

1 State of New Hampshire Banking Department

2	In re the Matter of:	)	Case No.: 07-129
		)	
3	State of New Hampshire Banking	)	
4	Department,	)	Order to Show Cause
		)	
5	Petitioner,	)	
		)	
6	and	)	
		)	
7	Referral Mortgage, Inc. (d/b/a RMI	)	
		)	
8	Mortgage), and George Francis Russell,	)	
		)	
9	Respondents	)	

10 NOTICE OF ORDER

11 This Order commences an adjudicative proceeding under the provisions  
12 of RSA Chapter 397-A and RSA Chapter 541-A.

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 and penalties for violations of New  
17 Hampshire Banking laws should not be imposed.

18 Pursuant to RSA 397-A:18, the Department has the authority to issue a  
19 complaint setting forth charges whenever the Department is of the opinion  
20 that the licensee or person over whom the Department has jurisdiction is  
21 violating or has violated any provision of RSA Chapter 397-A, or any rule or  
22 order thereunder.

23 Pursuant to RSA 397-A:20,IV, the Commissioner may issue, amend, or  
24 rescind such orders as are reasonably necessary to comply with the  
25 provisions of the Chapter.

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

5 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct  
6 that is or may be an unfair or deceptive act or practice under RSA Chapter  
7 358-A and exempt under RSA 358-A:3,I or that may violate any of the  
8 provisions of Titles XXXV and XXXVI and administrative rules adopted  
9 thereunder. The Commissioner may hold hearings relative to such conduct and  
10 may order restitution for a person or persons adversely affected by such  
11 conduct.

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

13 The above named Respondents have the right to request a hearing on  
14 this Order to Show Cause, as well as the right to be represented by counsel  
15 at each Respondent's own expense. All hearings shall comply with RSA Chapter  
16 541-A. Any such request for a hearing shall be in writing, and signed by the  
17 Respondent or the duly authorized agent of the above named Respondent, and  
18 shall be delivered either by hand or certified mail, return receipt  
19 requested, to the Banking Department, State of New Hampshire, 53 Regional  
20 Drive, Suite 200, Concord, NH 03301. Such hearings will be scheduled within  
21 10 days of the Department's receipt of the request. If the Respondent fails  
22 to appear at the hearing after being duly notified, such person shall be  
23 deemed in default, and the proceeding may be determined against the Respondent  
24 upon consideration of the Order to Show Cause, the allegations of which may be  
25 deemed to be true.

1           If any of the above named Respondents fails to request a hearing within  
2 30 calendar days of receipt of such order or reach a formal written and  
3 executed settlement with the Department within that time frame, then such  
4 person shall likewise be deemed in default, and the orders shall, on the  
5 thirty-first day, become permanent, and shall remain in full force and effect  
6 until and unless later modified or vacated by the Commissioner, for good cause  
7 shown.

8           STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF

9           The Staff Petition dated July 24, 2009 (a copy of which is attached  
10 hereto) is incorporated by reference hereto.

11           ORDER

12           WHEREAS, finding it necessary and appropriate and in the public  
13 interest, and consistent with the intent and purposes of the New Hampshire  
14 banking laws; and

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

17           It is hereby ORDERED, that:

- 18           1. Respondent Referral Mortgage, Inc. (d/b/a RMI Mortgage)  
19           ("Respondent Referral Mortgage") shall show cause why  
20           penalties in the amount of \$7,500.00 should not be imposed  
21           against it;
- 22           2. Respondent George Francis Russell ("Respondent Russell")  
23           shall show cause why penalties in the amount of \$10,000.00  
24           should not be imposed against her;
- 25           3. The above named Respondents shall show cause why, in addition

1 to the penalties listed in Paragraphs 1 through 2 above, the  
2 \$10,180.60 examination fee should not be paid to the  
3 Department;

4 4. The above named Respondents shall show cause why, in addition  
5 to the penalties listed in Paragraphs 1 through 3 above, the  
6 fee of \$2,500.00 for the late filing of the financial  
7 statement should not be paid to the Department;

8 5. The above named Respondents shall show cause why, in addition  
9 to the penalties listed in Paragraphs 1 through 4 above,  
10 statutory penalties of \$2,500.00 should not be imposed for  
11 failing to file the annual report;

12 6. The above named Respondents shall show cause why, in addition  
13 to the penalties listed in Paragraphs 1 through 5 above,  
14 consumer restitution of Consumer A's yield spread premium for  
15 \$1,248.75 should not be paid back to Consumer A;

16 7. Respondents shall be jointly and severally liable for the  
17 above amounts alleged in Paragraphs 1 through 6 above;

18 8. The above named Respondents shall show cause why, in addition  
19 to the penalties listed in Paragraphs 1 through 7 above,  
20 Respondent Referral Mortgage's license should not be revoked.

21 It is hereby further ORDERED that:

22 9. Along with the administrative penalties listed for the above  
23 named Respondents, the outstanding sum of \$15,180.60 and  
24 consumer restitution to Consumer A of \$1,248.75 shall both be  
25 immediately paid; and

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10. Failure to request a hearing within 30 days of the date of receipt or valid delivery of this Order shall result in a default judgment being rendered and administrative penalties imposed upon the defaulting Respondent(s) .

SIGNED,

Dated: 09/15/09

/s/  
PETER C. HILDRETH  
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 07-129  
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 3 State of New Hampshire Banking )  
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 4 Department, ) Staff Petition  
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 5 Petitioner, ) July 24, 2009  
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 6 and )  
 )  
 7 Referral Mortgage, Inc. (d/b/a RMI )  
 )  
 8 Mortgage), and George Francis Russell, )  
 )  
 9 Respondents )

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10 I. STATEMENT OF ALLEGATIONS

11 The Staff of the Banking Department, State of New Hampshire (hereinafter  
12 "Department") alleges the following facts:

13 Facts Common on All Counts:

- 14 1. Respondent Referral Mortgage, Inc. (d/b/a RMI Mortgage)  
 15 (hereinafter "Respondent RMI Mortgage") was licensed as a  
 16 Mortgage Broker from at least March 25, 2005 until its license  
 17 expired on December 31, 2006.
- 18 2. Respondent George Francis Russell (hereinafter "Respondent  
 19 Russell") was the President of Respondent RMI Mortgage, when  
 20 licensed by the Department.

21 Violation of RSA 397-A:12,V Failure to Pay Examination Fee (1 Count):

- 22 3. Paragraphs 1 through 2 are hereby realleged as fully set forth  
 23 herein.
- 24 4. The Department conducted an examination of Respondent Referral  
 25 Mortgage on July 24, 2006, while Respondent Referral Mortgage was

1 still licensed with the Department.

2 5. On February 16, 2007, the Department mailed the report of  
3 examination and invoice for \$10,180.60 to Respondent Referral  
4 Mortgage, via U.S. Certified Mail Return Receipt requested, which  
5 the post office returned to the Department on March 30, 2007 as  
6 "unclaimed".

7 6. The Department, via U.S. mail, submitted reminders on April 17,  
8 2007 and June 8, 2007. Both notices were returned by the post  
9 office to the Department.

10 7. To date, the above named Respondents still owe the \$10,180.60  
11 examination fee for the 20.11 day examination.

12 **Violation of RSA 397-A:13, IV Failure to Pay Late Penalty Owed for Late**

13 **Filing of Financial Statement(1 Count):**

14 8. Paragraphs 1 through 7 are hereby realleged as fully set forth  
15 herein.

16 9. Respondent Referral Mortgage's financial statement was due on or  
17 before March 31, 2006.

18 10. Respondent Referral Mortgage was still licensed at the time its  
19 financial statement filing was due to the Department.

20 11. The Department received Respondent Referral Mortgage's financial  
21 statement on August 18, 2006 (140 days late), which generated a  
22 fine of \$2,500.00 (\$25.00 a day; maximum \$2,500.00).

1 Violation of RSA 397-A:13, I Failure to File Annual Report (1 Count):

2 Violation of RSA 397-A:13, VI Failure of Officer and Owner to Respond to

3 Department Inquiries (1 Count):

4 12. Paragraphs 1 through 11 are hereby realleged as fully set forth  
5 herein.

6 13. Respondent Referral Mortgage was licensed in 2006, and thus  
7 subject to the filing of a 2006 annual report with the  
8 Department.

9 14. The 2006 annual report was due on or before February 1, 2007.

10 15. On January 8, 2007, the Department emailed all licensees  
11 regarding the annual report.

12 16. On February 2, 2007, the Department sent reminder letters by  
13 facsimile.

14 17. On March 5, 2007, the Department sent a reminder letter, via  
15 U.S. Certified Mail Return Receipt requested, which Respondents  
16 received on March 8, 2007.

17 18. To date, Respondent Referral Mortgage has failed to file the  
18 2006 annual report and failed to respond to reminder letters.

19 19. To date, the penalty for failing to file an annual report has  
20 accrued to the cap of \$2,500.00 (\$25.00 per day; maximum of  
21 \$2,500.00).



1 Violation of the Real Estate Settlement Procedures Act, Regulation X, 24

2 C.F.R. Section 3500.7, Appendix B, Illustration 13 and Appendix C via RSA

3 397-A:2,III (1 Count):

4 Violation of the Real Estate Settlement Procedures Act, Regulation X, 24

5 C.F.R. Section 3500.7, Appendix B, Illustration 13 and Appendix C via RSA

6 397-A:16,I (1 Count):

7 20. Paragraphs 1 through 19 are hereby realleged as fully set forth  
8 herein.

9 21. Consumer A's file from November 2005 contained a HUD Settlement  
10 Statement that disclosed a yield spread premium was collected  
11 from Respondent Referral Mortgage (paid outside of closing) in  
12 the amount of \$1,248.75.

13 22. A review of Consumer A's signed Good Faith Estimate revealed that  
14 no yield spread premium was disclosed, therefore, the Respondents  
15 are not entitled to the \$1,248.75.

16 **II. ISSUES OF LAW**

17 The staff of the Department alleges the following issues of law:

18 1. The Department realleges the above stated facts in Paragraphs 1  
19 through 22 as fully set forth herein.

20 2. The Department has jurisdiction over the licensing and regulation  
21 of persons engaged in mortgage banker or broker activities  
22 pursuant to NH RSA 397-A:2 and RSA 397-A:3.

23 3. RSA 397-A:2,III requires persons subject to or licensed under RSA  
24 Chapter 397-A to abide by applicable federal laws and regulations,  
25 the laws and rules of the State of New Hampshire, and the orders

1 of the Commissioner. Any violation of such law, regulation, order,  
2 or rule is a violation of RSA Chapter 397-A. Each of the above  
3 named Respondents violated this statute on at least one occasion  
4 as alleged above.

5 4. RSA 397-A:12,V provides that the expense of such examination shall  
6 be chargeable to and paid by the licensee. Each of the above  
7 named Respondents violated this provision on at least one  
8 occasion as alleged above. To date, the above named Respondents  
9 have failed to pay the \$10,180.60 examination invoice.

10 5. RSA 397-A:13,I provides that a licensee shall file its annual  
11 report on or before February 1 each year concerning operations  
12 for the preceding year or license period ending December 31.  
13 Each of the above named Respondents violated this provision on at  
14 least one occasion as alleged above. As calculated by RSA 397-  
15 A:13,IV, the above named Respondents reached the maximum  
16 statutory cap of \$2,500.00 for failing to file the 2006 annual  
17 report.

18 6. RSA 397-A:13,IV provides that any mortgage banker or mortgage  
19 broker failing to file either the annual report or the financial  
20 statement required by RSA Chapter 397-A within the time  
21 prescribed may be required to pay to the Department a penalty of  
22 \$25.00 for each calendar day the annual report or financial  
23 statement is overdue, up to a maximum penalty of \$2,500.00 per  
24 report or statement. Each of the above named Respondents violated  
25 this provision on at least one occasion as alleged above. The

1           above named Respondents filed a financial statement that was 140  
2           days late, and incurred a penalty of \$2,500.00.

3           7. RSA 397-A:13,VI provides that any officer, owner, manager or agent  
4           of any licensee shall reply promptly in writing, or other  
5           designated form, to any written inquiry from the Department.  
6           Respondent Russell violated this provision on at least one  
7           occasion as alleged above.

8           8. RSA 397-A:16,I provides that licensees may charge fees and points  
9           for services rendered in conjunction with the origination,  
10          closing, and servicing of loans; provided, however, that the  
11          licensee issues a written disclosure to the borrower stating the  
12          estimated amount and purpose of all fees and expenses within  
13          three business days of the receipt of a loan application. Each of  
14          the above named Respondents violated this provision on at least  
15          one occasion as alleged above.

16          9. 24 C.F.R. Section 3500.7, Appendix B, Illustration 13, and  
17          Appendix C provide that the mortgage broker's fee must be  
18          itemized in the Good Faith Estimate and on the HUD-1 Settlement  
19          Statement. Each of the above named Respondents violated this  
20          provision on at least one occasion as alleged above (via RSA 397-  
21          A:2,III and RSA 397-A:16,I.

22          10. RSA 397-A:17,I provides in part that the Commissioner may by  
23          order, upon due notice and opportunity for hearing, assess  
24          penalties or deny, suspend, or revoke a license or application if  
25          it is in the public interest and the applicant, respondent, or

1 licensee, any partner, officer, member, or director, any person  
2 occupying a similar status or performing similar functions, or  
3 any person directly or indirectly controlling the applicant,  
4 respondent, or licensee: (a) has violated any provision of RSA  
5 Chapter 397-A or rules thereunder, or (b) has not met the  
6 standards established in RSA Chapter 397-A.

7 11. RSA 397-A:18,I provides that the Department may issue a complaint  
8 setting forth charges whenever the Department is of the opinion  
9 that the licensee or person over whom the Department has  
10 jurisdiction, has violated any provision of RSA Chapter 397-A or  
11 orders thereunder.

12 12. RSA 397-A:21,IV provides that any person who, either knowingly or  
13 negligently, violates any provision of Chapter 397-A, may upon  
14 hearing, and in addition to any other penalty provided for by  
15 law, be subject to an administrative fine not to exceed  
16 \$2,500.00, or both. Each of the acts specified shall constitute  
17 a separate violation, and such administrative action or fine may  
18 be imposed in addition to any criminal penalties or civil  
19 liabilities imposed by New Hampshire Banking laws.

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

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

11 **III. RELIEF REQUESTED**

12 The staff of the Department requests the Commissioner take the following  
13 action:

- 14 1. Find as fact the allegations contained in section I of this Staff  
15 Petition;
- 16 2. Make conclusions of law relative to the allegations contained in  
17 section II of this Staff Petition;
- 18 3. Pursuant to RSA 397-A:17, order each of the above named  
19 Respondents to show cause why their license should not be revoked;
- 20 4. Assess fines and administrative penalties in accordance with RSA  
21 397-A:21, for violations of Chapter 397-A, in the number and  
22 amount equal to the violations set forth in section II of this  
23 Staff Petition; and
- 24 5. Take such other administrative and legal actions as necessary for  
25 enforcement of the New Hampshire Banking Laws, the protection of

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New Hampshire citizens, and to provide other equitable relief.

IV. RIGHT TO AMEND

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

Respectfully submitted by:

                    /s/                      
Maryam Torben Desfosses  
Hearings Examiner

                    07/24/09                      
Date