

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 07-053
)
 3 State of New Hampshire Banking) Order to Show Cause
)
 4 Department,) Cease and Desist Order
)
 5 Petitioner,)
)
 6 and)
)
 7 Fairfield Mortgage LLC, Earl J.)
)
 8 Cheney, David Paolini,)
)
 9 Respondents

10 NOTICE OF ORDER

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

13 LEGAL AUTHORITY AND JURISDICTION

14 Pursuant to RSA 397-A:17, the Commissioner has the authority to order
15 any person under his jurisdiction to show cause why a license should not be
16 revoked and fines paid as a result of violations of the Chapter.

17 Pursuant to RSA 397-A:18, the Commissioner may issue a cease and desist
18 order against any licensee who it has reasonable cause to believe is in
19 violation of the provisions of the Chapter.

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

23 Pursuant to RSA 397-A:21, every person who directly or indirectly
24 controls a person liable under this section, every partner, principal executive
25 officer or director of such person, every person occupying a similar status or
performing a similar function, every employee of such person who materially
aids in the act constituting the violation, and every licensee or person acting

1 as a common law agent who materially aids in the acts constituting the
2 violation, either knowingly or negligently, may, upon notice and opportunity
3 for hearing, and in addition to any other penalty provided for by law, be
4 subject to suspension, revocation, or denial of any registration or license,
5 including the forfeiture of any application fee, or the imposition of an
6 administrative fine not to exceed \$2,500, or both.

7 Pursuant to RSA 383:10-d, the Commissioner shall have exclusive
8 authority and jurisdiction to investigate conduct that is or may be an unfair
9 or deceptive act or practice under RSA 358-A and exempt under RSA 358-A:3, I or
10 that may violate any of the provisions of Titles XXXV and XXXVI and
11 administrative rules adopted thereunder. The Commissioner may hold hearings
12 relative to such conduct and may order restitution for a person or persons
13 adversely affected by such conduct. Nothing in this cause shall impair a
14 consumer's right of recovery under 383:10-d.

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

16 The above named respondents have the right to request a hearing on this
17 Order to Show Cause, as well as the right to be represented by counsel. A
18 hearing shall be held not later than 10 days after the request for such hearing
19 is received by the commissioner. Any such request for a hearing shall be in
20 writing, and signed by the respondent(s) or by the duly authorized agent of
21 the above named respondent(s), and shall be delivered either by hand or
22 certified mail, return receipt request, to the Banking Department, State of
23 New Hampshire, 64B Old Suncook Road, Concord, NH 03301.

24 If respondents fail to request a hearing or respond to the show cause
25 order within 30 calendar days of receipt of this order, respondent shall be
deemed in default, and the penalties requested will be imposed.

STATEMENT OF ALLEGATIONS

The allegations contained in the Staff Petition for Relief dated July

1 11, 2007 (a copy of which is attached hereto) are incorporated by reference
2 hereto.

3 **ORDER**

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

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

9 It is hereby ORDERED, that:

- 10 1. Respondent Fairfield Mortgage LLC shall show cause why
11 penalties in the amount of \$40,000.00 should not be imposed;
12 and
13 2. Respondent Earl J. Cheney shall show cause why penalties in
14 the amount of \$40,000.00 should not be imposed; and
15 3. Respondent David Paolini shall show cause why penalties in the
16 amount of \$40,000.00 should not be imposed; and
17 4. Respondent Fairfield Mortgage LLC shall show cause why its
18 license should not be revoked; and
19 5. Respondents shall cease and desist from violations of New
20 Hampshire Banking laws.

20 SIGNED,

21 Dated: 7/19/07

22 /S/
23 PETER C. HILDRETH
24 BANK COMMISSIONER

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

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 07-053
)
 3 State of New Hampshire Banking) Order to Show Cause
) Staff Petition
 4 Department,)
)
 5 Petitioner,) July 18, 2007
)
 6 and)
)
 7 Fairfield Mortgage LLC, Earl J.)
)
 8 Cheney, David Paolini,)
)
 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. Fairfield Mortgage LLC (hereinafter "Respondent Fairfield" or
16 "Fairfield" or "licensee") is a mortgage banker licensed by the
17 Department.
- 18 2. During all times relevant to this petition they were so licensed and
19 thus subject to the jurisdiction of the Commissioner.
- 20 3. Respondent Earl J. Cheney (hereinafter "Respondent Cheney" or "Cheney")
21 is the President of Fairfield and a 50% owner.
- 22 4. At the time of exam Respondent Fairfield had a licensed principal
23 office in Portsmouth, NH and a licensed branch office in Dover, NH.
24 They have since surrendered their branch license.
- 25 5. Respondent David Paolini (hereinafter "Respondent Paolini" or
"Paolini") was the Branch Manager of the Dover branch of Fairfield and
is a 50% owner of Farfield.

1 **FAILURE TO MAINTAIN SECURITY POLICY (RSA 397-A:17 I(1)) (2 Counts)**

2 6. Paragraphs 1-5 are hereby realleged as if fully set forth herein.

3 7. As a result of their business activity Respondents regularly have in
4 their possession consumer information of a confidential nature.

5 8. From their license date until October, 2006 licensee did not have a
6 written policy on safeguarding consumer information.

7 9. During that time licensee closed approximately 150 loans.

8 10. This failure to maintain a written policy may have contributed to the
9 counts of Failure to Protect Consumer Information and Failure to
10 Maintain Records alleged below.

11 11. Licensee's October, 2006 policy does not comply with federal law (16
12 C.F.R. 314.3 et seq) in that no risk assessments are being performed
13 and it is not specific to licensee's business model.

14 12. Upon information and belief at least another 100 consumers have
15 submitted personal non-public information to the licensee since
16 October, 2006.

17 13. Operating with such an incomplete policy represents the potential for
18 ongoing public harm.

19 **FAILURE TO PROTECT CONSUMER INFORMATION (RSA 397-A:17 I(1)) (1 Counts)**

20 14. Paragraphs 1-13 are hereby realleged as if fully set forth herein.

21 15. In response to examination requests licensee was unable to produce any
22 loan files for four loans.

23 16. Licensee had to retrieve one additional loan file from another licensed
24 entity. That entity had no apparent connection to the loan and thus no
25 reason for it to be out of the possession of Fairfield.

17. Respondent Cheney indicated that the loan located outside the Fairfield
offices was co-brokered by the other licensed entity. There was no
evidence in the loan file that this was known to either the consumer or
the lender.

1 18. Upon information and belief the five loan files contained borrower or
2 applicant's name, date of birth, social security number, bank account
3 numbers and other personally identifying information.

4 **FAILURE TO MAINTAIN RECORDS TO ENABLE COMPLIANCE DETERMINATION (RSA 397-**

5 **A:11) (4 Counts)**

6 19. Paragraphs 1-18 are hereby realleged as if fully set forth herein.

7 20. The licensee was asked to produce a loan list for an 18 month period
8 for the examination. The licensee produced two inaccurate loan lists.
9 The first understated the number of loans by approximately 40. The
10 second list understated the number of loans by approximately 60.

11 21. The licensee lost or misplaced at least five loan files as previously
12 alleged.

13 22. In every loan reviewed, the originator failed to sign and date the
14 initial application. Thus the Department is unable to determine whether
15 licensee is complying with federal law requiring Good Faith Estimate
16 disclosures within three days of application.

17 23. The licensee has a practice of collecting income verification
18 documentation from an applicant then returning such documentation or
19 shredding it if the borrower obtains a stated income product, thus
20 making it difficult for the Department to determine if the licensee is
21 knowingly placing applicants into products they cannot afford.

22 **DISHONEST OR UNETHICAL PRACTICES (RSA 397-A:17 I(k) (5 Counts)**

23 24. Paragraphs 1-23 are hereby realleged as if fully set forth herein.

24 25. In a truth in lending statement for a loan funded by licensee the
25 amount financed was overstated by \$1562.11, the finance charge was
understated by \$1566.91 and the annual percentage rate was understated
by 5.271%. All of these misstatements would cause a borrower to think
they were getting a product vastly different from what they were
actually receiving.

1 26. Fairfield Mortgage closed eight loans in the name of Coastal Mortgage
2 Group without disclosing its true identity to lenders. By way of
3 explanation Respondent Cheney admitted that he formerly operated and
4 managed a net branch for Coastal and closed these eight loans under
5 Coastal's name while waiting to set up his own relationship with
6 lenders. This method of "branch operations" is an illegal business
7 model under Chapter 397-A.

8 27. Respondents allowed another licensee to use its license information to
9 close New Hampshire loans. At least three loans were originated by the
10 other licensee though the loan files disclosed only Fairfield. Upon
11 information and belief lenders and consumers had no knowledge of these
12 licensees' interactions.

13 28. Respondents' employees were forwarding the lender passwords obtained
14 from Team Mortgage LLC to Coastal Mortgage LLC.

15 29. Respondent allowed representatives of Coastal Mortgage LLC to use its
16 logon ID's and passwords expressly to allow Coastal Mortgage LLC to
17 deceive the lender into thinking a new broker was submitting the loan
18 application of an applicant who had already been denied when the
19 application was submitted by Coastal Mortgage LLC.

20 **FAILURE TO SUPERVISE (RSA 397-A:6 I) (1 Counts)**

21 30. Paragraphs 1-29 are hereby realleged as if fully set forth herein.

22 31. In at least three loan files the signature of Respondent Cheney was
23 forged on loan documents by his employees.

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

- 1 1. The Department has jurisdiction over the licensing and regulation of
2 persons engaged in mortgage banker / broker activities pursuant to New
3 Hampshire Revised Statutes Annotated (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 RSA 397-A:17, the Department has the power to issue and to
10 serve an order requiring persons to show cause why their license
11 shouldn't be revoked or suspended and penalties imposed for violations
12 of the Chapter. As alleged above Respondents have committed numerous
13 violations of the Chapter.
- 14 4. Pursuant to RSA 397-A:17 I(k) it is a violation of the Chapter to
15 engage in dishonest or unethical practices in the making or collecting
16 of mortgage loans. Respondent has violated RSA 397-A:17 I(k) at least
17 5 times as alleged above.
- 18 5. Pursuant to RSA 397-A:17 I(1) licensees must abide by all applicable
19 federal laws or rules thereunder. 16 C.F.R. §314.3 requires companies
20 such as licensee to maintain a written comprehensive security policy.
21 Respondents violated this federal rule and therefore violated the
22 Chapter as alleged above.
- 23 6. Pursuant to RSA 397-A:17 I(1) licensees must abide by all applicable
24 federal laws or rules thereunder. 18 U.S.C. §6801 requires all
25 financial institutions to maintain the integrity of nonpublic personal
information. Respondents violated this federal statute by losing or
misplacing loan files in at least 5 instances and therefore violated
the Chapter as alleged above.

- 1 7. Pursuant to RSA 397-A:11 licensees must maintain such records as will
2 allow the Department to determine compliance with the Chapter and the
3 rules adopted pursuant to it including a provision that the licensee
4 must maintain all original documents. Respondents violated the Chapter
5 on at least 4 occasions by not maintaining the proper information in
6 the loan files as alleged above.
- 7 8. Pursuant to NH RSA 397-A:17 I(k) mortgage bankers/brokers engaging in
8 business in New Hampshire are prohibited from engaging in unethical
9 business practices. Respondent has violated said statute at least 5
10 times as alleged above.
- 11 9. RSA 397-A:21 IV provides that any person who, either knowingly or
12 negligently, violates any provision of RSA 397-A, may upon hearing, and
13 in addition to any other penalty provided for by law, be subject to an
14 administrative fine not to exceed \$2,500, or both. Each of the acts
15 specified shall constitute a separate violation, and such
16 administrative action or fine may be imposed in addition to any
17 criminal penalties or civil liabilities imposed by New Hampshire
18 banking laws. Respondent is subject to administrative fines for
19 violations as alleged above.
- 20 10. RSA 397-A:21 V provides that every person who directly or indirectly
21 controls a person liable under this section, every partner, principal
22 executive officer or director of such person, every person occupying a
23 similar status or performing a similar function, every employee of such
24 person who materially aids in the act constituting the violation, and
25 every licensee or person acting as a common law agent who materially aids
in the acts constituting the violation, either knowingly or negligently,
may, upon notice and opportunity for hearing, and in addition to any
other penalty provided for by law, be subject to suspension, revocation,
or denial of any registration or license, including the forfeiture of any

1 application fee, or the imposition of an administrative fine not to
2 exceed \$2,500, or both.

3 **RELIEF REQUESTED**

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

- 6 1. Find as fact the allegations contained in section I of the Statement of
7 Allegations of this petition.
- 8 2. Make conclusions of law relative to the allegations contained in section
9 II of the Statement of Allegations of this petition.
- 10 3. Pursuant to NH RSA 397-A:18, immediately Order Respondent to Cease and
11 Desist from violations of the New Hampshire Banking Laws.
- 12 4. Assess fines and administrative penalties in accordance RSA 397-A:22, for
13 violations of the New Hampshire Banking Laws, in the number and amount
14 equal to the violations set forth in section II of the Statement of
15 Allegations of this petition. Each Respondent is subject to an
16 administrative penalty of \$32,500 for violations as enumerated above.
- 17 5. Pursuant to NH RSA 397-A:17, Order Respondent Fairfield to Show Cause why
18 its license should not be revoked.
- 19 6. Make such other administrative and legal actions as are necessary for
20 enforcement of the New Hampshire Banking laws, the protection of New
21 Hampshire citizens, and to provide other equitable relief.

21 **RIGHT TO AMEND**

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

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Respectfully submitted by:

 /S/
James Shepard
Staff Attorney

7/18/07
Date