

1 State of New Hampshire Banking Department

2

3 In re the Matter of:) Case No.: 07-044
)
 4 State of New Hampshire Banking) Cease and Desist Order
)
 5 Department,)
)
 6 and)
)
 7 EJC Coastal Mortgage Group LLC and)
)
 8 Earl Jay Cheney,)
)
 9 Respondents)
)
 10)
)
 11)

12 NOTICE OF ORDER

13 This Order commences an adjudicative proceeding under the provisions of
14 RSA 397-A:18 II and RSA 383:10-d.

15 LEGAL AUTHORITY AND JURISDICTION

16 Pursuant to RSA 397-A:18 II, the Banking Department of the State of New
17 Hampshire (hereinafter the "Department") has the authority to issue and cause
18 to be served an order requiring any person engaged in any act or practice
19 constituting a violation of RSA 397-A or any rule or order thereunder, to
20 cease and desist from violations of RSA 397-A.

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

24 Pursuant to RSA 383:10-d, the Commissioner shall have exclusive
25 authority and jurisdiction to investigate conduct that is or may be an unfair
or deceptive act or practice under RSA 358-A and exempt under RSA 358-A:3, I or

1 that may violate any of the provisions of Titles XXXV and XXXVI and
2 administrative rules adopted thereunder. The Commissioner may hold hearings
3 relative to such conduct and may order restitution for a person or persons
4 adversely affected by such conduct.

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

6 The above named respondent has the right to request a hearing on this
7 Order to Cease and Desist, as well as the right to be represented by counsel.
8 A hearing shall be held not later than 10 days after the request for such
9 hearing is received by the commissioner after which and within 20 days of the
10 date of the hearing the commissioner shall issue a further order vacating the
11 cease and desist order or making it permanent as the facts require. All
12 hearings shall comply with 541-A. If the person to whom a cease and desist
13 order is issued fails to appear at the hearing after being duly notified, such
14 person shall be deemed in default, and the proceeding may be determined against
15 him or her upon consideration of the cease and desist order, the allegations of
16 which may be deemed to be true.

17 If the person to whom a cease and desist order is issued fails to request
18 a hearing within 30 calendar days of receipt of such order, then such person
19 shall likewise be deemed in default, and the order shall, on the thirty-first
20 day, become permanent, and shall remain in full force and effect until and
21 unless later modified or vacated by the commissioner, for good cause shown.
22 Any such request for a hearing shall be in writing, and signed by the
23 respondent or by the duly authorized agent of the above named respondent, and
24 shall be delivered either by hand or certified mail, return receipt request,
25 to the Banking Department, State of New Hampshire, 64B Old Suncook Road,
Concord, NH 03301.

STATEMENT OF ALLEGATIONS

1 The allegations contained in the Staff Petition for Relief dated
2 February 26, 2007 (a copy of which is attached hereto) are incorporated by
3 reference hereto.

4 **ORDER**

5 WHEREAS, finding it necessary and appropriate and in the public
6 interest, and consistent with the intent and purposes of the New Hampshire
7 banking laws, and

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

10 It is hereby ORDERED, that:

- 11 1. The Respondent EJC Coastal Mortgage Group LLC is hereby
12 ordered to immediately cease engaging in the activity of a
13 mortgage banker / broker on residential property in New
14 Hampshire.
- 15 2. Failure to request a hearing within 30 days of the date of
16 receipt of this Order shall result in a default judgment being
17 rendered, administrative penalties being imposed upon the
18 defaulting Respondents, and such further action as is
19 necessary to determine the proper amount of restitution.

20 SIGNED,

21 Dated: 2/26/07

22 /s/
23 PETER C. HILDRETH
24 BANK COMMISSIONER
25

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12 STATEMENT OF ALLEGATIONS

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

- 15 1. During an examination of a licensed entity, the Examiner in Charge
 16 ("EIC") noted the licensee had conducted mortgage activity with EJC
 17 Coastal Mortgage Group LLC (hereinafter "Respondent EJC").
- 18 2. Respondent Earl Jay Cheney was the majority owner of Respondent EJC.
- 19 3. The EIC noted Respondent EJC originated at least 48 loans, then placed
 20 these loans with a licensed entity and received compensation for the
 21 loans.
- 22 4. The Respondent was not licensed as a mortgage broker nor was it
 23 entitled to collect fees. The Respondent engaged in activity that
 24 required it to obtain a license.

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

- 1 1. The Banking Department ("Department"), has jurisdiction over the
2 licensing and regulation of persons engaged in first mortgage banker /
3 broker activities pursuant to NH RSA 397-A:3.
- 4 2. Pursuant to the New Hampshire Banking laws, RSA 397-A:3 requires any
5 person not exempt under RSA 397-A:4 that, in its own name or on behalf
6 of other persons, engages in the business of making or brokering first
7 mortgage loans secured by real property located in this state shall be
8 required to obtain a license from the banking department.
- 9 3. Pursuant to NH RSA 397-A:18, the Department has the power to issue and
10 to serve an order requiring persons to cease and desist from violations
11 of the chapter whenever it has reasonable cause to believe that any
12 person has engaged in any act or practice constituting a violation of
13 the banking laws, or any rule or order thereunder. Respondent has
14 violated RSA 397-A:3 by conducting unlicensed mortgage banker / broker
15 activities in New Hampshire.
- 16 4. Pursuant to NH RSA 397-A:17 mortgage bankers/brokers engaging in
17 business in New Hampshire are prohibited from engaging in unethical
18 business practices.
- 19 5. Pursuant to RSA 397-A:16 only licensed mortgage brokers and bankers are
20 entitled to retain commissions for their services.
- 21 6. Pursuant to RSA 397-A:21 any person who, either knowingly or
22 negligently, violates any provision of this chapter may, upon notice and
23 opportunity for hearing, and in addition to any such other penalty
24 provided for by law, be subject to suspension, revocation or denial of
25 any registration or license, including forfeiture of any application fee,
or an administrative fine not to exceed \$2,500, or both. Each of the
acts specified shall constitute a separate violation, and each such
administrative action or fine may be imposed in addition to any criminal
or civil penalties imposed.

1 7. Also pursuant to RSA 397-A:21 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 8. Pursuant to RSA 383:10-d, the commissioner shall have exclusive
13 authority and jurisdiction to investigate conduct that is or may be an
14 unfair or deceptive act or practice under RSA 358-A and exempt under RSA
15 358-A:3, I or that may violate any of the provisions of Titles XXXV and
16 XXXVI and administrative rules adopted thereunder. The commissioner may
17 hold hearings relative to such conduct and may order restitution for a
person or persons adversely affected by such conduct.

18 **RELIEF REQUESTED**

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

- 21 1. Find as fact the allegations contained in section I of the Statement of
22 Allegations of this petition.
- 23 2. Make conclusions of law relative to the allegations contained in section
24 II of the Statement of Allegations of this petition.
- 25 3. Pursuant to NH RSA 397-A:18, immediately Order Respondent to Cease and
Desist from violations of the New Hampshire Banking Laws.

