2011, BayBurg’s Mortgage Broker license issued by the Department expired. On March 26, 2012, Nicole Jeanson, an examiner from the Department, contacted Mr. Bayer via email. Examiner Jeanson explained that “[e]ven though [BayBurg] is no longer licensed in New Hampshire, you still are required to facilitate your NH Examination.” Examiner Jeanson also requested that Mr. Bayer complete the Officer Questionnaire. When Mr. Bayer failed to respond to the email, Examiner Jeanson called Mr. Bayer and left a voicemail in follow up. Examiner Jeanson also sent follow up emails on March 29, 2012 and March 30, 2012 with no response from Mr. Bayer.

4. On April 19, 2012, Tiffany DeLisi, a program specialist at the Department, sent Mr. Bayer a Report of Examination on BayBurg and an invoice for the cost of the examination. When Mr. Bayer failed to respond, Ms. DeLisi resent the invoice on May 9, 2012 and May 23, 2012.
5. Subsequently, on August 6, 2012, Emelia Galdieri, the undersigned hearings examiner for the Department, called Mr. Bayer and left him a voice mail regarding the above-outline facts. Attorney Galdieri also sent Mr. Bayer a letter via certified mail summarizing the above-outlined facts and requesting that he contact the Department within fourteen days to resolve the matter. Mr. Bayer received the letter on August 9, 2012 and failed to respond.
6. The facts as alleged above, if true, show that the respondents have violated the following provisions of RSA Chapter 397-A:
 - a. RSA 397-A:12, V: The respondents knowingly violated RSA 397-A:12, V when they did not pay the expense of examination. Accordingly, the respondents should be assessed an administrative fine of \$2,500, and directed to pay the cost of the examination.
 - b. RSA 397-A:12, VII: The respondents knowingly violated RSA 397-A:12, VII when Mr. Bayer failed to facilitate the examination by refusing to submit the Officer Questionnaire. Accordingly, the respondents should be assessed an administrative fine of \$2,500.
7. Pursuant to RSA 397-A:20, VI, this Order is necessary and appropriate to the public interest, for the protection of consumers, and consistent with the purposes fairly intended by the policy and provisions of RSA Chapter 397-A.

ORDER

Accordingly, the Banking Commissioner orders as follows:

1. The respondents shall show cause why the Commissioner should not direct the respondents to comply with RSA 397-A:12, V and pay the examination fee of \$727.60;
2. The respondents shall show cause why the Commissioner should not order the respondents to pay an administrative fine of \$2,500 for knowingly violating RSA 397-A:12, V; and
3. The respondents shall show cause why the Commissioner should not order the respondents to pay an administrative fine of \$2,500 for knowingly violating RSA 397-A:12, VII.

NOTICE OF RIGHT TO A HEARING

The respondents have a right to request a hearing in writing on this Order to Show Cause. “A hearing, if requested shall be scheduled not later than 10 calendar days after the written request for such hearing is received by the commissioner.” RSA 397-A:17, I.

If the respondents fail “to request a hearing within 30 calendar days of receipt or valid delivery of [this Order to Show Cause] or fail[] to appear at a hearing after being duly notified, or cannot be located after a reasonable search, such person shall be deemed in default and the proceeding may be decided against the person upon consideration of the order to show cause . . . the allegations of which may be deemed to be true.” Id.

RECOMMENDED by:

8/28/2012
Date

_____/s/
Emelia A.S. Galdieri
N.H. Bar #19840
Hearings Examiner
State of New Hampshire Banking Department

ORDERED by:

8/29/2012

Date

/s/

Ronald A. Wilbur

State of New Hampshire Bank Commissioner

CERTIFICATE OF SERVICE

I, Emelia A.S. Galdieri, hereby certify that on August 30th 2012, a copy of this

Order to Show Cause was sent to the following parties via U.S. Certified Mail First Class:

Adam M. Bayer, President
BayBurg Financial, Inc.
2972 NW 60th Street
Ft. Lauderdale, FL 33309

_____/s/_____
Emelia A.S. Galdieri
N.H. Bar #19840
Hearings Examiner
State of New Hampshire Banking Department