

1 State of New Hampshire Banking Department

)Case No.: 06-173

2 In re the Matter of:)

3 State of New Hampshire Banking)

4 Department,)

)Order to Show Cause

5 Petitioner,)

6 and)

7 Alta Financial Corporation (d/b/a Alta)

8 Financial of New Hampshire), Exit)

9 Realty Corp., and Rick Krogh,)

10 Respondents)

11 NOTICE OF ORDER

12 This Order commences an adjudicative proceeding under the provisions
13 of RSA 397-A and RSA 541-A.

14 LEGAL AUTHORITY AND JURISDICTION

15 Pursuant to RSA 397-A:17, the Banking Department of the State of New
16 Hampshire (hereinafter the "Department") has the authority to issue an order
17 to show cause why license revocation and penalties for violations of New
18 Hampshire Banking laws should not be imposed.

19 Pursuant to RSA 397-A:18, the Department has the authority to issue a
20 complaint setting forth charges whenever the Department is of the opinion
21 that the licensee or person over whom the Department has jurisdiction is
22 violating or has violated any provision of RSA Chapter 397-A, or any rule or
23 order thereunder.

24 Pursuant to RSA 397-A:20, the Commissioner may issue, amend, or
25 rescind such orders as are reasonably necessary to comply with the

1 provisions of the Chapter.

2 Pursuant to RSA 397-A:21, the Commissioner has the authority to
3 suspend, revoke or deny any license and to impose administrative penalties
4 of up to \$2,500.00 for each violation of New Hampshire banking law and
5 rules.

6 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct
7 that is or may be an unfair or deceptive act or practice under RSA 358-A and
8 exempt under RSA 358-A:3,I or that may violate any of the provisions of
9 Titles XXXV and XXXVI and administrative rules adopted thereunder. The
10 Commissioner may hold hearings relative to such conduct and may order
11 restitution for a person or persons adversely affected by such conduct.

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

13 The above named Respondent has the right to request a hearing on this
14 Order to Show Cause, as well as the right to be represented by counsel at
15 each Respondent's own expense. All hearings shall comply with RSA 541-A. Any
16 such request for a hearing shall be in writing, and signed by the Respondent
17 or the duly authorized agent of the above named Respondent, and shall be
18 delivered either by hand or certified mail, return receipt requested, to the
19 Banking Department, State of New Hampshire, 53 Regional Drive, Suite 200,
20 Concord, NH 03301. Such hearings will be scheduled within 10 days of the
21 Department's receipt of the request. If the Respondent fails to appear at the
22 hearing after being duly notified, such person shall be deemed in default, and
23 the proceeding may be determined against the Respondent upon consideration of
24 the Order to Show Cause, the allegations of which may be deemed to be true.

25 If the above named Respondent fails to request a hearing within 30

1 calendar days of receipt of such order or reach formal settlement with the
2 Department within that time frame, then such person shall likewise be deemed
3 in default, and the orders shall, on the thirty-first day, become permanent,
4 and shall remain in full force and effect until and unless later modified or
5 vacated by the Commissioner, for good cause shown.

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

7 The Staff Petition dated June 1, 2009 (a copy of which is attached
8 hereto) is incorporated by reference hereto.

9 **ORDER**

10 WHEREAS, finding it necessary and appropriate and in the public
11 interest, and consistent with the intent and purposes of the New Hampshire
12 banking laws, and

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

15 It is hereby ORDERED, that:

- 16 1. Respondent Alta Financial Corporation (d/b/a Alta Financial
17 of New Hampshire) ("Respondent Alta Financial") shall show
18 cause why penalties in the amount of \$7,500.00 should not be
19 imposed against it;
- 20 2. Respondent Exit Realty Corp. ("Respondent Exit Realty") shall
21 show cause why penalties in the amount of \$7,500.00 should
22 not be imposed against it;
- 23 3. Respondent Rick Krogh ("Respondent Krogh") shall show cause
24 why penalties in the amount of \$7,500.00 should not be
25 imposed against him;

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 06-173
3 State of New Hampshire Banking)
4 Department,) Staff Petition
5 Petitioner,) June 1, 2009
6 and)
7 Alta Financial Corporation (d/b/a Alta)
8 Financial of New Hampshire), Exit)
9 Realty Corp., and Rick Krogh,)
10 Respondents)

11 I. STATEMENT OF ALLEGATIONS

12 The Staff of the Banking Department, State of New Hampshire (hereinafter
13 "Department") alleges the following facts:

14 Facts Common on All Counts:

- 15 1. Respondent Alta Financial Corporation (d/b/a Alta Financial of
16 New Hampshire) (hereinafter "Respondent Alta Financial") was
17 licensed as a Mortgage Banker from at least January 25, 2005
18 (with an amended license date of August 21, 2006) until its
19 license expired on December 31, 2006.
- 20 2. Respondent Exit Realty Corp. (hereinafter "Respondent Exit
21 Realty") was the 100% owner of Respondent Alta Financial
22 beginning on March 7, 2005.
- 23 3. Respondent Rick Krogh (hereinafter "Respondent Krogh" was the
24 President of Respondent Alta Financial, when licensed by the
25 Department.

1 Violation of RSA 397-A:12,VII Failure to Facilitate Exam (1 Count):

2 Violation of RSA 397-A:12,III Examinations: Failure to Provide Requested
3 Files (1 Count):

4 Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested
5 Files (1 Count):

6 4. Paragraphs 1 through 2 are hereby realleged as fully set forth
7 herein.

8 5. The Department conducted an examination of Respondent Alta
9 Financial on February 2, 2006, while Respondent Alta Financial
10 was still licensed with the Department.

11 6. On December 28, 2005, the Department sent a request to complete
12 the Officers Questionnaire to Respondent Alta Financial via U.S.
13 Certified Mail Return Receipt requested, which Respondent Alta
14 Financial received on January 6, 2006.

15 7. The requested information was due to the Department 21 days after
16 the January 6, 2006 receipt of the request, which would have been
17 January 27, 2006.

18 8. The Department received the requested information on February 22,
19 2006, which is 26 days past the due date.

20 9. To date, fines have accrued for failing to timely provide the
21 requested files. The fine is \$1,300.00 (\$50.00 a day x 26 days).

22 **II. ISSUES OF LAW**

23 The staff of the Department alleges the following issues of law:

24 1. The Department realleges the above stated facts in Paragraphs 1
25 through 9 as fully set forth herein.

1 2. The Department has jurisdiction over the licensing and regulation
2 of persons engaged in mortgage banker or broker activities
3 pursuant to NH RSA 397-A:2 and RSA 397-A:3.

4 3. RSA 397-A:11,II provides that requested files and business records
5 must be received by the Department within 21 calendar days of
6 request. The licensee will be subject to a \$50.00 a day fine
7 every day after the 21-day period the records are not produced.
8 Each of the above named Respondents violated this provision on at
9 least one occasion as alleged above. Respondents currently owe
10 \$1,300.00.

11 4. RSA 397-A:12,III requires licensees to comply with examination
12 requests with or without prior notice. All books, papers, files,
13 related material, and records of assets shall be subject to the
14 Department's examination. Each of the above named Respondents
15 violated this provision on at least one occasion as alleged
16 above.

17 5. RSA 397-A:12,VII provides that every person being examined, and
18 all of the officers, directors, employees, agents, and
19 representatives of such person shall make freely available to the
20 Commissioner or his or her examiners, the accounts, records,
21 documents, files, information, assets, and matters in their
22 possession or control relating to the subject of the examination
23 and shall facilitate the examination. Each of the above named
24 Respondents violated this provision on at least one occasion as
25 alleged above.

1 6. RSA 397-A:17,I provides in part that the Commissioner may by
2 order, upon due notice and opportunity for hearing, assess
3 penalties or deny, suspend, or revoke a license or application if
4 it is in the public interest and the applicant, respondent, or
5 licensee, any partner, officer, member, or director, any person
6 occupying a similar status or performing similar functions, or
7 any person directly or indirectly controlling the applicant,
8 respondent, or licensee: (a) has violated any provision of RSA
9 Chapter 397-A or rules thereunder, or (b) has not met the
10 standards established in RSA Chapter 397-A.

11 7. RSA 397-A:18,I provides that the Department may issue a complaint
12 setting forth charges whenever the Department is of the opinion
13 that the licensee or person over whom the Department has
14 jurisdiction, has violated any provision of RSA 397-A or orders
15 thereunder.

16 8. RSA 397-A:21,IV provides that any person who, either knowingly or
17 negligently, violates any provision of Chapter 397-A, may upon
18 hearing, and in addition to any other penalty provided for by
19 law, be subject to an administrative fine not to exceed
20 \$2,500.00, or both. Each of the acts specified shall constitute
21 a separate violation, and such administrative action or fine may
22 be imposed in addition to any criminal penalties or civil
23 liabilities imposed by New Hampshire Banking laws.

24 9. RSA 397-A:21,V provides that every person who directly or
25 indirectly controls a person liable under this section, every

1 partner, principal executive officer or director of such person,
2 every person occupying a similar status or performing a similar
3 function, every employee of such person who materially aids in the
4 act constituting the violation, and every licensee or person acting
5 as a common law agent who materially aids in the acts constituting
6 the violation, either knowingly or negligently, may, upon notice
7 and opportunity for hearing, and in addition to any other penalty
8 provided for by law, be subject to suspension, revocation, or
9 denial of any registration or license, including the forfeiture of
10 any application fee, or the imposition of an administrative fine
11 not to exceed \$2,500, or both. Each of the acts specified shall
12 constitute a separate violation, and such administrative action or
13 fine may be imposed in addition to any criminal or civil penalties
14 imposed.

15 **III. RELIEF REQUESTED**

16 The staff of the Department requests the Commissioner take the following
17 action:

- 18 1. Find as fact the allegations contained in section I of this Staff
19 Petition;
- 20 2. Make conclusions of law relative to the allegations contained in
21 section II of this Staff Petition;
- 22 3. Pursuant to RSA 397-A:17, order each of the above named
23 Respondents to show cause why their license should not be revoked;
- 24 4. Assess fines and administrative penalties in accordance with RSA
25 397-A:21, for violations of Chapter 397-A, in the number and

