

1 State of New Hampshire Banking Department

2

3 In re the Matter of:) Case No.: 07-051
)
 4 State of New Hampshire Banking)
) Cease and Desist Order
 5 Department,)
)
 6 and)
)
 7 Brookfield Mortgage Company, Erik A.)
)
 8 Jacobs and Ali Foster,)
)
 9 Respondent(s))
)
 10)
)

11
12 NOTICE OF ORDER

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14 This Order commences an adjudicative proceeding under the provisions of
15 RSA 397-A:18 II and BAN 200 et seq.

16 LEGAL AUTHORITY AND JURISDICTION

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

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SIGNED,

Dated: 4/27/07

/s/
PETER C. HILDRETH
BANK COMMISSIONER

**NOTE: VIOLATION OF A CEASE AND DESIST ORDER IS A
CRIMINAL OFFENSE.**

1 State of New Hampshire Banking Department

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3 In re the Matter of:) Case No.: 07-051
)
 4 State of New Hampshire Banking) Cease and Desist Order
) Staff Petition
 5 Department,)
)
 6 and)
) April 27, 2007
 7 Brookfield Mortgage Company, Erik A.)
)
 8 Jacobs and Ali Foster,)
)
 9 Respondents)
)
 10)
)
 11)

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
 17 Brookfield Mortgage Company (hereinafter "Respondent Brookfield").
- 18 2. The EIC noted that Respondent Brookfield originated at least 2 loans,
 19 then placed these loans with a licensed entity in expectation of
 20 compensation.
- 21 3. Respondent Brookfield was not licensed as a mortgage broker nor was it
 22 entitled to any compensation. Respondent Brookfield engaged in
 23 activity that required it to obtain a license.
- 24 4. After the examination, the licensed entity notified the Department that
 25 the licensed entity had brokered a total of 5 loans with Respondent
 Brookfield compensating Brookfield and/or its originators in each
 instance.

1 5. Upon information and belief Respondent Brookfield Mortgage Company is a
2 licensed mortgage broker in the state of Maine.

3 6. According to public records Respondent Brookfield is owned by
4 Respondent Eric A. Jacobs (hereinafter Respondent Jacobs or Jacobs.)

5 7. Of the five loans illegally co-brokered by Respondent Brookfield at
6 least one was brokered by Respondent Ali Foster (hereinafter Respondent
7 Foster or Foster).

8 8. Upon information and belief Respondent Foster is an originator for
9 Respondent Brookfield and subject to its supervision and control.

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

12 1. The Banking Department ("Department"), has jurisdiction over the
13 licensing and regulation of persons engaged in first mortgage banker /
14 broker activities pursuant to NH RSA 397-A:3.

15 2. Pursuant to the New Hampshire Banking laws, RSA 397-A:3 requires any
16 person not exempt under RSA 397-A:4 that, in its own name or on behalf
17 of other persons, engages in the business of making or brokering first
18 mortgage loans secured by real property located in this state shall be
19 required to obtain a license from the banking department.

20 3. Pursuant to NH RSA 397-A:18, the Department has the power to issue and
21 to serve an order requiring persons to cease and desist from violations
22 of the chapter whenever it has reasonable cause to believe that any
23 person has engaged in any act or practice constituting a violation of
24 the banking laws, or any rule or order thereunder. Respondent has
25 violated RSA 397-A:3 by conducting unlicensed mortgage banker / broker
activities in New Hampshire.

4. Pursuant to RSA 397-A:1 originators may only work for one mortgage
broker at a time.

1 5. Pursuant to RSA 397-A:16 only licensed mortgage brokers and bankers are
2 entitled to retain commissions for their services.

3 6. Pursuant to RSA 397-A:21 any person who, either knowingly or
4 negligently, violates any provision of this chapter may, upon notice and
5 opportunity for hearing, and in addition to any such other penalty
6 provided for by law, be subject to suspension, revocation or denial of
7 any registration or license, including forfeiture of any application fee,
8 or an administrative fine not to exceed \$2,500, or both. Each of the
9 acts specified shall constitute a separate violation, and each such
10 administrative action or fine may be imposed in addition to any criminal
or civil penalties imposed.

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

22 8. Pursuant to RSA 383:10-d, the commissioner shall have exclusive
23 authority and jurisdiction to investigate conduct that is or may be an
24 unfair or deceptive act or practice under RSA 358-A and exempt under RSA
25 358-A:3, I or that may violate any of the provisions of Titles XXXV and
XXXVI and administrative rules adopted thereunder. The commissioner may
hold hearings relative to such conduct and may order restitution for a

1 person or persons adversely affected by such conduct.

2 **RELIEF REQUESTED**

3 The staff of the Banking Department requests the Commissioner take the
4 following action:

- 5 1. Find as fact the allegations contained in section I of the Statement of
6 Allegations of this petition.
- 7 2. Make conclusions of law relative to the allegations contained in section
8 II of the Statement of Allegations of this petition.
- 9 3. Pursuant to NH RSA 397-A:18, immediately Order Respondent to Cease and
10 Desist from violations of the New Hampshire Banking Laws and conducting
11 mortgage activity secured by any interest in New Hampshire real property
12 where licensure is required.
- 13 4. Issue a fine against each Respondent in the amount of \$2,500.00 for each
14 violation of the chapter.
- 15 5. Order the Respondents to refund all fees and/or commissions received as a
16 result of their unlicensed activity.
- 17 6. Take such other administrative and legal actions as are necessary for
18 enforcement of the New Hampshire Banking laws, the protection of New
19 Hampshire citizens, and to provide other equitable relief.

18 **RIGHT TO AMEND**

19 The Department reserves the right to amend this Petition for Relief and
20 to request that the Banking Department Commissioner take additional
21 administrative action. Nothing herein shall preclude the Department from
22 bringing additional enforcement action under RSA 397-A or the regulations
23 thereunder.
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