

In re: Capital Access Residential, Inc., and
Barry P. Winer, Respondents

Case No.: 14-204

NOTICE OF ORDER TO SHOW CAUSE FOR LICENSE SUSPENSION OF
RESPONDENT CAPITAL ACCESS RESIDENTIAL, INC.'S NEW
HAMPSHIRE MORTGAGE BROKER LICENSE

("ORDER")

1. This Order commences an adjudicative proceeding under the provisions of RSA Chapter 397-A (including RSA 397-A:17,I through IV, RSA 397-A:20,IV and RSA 397-A:21,IV and V) and RSA Chapter 541-A.
2. The Commissioner may issue an order requiring the above named Respondents to show cause why the Respondents' mortgage broker license should not be suspended. RSA 397-A:17,I (including RSA 397-A:17,I(a), (e) and (j)).
3. The Department reserves its right pursuant to RSA 397-A:20,IV to amend this Order or issue or rescind such orders as are reasonably necessary to carry out the provisions of RSA Chapter 397-A.

RESPONDENTS

4. Capital Access Residential, Inc. ("Respondent Capital Access") is a corporation duly formed in the State of

In re: Capital Access Residential, Inc., and Barry P. Winer
Case No. 14-204

Order to Cease and Desist and to Show Cause - 1

Massachusetts on June 30, 2006 with a principal office location in Newton, Massachusetts. Respondent Capital Access registered with the New Hampshire Secretary of State on December 14, 2006 and has been licensed with the New Hampshire Banking Department ("Department") as a New Hampshire Mortgage Broker since January 1, 2007. Respondent Capital Access is a Mortgage Broker and a Person. RSA 397-A:1, XIII and XVIII.

5. Barry P. Winer ("Respondent Winer") is the 100% direct owner, control person and President of Respondent Capital Access. Respondent Winer is a Control person (RSA 397-A:1,V-a), a Direct Owner (RSA 397-A:1,VI-a), a Principal (RSA 397-A:1,XIX), and a Person (RSA 397-A:1,XVIII).

6. The above-named Respondents are hereinafter collectively known as "Respondents."

RIGHT TO REQUEST A HEARING

7. Respondents each have a right to request a hearing on this Order. A hearing shall be scheduled within 10 calendar days after receipt of written request for such hearing. RSA 397-A:17. If Respondents "fail[]" to request a hearing within 30 calendar days of receipt or valid delivery of the order and no hearing is ordered by the commissioner, then such person[s] shall

be deemed in default, and the order shall, on the thirty-first day, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the commissioner, for good cause shown." Id.

8. If any person fails to appear at the hearing, such person shall be deemed in default, and the Order shall become permanent, all allegations may be deemed true, and shall remain in full force and effect until modified or vacated by the Commissioner for good cause shown. 541-A:31,V(a) and JUS 810.02.
9. A default herein may result in suspension of Respondents' New Hampshire Mortgage Broker license.

STATEMENT OF ALLEGATIONS

Examination Invoice:

10. On January 6, 2014, the Department conducted an examination of Respondent Capital Access. The examination fee totaled \$2,025.10.
11. On February 7, 2014, the Department sent both the Report of Examination ("ROE") and \$2,025.10 examination fee invoice ("Invoice") to Respondents via Certified Mail. According to the signed return receipt, Respondents received the ROE and Invoice on February 11, 2014. Respondents responded to the ROE but failed

In re: Capital Access Residential, Inc., and Barry P. Winer
Case No. 14-204

Order to Cease and Desist and to Show Cause - 3

- to pay the Invoice.
12. On March 5, 2014 and March 19, 2014, the Department sent Respondents a second and third notice for payment of the Invoice.
 13. In violation of RSA 397-A:12,V (in conjunction with 397-A:22,I), Respondents failed to pay the Invoice within 14 days of its February 11, 2014 receipt thereof.

Respondent Winer's Inconsistent Communications with the Department:

14. On March 20, 2014, Respondent Winer advised the Department he had the Invoice and would mail the payment the next day. Respondents failed to pay the Invoice.
15. On May 5, 2014, the Department contacted Respondents regarding the non-payment of the Invoice. Respondent Winer indicated he paid the Invoice and would research with his bank and contact the Department.
16. On May 16, 2014, the Department's Legal Division spoke with Respondent Winer, who indicated he had a family emergency and had sent the sent. Respondent Winer stated he would reissue a check the next day and fax a copy to the Department for its records. Respondents failed to pay the Invoice.
17. On May 28, 2014, the Department's Legal Division again

- spoke with Respondent Winer. Respondent Winer indicated the check for the Invoice will be sent in a different manner (different mail slot) to the Department. Respondents failed to pay the Invoice.
18. On June 6, 2014, the Department placed a deficiency on the Nationwide Mortgage Licensing System & Registry ("NMLS") to ensure Respondents contact the Department.
 19. On June 26, 2014, the Department spoke with Respondent Winer, who advised the Department he will have funds to pay the Invoice from a closing occurring the following week. Respondents still failed to pay the Invoice.
 20. On July 14, 2014, the Department left a voicemail for Respondent Winer regarding non-payment of the Invoice.
 21. On August 22, 2014, the Department sent Respondents a letter of warning to Respondents via Certified Mail and electronic mail. Respondent Winer received the email on August 22, 2014 in the morning and deleted the same in the afternoon. The United States Post Office Tracking records indicate the letter was delivered on August 25, 2014.
 22. RSA 397-A:13,VI states that an owner of a licensee shall reply promptly in writing or in other designated form to any written inquiry from the commissioner requesting a reply. To date, Respondents failed to

appropriate to the public interest and for the protection of consumers and consistent with the purpose and intent of New Hampshire banking laws;

- c. Pursuant to RSA 397-A:17,I, if any Respondent fails to respond to this Order and/or defaults then all facts as alleged herein are deemed as true.

26. Accordingly, it is hereby ORDERED that:

- a. Pursuant to RSA 397-A:17,I (including RSA 397-A:17,I(a), and (e)), Respondents shall show cause why Respondent Capital Access' New Hampshire Mortgage Broker license should not be suspended; and
- b. Pursuant to RSA 397-A:12,V (in conjunction with RSA 397-A:22,I), Respondents shall show cause why the \$2,025.10 examination fee should not be paid to the Department;
- c. Respondents shall show cause why a \$2,500.00 administrative fine for each violation should not be imposed as follows:

(1). Respondent Capital Access:

Violation #1: RSA 397-A:12,V (in conjunction with RSA 397-A:22,I) for failure to pay the examination invoice; and

