

1 State of New Hampshire Banking Department

2

3 In re the Matter of: ) Case No.: 06-090  
 )  
 4 State of New Hampshire Banking ) Order To Show Cause  
 )  
 5 Department, ) Cease and Desist Order  
 )  
 6 Petitioner, )  
 )  
 7 and )  
 )  
 8 Apex Financial Group Inc., and Roy )  
 )  
 9 Williams, )  
 )  
 10 Respondents

---

11  
12 NOTICE OF ORDER

13 This Order commences an adjudicative proceeding under the provisions of  
14 RSA 541A:31, RSA 397-A, and BAN 204.03.

15 LEGAL AUTHORITY AND JURISDICTION

16 Pursuant to RSA 397-A:17, the Commissioner of the New Hampshire Banking  
17 Department (hereinafter "the Department") may issue an Order to Show Cause  
18 why a license should not be revoked. RSA 397-A:17 states that the  
19 Department may issue such Order when a licensee fails to comply with the  
20 chapter. RSA 397-A:21 states the Commissioner may impose penalties of up to  
\$2,500 per violation of the chapter.

21 Pursuant to RSA 397-A:18, the Commissioner may issue a Cease and Desist  
22 Order when there is reasonable cause to believe a person subject to his  
23 jurisdiction is in violation of the provisions of the Chapter.

24 Pursuant to RSA 383:10-d the Commissioner may enforce the New Hampshire  
25 Consumer Protection Act, RSA 358-A against all licensees. The Commissioner  
may utilize all remedies available under the Act.

1    **NOTICE OF RIGHT TO REQUEST A HEARING**

2            The above named respondent has the right to request a hearing on this  
3 Order to Show Cause and Cease and Desist Order, as well as the right to be  
4 represented by counsel. Any such request for a hearing shall be in writing,  
5 and signed by the respondent or by the duly authorized agent of the above  
6 named respondent, and shall be delivered either by hand or certified mail,  
7 return receipt request, to the Banking Department, State of New Hampshire,  
8 64B Old Suncook Road, Concord, NH 03301. Such hearings will be scheduled  
9 within 10 days of the request.

10            If respondent fails to request a hearing or respond to the show cause  
11 order within 30 calendar days of receipt of this order, respondent shall be  
12 deemed in default, the penalties requested will be imposed and the Cease and  
13 Desist Order shall become permanent.

14    **STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF**

15            The allegations of the Staff Petition dated July 18, 2007 (a copy of  
16 which is attached hereto) are incorporated by reference hereto.

17    **ORDER**

18            WHEREAS, finding it necessary and appropriate and in the public  
19 interest, and consistent with the intent and purposes of the New Hampshire  
20 banking laws, and

21            WHEREAS, finding that the allegations contained in the Staff Petition,  
22 if proved true and correct, form the legal basis of the relief requested,

23            It is hereby ORDERED, that:

- 24            1. Respondent Apex shall show cause why penalties in the amount
- 25            of \$190,000 should not be imposed; and
- 2. Respondent Apex shall show cause why its license should not be
- revoked; and

- 1 3. Respondent Roy Williams shall show cause why penalties in the
- 2 amount of \$190,000.00 should not be imposed; and
- 3 4. Respondents shall immediately cease and desist from all
- 4 violation of the Chapter; and
- 5 5. Failure to request a hearing within 30 days of the date of
- 6 receipt of this Order shall result in a default judgment being
- 7 rendered and administrative penalties being imposed upon the
- 8 defaulting Respondent.

SIGNED,

9  
10 Dated: 7/30/07

\_\_\_\_\_  
/S/  
PETER C. HILDRETH  
BANK COMMISSIONER

11  
12  
13 **NOTE: VIOLATION OF A CEASE AND DESIST ORDER IS A CRIMINAL**

14 **OFFENSE.**

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 06-090  
 )  
 3 State of New Hampshire Banking ) Staff Petition  
 )  
 4 Department, )  
 )  
 5 Petitioner, ) July 18, 2007  
 )  
 6 and )  
 )  
 7 Apex Financial Group Inc., and Roy )  
 )  
 8 Williams )  
 )  
 9 Respondents

---

10  
11 STATEMENT OF ALLEGATIONS

12 I. The staff of the Banking Department, State of New Hampshire (hereinafter  
13 referred to as the "Department") alleges the following facts:

14 Facts Common to All Counts

- 15 1. Apex Financial Group, Inc. (hereinafter Respondent Apex or licensee) is
- 16 licensed as a Mortgage Banker and has held a Department issued license
- 17 since 2004.
- 18 2. Respondent Roy Williams is the president and owner of Respondent Apex.

19 Unlicensed Entities (RSA 397-A:17 I(c)) (48 Counts)

- 20 3. The licensee cannot accept or process loan applications transmitted or
- 21 brokered by a mortgage broker who is unlicensed.
- 22 4. Respondent Apex has contractual relationships with at least eighteen
- 23 unlicensed entities who broker and transmit loans to Apex. The
- 24 unlicensed entities process loans from origination to closing, only
- 25 notifying the licensee after the closing is complete.
- 5. Collectively these unlicensed entities have brokered and processed at
- least forty-eight loans on behalf of licensee.

1 6. Upon information and belief the Respondents are continuing in this  
2 illegal course of conduct.

3 **Operating Unlicensed Branches (RSA 397-A:3) (13 Counts)**

4 7. The licensee closed one loan at an unlicensed Exeter branch in October,  
5 2006.

6 8. The licensee closed nine loans at their Deerfield branch in 2006. The  
7 branch was not licensed until January, 2007.

8 9. The licensee closed one loan at an unlicensed Nashua branch in July,  
9 2006.

10 10. The licensee closed one loan at an unlicensed Concord branch in  
11 September, 2006.

12 11. The licensee closed one loan at their Hampstead branch in July, 2006.  
13 The branch was not licensed until January, 2007.

14 12. Since a number of the above branches remain unlicensed to date, upon  
15 information and belief the Respondents are continuing in this illegal  
16 course of conduct.

17 **Failure to Notify Department of Significant Events (RSA 397-A:10 IV) (14**  
18 **Counts)**

19 13. Respondent Apex was named as a defendant in at least 9 suits involving  
20 lending or brokering activities from 1998 through 2005.

21 14. Respondent Apex failed to notify the department of any of these actions  
22 until September 28, 2005 when they notified the Department in response  
23 to an examination questionnaire.

24 15. Respondent Apex was the subject of five regulatory actions by state  
25 agencies concerning their mortgage banking/brokering activity.

16. Respondent Apex failed to report any of these actions within 10 days.

**Failure to Facilitate Examination (RSA 397-A:12) (1 Count)**

17. The Department had several correspondences with Respondent Apex and  
Respondent Apex's Florida Counsel which indicated that an examination

1 would take place on September 15, 2005 at the New Hampshire Banking  
2 Department.

3 18. Respondent Apex failed to provide materials in a timely manner.

4 Respondent did not provide the requested materials until late 2006 after  
5 a threatened non-renewal of their license.

6  
7 II. The staff of the Banking Department, State of New Hampshire alleges the  
8 following issues of law:

9 1. The Banking Department ("Department"), has jurisdiction over the  
10 licensing and regulation of persons engaged in mortgage broker  
11 activities pursuant to NH RSA 397-A:2.

12 2. RSA 397-A:3 requires that any person that engages in mortgage brokering  
13 or lending be licensed.

14 3. Pursuant to the New Hampshire Banking laws, RSA 397-A:12 the Department  
15 may examine the business affairs of any licensee or any other person,  
16 whether licensed or not, as it deems necessary to determine compliance  
17 with this chapter and the rules adopted pursuant to it and with the  
18 Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.). In  
19 determining compliance, the banking department may examine the books,  
20 accounts, records, files, and other documents or matters of any  
21 licensee or person. The banking department shall have the power to  
22 subpoena witnesses and administer oaths in any adjudicative  
23 proceedings, and to compel, by subpoena duces tecum, the production of  
24 all books, records, files, and other documents and materials relevant  
25 to its investigation. RSA 397-A:12 further requires every person being  
examined, and all of the officers, directors, employees, agents, and  
representatives of such person shall make freely available to the  
commissioner or his or her examiners, the accounts, records, documents,

1 files, information, assets, and matters in their possession or control  
2 relating to the subject of the examination and shall facilitate the  
3 examination.

4 4. RSA 397-A:11 requires licensees to submit a list of loans within 7 days  
5 of the Department's request. That statute further requires that files  
6 requested by the Department be provided within 14 days of the request.

7 5. RSA 397-A:10 IV requires licensees to report significant events as  
8 defined by rule to the Department within 10 days. BAN 2407.01 defines  
9 significant events to include the filing of civil suits naming a  
10 licensee as defendant related in any way to the licensee's activities  
11 regulated by the Department and receiving any formal administrative  
12 action in any state against the licensee based on lending and brokering  
13 activities.

14 6. Pursuant to NH RSA 397-A:17, the Department has the power to issue and  
15 to serve an order requiring licensees to show cause why their license  
16 should not be revoked, suspended, or penalties imposed or both for  
17 violations of the chapter.

18 7. RSA 397-A:17 prohibits entities from accepting or processing loan  
19 applications transmitted or brokered by a broker who is not licensed.

20 8. RSA 397-A:21 IV provides that any person who, either knowingly or  
21 negligently, violates any provision of RSA 397-A, may upon hearing, and  
22 in addition to any other penalty provided for by law, be subject to  
23 suspension, revocation or denial of any registration or license, or an  
24 administrative fine not to exceed \$2,500, or both. Each of the acts  
25 specified shall constitute a separate violation, and such  
administrative action or fine may be imposed in addition to any  
criminal penalties or civil liabilities imposed by New Hampshire  
banking laws.

1 9. RSA 397-A:21 V provides that every person who directly or indirectly  
2 controls a person liable under this section, every partner, principal  
3 executive officer or director of such person, every person occupying a  
4 similar status or performing a similar function, every employee of such  
5 person who materially aids in the act constituting the violation, and  
6 every licensee or person acting as a common law agent who materially aids  
7 in the acts constituting the violation, either knowingly or negligently,  
8 may, upon notice and opportunity for hearing, and in addition to any  
9 other penalty provided for by law, be subject to suspension, revocation,  
10 or denial of any registration or license, including the forfeiture of any  
11 application fee, or the imposition of an administrative fine not to  
exceed \$2,500, or both.

12 10. RSA 397-A:17 provides the Commissioner may issue an Order to Show Cause  
13 against any person under his jurisdiction for violations of the Chapter.

14 11. RSA 397-A:18 provides the Commissioner may issue a Cease and Desist Order  
15 against any licensee or person it has reasonable cause to believe is in  
16 violation of the provisions of the Chapter.

17 **RELIEF REQUESTED**

18 The staff of the Banking Department requests the Commissioner take the  
19 following action:

- 20 1. Find as fact the allegations contained in section I of the Statement of  
21 Allegations of this petition;
- 22 2. Make conclusions of law relative to the allegations contained in section  
23 II of the Statement of Allegations of this petition;
- 24 3. Pursuant to NH RSA 397-A:17, Order Respondent Apex to Show Cause why  
25 their license should not be suspended or revoked for violations of the  
New Hampshire Banking Laws.



- 1       4. Pursuant to RSA 397-A:21, Order Respondent Apex to Show Cause why they
- 2               should not pay administrative fines in the amount of \$190,000 for
- 3               violations of the New Hampshire Banking Laws, RSA 397-A; and
- 4       5. Pursuant to RSA 397-A:21, Order Respondent Roy Williams to Show Cause why
- 5               he should not pay administrative fines in the amount of \$190,000 for
- 6               violations of the New Hampshire Banking Laws, RSA 397-A; and
- 7       6. Pursuant to RSA 397-A:18, Order Respondents to Cease and Desist from
- 8               further violations of New Hampshire Banking Laws; and
- 9       7. Take such other administrative and legal actions as are necessary for
- 10              enforcement of the New Hampshire Banking laws, the protection of New
- Hampshire citizens, and to provide other equitable relief.

11   **RIGHT TO AMEND**

12               The Department reserves the right to amend this Petition for Relief and

13 to request that the Commissioner take additional administrative action.

14 Nothing herein shall preclude the Department from bringing additional

15 enforcement action under RSA 397-A or the regulations thereunder.

16 Respectfully submitted by:

17   /S/      

18 James Shepard  
Staff Attorney

      7/18/07        
Date