

1 State of New Hampshire Banking Department

2

3 In re the Matter of:) Case No.: 07-059
)
 4 State of New Hampshire Banking) Order to Show Cause
)
 5 Department,) And
)
 6 and) Cease and Desist Order
)
 7 New Century Mortgage Corporation,)
)
 8 Respondent)
)
 9)
)
 10)
)
 11)

12 NOTICE OF ORDER

13 This Order commences an adjudicative proceeding under the provisions of
14 RSA 397-A, RSA 383:10-d RSA 541-A:31 and BAN 200 et seq.

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:20, the Commissioner may issue, amend, or rescind
22 such orders as are reasonably necessary to comply with the provisions of the
23 Chapter.

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

Pursuant to RSA 383:10-d, the Commissioner shall have exclusive
authority and jurisdiction to investigate conduct that is or may be an unfair

1 or deceptive act or practice under RSA 358-A and exempt under RSA 358-A:3, I or
2 that may violate any of the provisions of Titles XXXV and XXXVI and
3 administrative rules adopted thereunder. The Commissioner may hold hearings
4 relative to such conduct and may order restitution for a person or persons
5 adversely affected by such conduct.

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

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

19 If respondents fail to request a hearing or respond to the orders
20 within 30 calendar days of receipt of these orders, respondent shall be
21 deemed in default, the penalties requested will be imposed, and the Cease and
22 Desist will be become permanent on the 31st day.

23 Any such request for a hearing shall be in writing, and signed by the
24 respondent or by the duly authorized agent of the above named respondent, and
25 shall be delivered either by hand or certified mail, return receipt request,
to the Banking Department, State of New Hampshire, 64B Old Suncook Road,
Concord, NH 03301.

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

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 07-059
3 State of New Hampshire Banking) Staff Petition
4 Department,)
5 Petitioner,)
6 and)
7 New Century Mortgage Corporation,)
8 Respondent)
9

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. New Century Mortgage Corporation (hereinafter, "Respondent") is
15 currently licensed as a Mortgage Banker.
 - 16 2. Respondent's principal place of business is Irvine, California.
 - 17 3. Respondent is a wholly owned subsidiary of New Century Financial
18 Corporation, a publicly traded real estate investment trust listed
19 on the New York Stock Exchange.
 - 20 4. On or about March 5, 2007 the Department became aware of the
21 financial instability of Respondent including the posting of
22 several losses in their financial filings and a precipitous drop
23 in its parent company's stock value.
 - 24 5. Respondent failed to notify the Department of problems related to
25 its lines of credit and of its repurchase liabilities.

1 6. On or about March 9, 2007 the Department received a communication
2 from Respondent that they had closed on at least four New
3 Hampshire residential mortgage loans without having any funding
4 for said loans.

5 7. The Respondent is currently unable to operate with the financial
6 integrity necessary to warrant the public confidence.

7 8. If these conditions existed at time of Respondent's application
8 the Commissioner would have been justified in denying the license.
9

10 **ISSUES OF LAW**

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

12 1. The Department realleges the above stated facts in paragraphs 1
13 through 8.

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

17 3. Pursuant to New Hampshire Banking law, RSA 397-A:5 the
18 Commissioner at time of completed application has 120 days to
19 determine whether the applicant's financial resources,
20 experience, personnel, and record of past or proposed conduct
21 warrant the public's confidence and issuance of a license.

22 4. Licensees must notify the Department within 5 business days of
23 the occurrence of certain events according to BAN 2407.01. Said
24 events include the termination or default of existing lines of
25 credit and the exercise of recourse rights by investors.

- 1 5. Pursuant to RSA 397-A:14-b licensee's must fund loans at
2 closing.
- 3 6. Pursuant to RSA 397-A:17 the Commissioner may issue an order
4 requiring a person to whom any license has been granted or any
5 person under the commissioner's jurisdiction to show cause why
6 the license should not be revoked, suspended, or penalties
7 imposed, or both, for violations of this chapter.
- 8 7. Pursuant to RSA 397-A:17 the Commissioner may issue an order
9 requiring a person to whom any license has been granted or any
10 person under the commissioner's jurisdiction to show cause why
11 the license should not be revoked, suspended, or penalties
12 imposed when the licensee or a person under its control is not
13 qualified on the basis of such factors as experience, knowledge,
14 and financial integrity.
- 15 8. Pursuant to RSA 397-A:18 the Department may issue a Cease and
16 Desist Order against anyone who it has reasonable cause to
17 believe is in violation of the provisions of the Chapter or a
18 rule or order under the Chapter.
- 19 9. Pursuant to RSA 397-A:20 the Commissioner may issue such order
20 as are reasonably necessary to carry out the provisions of the
21 Chapter.
- 22 10. RSA 397-A:21 IV provides that any person who, either knowingly
23 or negligently, violates any provision of Chapter 397-A, may
24 upon hearing, and in addition to any other penalty provided for
25 by law, be subject to an administrative fine not to exceed
 \$2,500, or both. Each of the acts specified shall constitute a

1 separate violation, and such administrative action or fine may
2 be imposed in addition to any criminal penalties or civil
3 liabilities imposed by New Hampshire Banking laws.

4 **RELIEF REQUESTED**

5 III. The staff of the Department requests the Commissioner take the
6 following Action:

- 7 1. Find as fact the allegations contained in section I of this
8 petition;
- 9 2. Make conclusions of law relative to the allegations contained
10 in section II of the this petition;
- 11 3. Assess fines and administrative penalties in accordance with
12 RSA 397-A:21, for violations of Chapter 397-A, in the number
13 and amount equal to the violations set forth in section II of
14 this petition; and
- 15 4. Order Respondent to show cause why their license should not be
16 Revoked; and
- 17 5. In accordance with RSA 397-A:18, Order the Respondent to Cease
18 and Desist from violations of New Hampshire Law; and
- 19 6. In accordance with RSA 397-A:20, Order the Respondent to
20 immediately cease taking mortgage applications; and
- 21 7. Take such other administrative and legal actions as necessary
22 for enforcement of the New Hampshire Banking Laws, the
23 protection of New Hampshire citizens, and to provide other
24 equitable relief.

25 **RIGHT TO AMEND**

1 IV. The Department reserves the right to amend this Staff Petition and
2 to request that the Commissioner take additional administrative
3 action. Nothing herein shall preclude the Department from bringing
4 additional enforcement action under RSA 397-A or the regulations
5 thereunder.

6
7 Respectfully submitted by:

8
9 /s/
10 James Shepard
Staff Attorney

3/12/07
Date