

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 07-030
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3 State of New Hampshire Banking) Order to Show Cause
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4 Department,)
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5 Petitioner,)
))
6 and)
))
7 Martin W Day Sr,)
))
8 Respondent)
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10 NOTICE OF ORDER

11 This Order commences an adjudicative proceeding under the provisions of
12 RSA 397-A:17, RSA 541-A and BAN 200.

13 LEGAL AUTHORITY AND JURISDICTION

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

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

21 NOTICE OF RIGHT TO REQUEST A HEARING

22 The above named respondent has the right to request a hearing on this
23 Order to Show Cause, as well as the right to be represented by counsel at the
24 Respondent's own expense. All hearings shall comply with RSA 541-A. Any such
25 request for a hearing shall be in writing, and signed by the respondent or
the duly authorized agent of the above named respondent, and shall be
delivered either by hand or certified mail, return receipt requested, to the

1 Banking Department, State of New Hampshire, 64B Old Suncook Road, Concord, NH
2 03301. Such hearings will be scheduled within 10 days of the request. If the
3 Respondent fails to appear at the hearing after being duly notified, such
4 person shall be deemed in default, and the proceeding may be determined against
5 the Respondent upon consideration of the Order to Show Cause, the allegations
6 of which may be deemed to be true. Respondents are entitled to at least 30
7 days' notice regarding the hearing date.

8 If the Respondent fails to request a hearing within 30 calendar days of
9 receipt of such order or reach formal settlement with the Department within
10 that time frame, then such person shall likewise be deemed in default, and the
11 orders shall, on the thirty-first day, become permanent, and shall remain in
12 full force and effect until and unless later modified or vacated by the
13 commissioner, for good cause shown.

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

15 The Staff Petition dated March 2, 2007 (a copy of which is attached
16 hereto) is 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 the Respondent shall show cause why:

24 1. Administrative penalties of \$2,500.00 should not be imposed;

25 and

2. Respondents license should not be revoked; and

It is hereby ORDERED that:

3. Respondent shall pay \$1,065.13 in examination fees

immediately; and

1 4. Failure to request a hearing within 30 days of the date of
2 receipt of this Order shall result in a default judgment being
3 rendered, license revocation and administrative penalties
4 imposed upon the defaulting Respondent.

5 SIGNED,

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7 Dated: 3/2/07

/s/
PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 07-030
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3 State of New Hampshire Banking) Staff Petition
))
4 Department,))
))
5 Petitioner,) March 2, 2007
))
6 and))
))
7 Martin W Day Sr,))
))
8 Respondent))
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10 STATEMENT OF ALLEGATIONS

- 11 I. The Staff of the Banking Department, State of New Hampshire
12 (hereinafter referred to as the "Department) alleges the following
13 facts:
- 14 1. On or about November 28, 2005 the Department began conducting an
15 examination of Martin W Day Sr (hereinafter "Respondent").
 - 16 2. Respondent was licensed as a Mortgage Broker and at all times
17 relevant to this action held a Department license since at least
18 1999.
 - 19 3. The Department sent an invoice for the cost of the exam in the
20 amount of \$1,065.13 to the Respondent via UPS 2nd Day Air on June
21 2, 2006 (mail piece number: 1Z X46 660 37 1001 469 8). The
22 Respondent received the mail piece on or about June 13, 2006.
 - 23 4. A second invoice was sent to the Respondent on June 29, 2006.
 - 24 5. A third invoice was sent to the Respondent on August 1, 2006.
 - 25 6. On September 6, 2006 the Department sent a warning letter to the
Respondent via US Certified Mail (mail piece number: 7002 2030

1 0000 9677 1848). The Respondent refused the mail and it was
2 resent by the Department via UPS 2nd Day Air (mail piece number: 12
3 X46 660 37 1001 413 4). The Respondent received the letter on
4 September 27, 2006.

5 7. To date, the Respondent has not paid the outstanding invoice.
6

7 **ISSUES OF LAW**

8 II. The staff of the Department, alleges the following issues of law:

- 9 1. The Department realleges the above stated facts in paragraphs 1
10 through 7.
- 11 2. The Department has jurisdiction over the licensing and
12 regulation of persons engaged in mortgage broker activities
13 pursuant to NH RSA 397-A:3.
- 14 3. Pursuant to New Hampshire Banking law, RSA 397-A:12 the
15 Department may examine the business affairs of any licensee or
16 any other person, whether licensed or not, as it deems necessary
17 to determine compliance with this Chapter and the rules adopted
18 pursuant to it and with the Consumer Credit Protection Act, as
19 amended (15 U.S.C. 1601 et seq.). In determining compliance,
20 the Department may examine the books, accounts, records, files,
21 and other documents or matters of any licensee or person. RSA
22 397-A:12 further requires every person being examined, and all
23 of the officers, directors, employees, agents, and
24 representatives of such person shall make freely available to
25 the commissioner or his examiners, the accounts, records,
documents, files, information, assets, and matters in their

1 possession or control relating to the subject of the examination
2 and shall facilitate the examination. The Respondent violated
3 this provision by failing to provide the examination materials
4 in a timely fashion as required in the First Day Letter.

5 4. RSA 397-A:12 provides that licensees are to pay the costs of
6 examinations.

7 5. RSA 397-A:17 II allows the Department to immediately suspend a
8 license for 30 days pending the investigation of that licensee.

9 6. RSA 397-A:21 IV provides that any person who, either knowingly
10 or negligently, violates any provision of Chapter 397-A, may
11 upon hearing, and in addition to any other penalty provided for
12 by law, be subject to an administrative fine not to exceed
13 \$2,500, or both. Each of the acts specified shall constitute a
14 separate violation, and such administrative action or fine may
15 be imposed in addition to any criminal penalties or civil
16 liabilities imposed by New Hampshire Banking laws.

17 **RELIEF REQUESTED**

18 III. The staff of the Department requests the Commissioner take the
19 following Action:

- 20 1. Find as fact the allegations contained in section I of this
21 petition;
- 22 2. Make conclusions of law relative to the allegations contained
23 in section II of the this petition;
- 24 3. Order Respondent to Show Cause why its license should not be
25 revoked;

- 1 4. Assess fines and administrative penalties in accordance with
2 RSA 397-A:21, for violations of Chapter 397-A, in the number
3 and amount equal to the violations set forth in section II of
4 this petition; and
- 5 5. Order Respondent to pay the statutory penalty from RSA 397-
6 A:11.
- 7 6. Order the Respondent to pay the exam fee from RSA 397-A:12.
- 8 7. Take such other administrative and legal actions as necessary
9 for enforcement of the New Hampshire Banking Laws, the
10 protection of New Hampshire citizens, and to provide other
11 equitable relief.

12 RIGHT TO AMEND

13 IV. The Department reserves the right to amend this Staff Petition and
14 to request that the Commissioner take additional administrative
15 action. Nothing herein shall preclude the Department from bringing
16 additional enforcement action under RSA 397-A or the regulations
17 thereunder.

18 Respectfully submitted by:

19
20 /S/
21 James Shepard
22 Staff Attorney

23
24 3/2/07
25 Date