

1 State of New Hampshire Banking Department

)Case No.: 07-138

2 In re the Matter of:

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3 State of New Hampshire Banking

)

)Order to Show Cause

4 Department,

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5 Petitioner,

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6 and

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7 A & B Mortgage Corporation, and Jim

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)

8 Collins,

)

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9 Respondents

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10)

11 NOTICE OF ORDER

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

14 LEGAL AUTHORITY AND JURISDICTION

15 Pursuant to RSA 397-A:17, the Banking Department of the State of New
16 Hampshire (hereinafter the "Department") has the authority to issue an order
17 to show cause why license revocation and penalties for violations of New
18 Hampshire Banking laws should not be imposed.

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

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

1 provisions of the Chapter.

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

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

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

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

1 upon consideration of the Order to Show Cause, the allegations of which may be
2 deemed to be true.

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

9 **STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF**

10 The Staff Petition dated January 5, 2009 (a copy of which is attached
11 hereto) is incorporated by reference hereto.

12 **ORDER**

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

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

18 It is hereby ORDERED, that:

- 19 1. Respondent A & B Mortgage Corporation ("Respondent A & B
20 Mortgage") shall show cause why penalties in the amount of
21 \$25,000.00 should not be imposed against it;
- 22 2. Respondent Jim Collins ("Respondent Collins") shall show
23 cause why penalties in the amount of \$42,500.00 should not be
24 imposed against him;
- 25 3. The above named Respondents shall show cause why, in addition

1 to the penalties listed in Paragraphs 1 through 2 above, a
2 statutory penalty of \$2,500.00 should not be imposed for
3 failing to file the 2007 annual report;

4 4. The above named Respondents shall show cause why, in addition
5 to the penalties listed in Paragraphs 1 through 3 above,
6 \$500.00 examination fee should not be paid to the Department;

7 5. The above named Respondents shall show cause why, in addition
8 to the penalties listed in Paragraphs 1 through 4 above, the
9 accrued fine of \$24,300.00 for failing to provide examination
10 materials (and still accruing) should not be paid to the
11 Department;

12 6. Respondents shall be jointly and severally liable for the
13 above amounts alleged in Paragraphs 1 through 5 above;

14 7. The above named Respondents shall show cause why, in addition
15 to the penalties listed in Paragraphs 1 through 6 above,
16 Respondent A & B Mortgage's license should not be revoked.

17 It is hereby further ORDERED that:

18 8. Along with the administrative penalties listed for the above
19 named Respondents, the outstanding statutory penalty of
20 \$25,050.00 shall be immediately paid; and
21

22
23 [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
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25

1 9. Failure to request a hearing within 30 days of the date of
2 receipt or valid delivery of this Order shall result in a
3 default judgment being rendered and administrative penalties
4 imposed upon the defaulting Respondent(s).
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6

7 SIGNED,

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9 Dated: 01/05/09

/s/

PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 07-138
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) January 5, 2009
)
 6 and)
)
 7 A & B Mortgage Corporation, and Jim)
)
 8 Collins,)
)
 9 Respondents)
)
 10)

11 I. STATEMENT OF ALLEGATIONS

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

14 Facts Common on All Counts:

- 15 1. Respondent A & B Mortgage Corporation (hereinafter "Respondent
16 A & B Mortgage") was licensed as a Mortgage Banker from at least
17 March 26, 2004 until its license expired on December 31, 2007.
- 18 2. Respondent Jim Collins (hereinafter "Respondent Collins") was
19 the 90% owner and President of Respondent A & B Mortgage, when
20 licensed by the Department.

21 Violation of RSA 397-A:12,VII Failure to Facilitate Exam (1 Count):

22 Violation of RSA 397-A:12,III Examinations: Failure to Provide Requested
23 Files (1 Count):

24 Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested
25 Files (1 Count):

1 Violation of RSA 397-A:13,II Failure to File Financial Statement (2 Counts):

2 Violation of RSA 397-A:13,V Failure to File Additional Documents (1 Count):

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

4 Department Inquiries (2 Counts):

5 Violation of RSA 397-A:10,IV Failure to Update Information on File with

6 Commissioner (2 Counts):

7 3. Paragraphs 1 through 2 are hereby realleged as fully set forth
8 herein.

9 4. The Department attempted to conduct an examination of Respondent
10 A & B Mortgage on October 1, 2007, while Respondent A & B
11 Mortgage was still licensed with the Department.

12 5. On September 5, 2007, the Department mailed the September 4, 2007,
13 notice of examination to Respondent A & B Mortgage via U.S.
14 Certified Mail Return Receipt requested, which Respondents
15 received on September 7, 2007 at a different address than the one
16 to which the notice was sent.

17 6. The above named Respondents failed to inform the Commissioner of
18 the new address prior to the September 4, 2007 notice of
19 examination sent by the Department.

20 7. The materials requested in the notice of examination were due on
21 September 28, 2007, which is 21 days after the September 7, 2007
22 delivery of the notice of examination.

23 8. The September 4, 2007 Notice of Examination required the
24 Respondent to submit the following documents:

25 a. A list of all New Hampshire files of loans that the licensee

1 originated, funded, closed, denied, or that were withdrawn,
2 canceled or serviced by the licensee during the period 18
3 months prior to the date of this notice;

4 b. A copy of the most recent year-end financial statement, SEC 10-
5 K and 10-Q if applicable, and most recent Federal Income Tax
6 return;

7 c. A copy of the most recent quarterly financial statement;

8 d. Work papers and copies of source documents to support the
9 figures submitted on the company's most recently filed New
10 Hampshire Annual Report; the work papers shall demonstrate the
11 actual calculation of the numbers for verification by the
12 department; and

13 e. A list on Schedules A and B of the license application form of
14 the current direct owners, indirect owners and all principals
15 of the company.

16 9. With no response from any of the above named Respondents, a second
17 notice dated October 25, 2007 was submitted to Respondent A & B
18 Mortgage via U.S. Certified Mail Return Receipt and received by
19 A & B Mortgage at the new address on October 26, 2007.

20 10. A third attempt was made by facsimile on October 25, 2007. The
21 facsimile number came back as "busy".

22 11. The above named Respondents failed to update the Commissioner that
23 the facsimile number for Respondent A & B Mortgage was
24 disconnected.

25 12. To date, the requested materials have not been received and

1 Respondents have not responded to these inquiries and requests.

2 13. To date, fines have accrued for failing to provide the requested
3 files. The current fine to date is \$24,300.00 (\$50/day x 486
4 days) and still accruing.

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

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

7 **Department Inquiries (3 Counts):**

8 14. Paragraphs 1 through 12 are hereby realleged as fully set forth
9 herein.

10 15. The Department attempted to conduct an examination of Respondent
11 A & B Mortgage on October 1, 2007, while Respondent A & B
12 Mortgage was still licensed with the Department.

13 16. Respondent A & B Mortgage failed to facilitate the October 1, 2007
14 examination by failing to respond to the September 4, 2007
15 examination and by failing to provide requested examination
16 materials.

17 17. On November 20, 2007 the Department mailed the report of
18 examination and invoice for \$500.00 to Respondent A & B Mortgage,
19 via U.S. Certified Mail Return Receipt requested, which
20 Respondents received on November 24, 2007.

21 18. The above named Respondents failed to respond to the November 20,
22 2007 correspondence from the Department.

23 19. The Department, via U.S. mail, mailed a second notice on January
24 3, 2008 and a third notice on February 5, 2008.

25 20. The above named Respondents did not respond to any of the three

1 notices for payment of the \$500.00 invoice.

2 21. To date, the above named Respondents still owe the \$500.00
3 examination fee for a one day examination.

4 Violation of RSA 397-A:10-a,I(a) Failure to Properly Surrender License (1
5 Count):

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

7 Violation of RSA 397-A:13,VI Failure of Officer and Owner to Respond to
8 Department Inquiries (2 Counts):

9 22. Paragraphs 1 through 21 are hereby realleged as fully set forth
10 herein.

11 23. The 2007 Annual Report was due on or before February 1, 2008.

12 24. On January 18, 2008, the Department sent a certified letter
13 advising that Respondent A & B Mortgage's license had expired on
14 December 31, 2007 and that surrender/expiration form documents
15 needed to be submitted to the Department.

16 25. On February 5, 2008, the Department mailed via U.S. Certified Mail
17 Return Receipt requested a reminder letter that the annual report
18 was due on February 1, 2008. The letter was returned to the
19 Department as "unclaimed and unable to forward".

20 26. On February 19, 2008, the Department sent yet another reminder
21 letter via certified mail, instructing Respondent A & B Mortgage
22 to complete and submit surrender/expiration forms, a publication
23 notice and the annual report. As of this date, the letter was
24 returned as "moved" and "unable to forward".

25 27. To date, the accrued penalty for failure to file an annual report

1 has reached the maximum cap of \$2,500.00.

2 **II. ISSUES OF LAW**

3 The staff of the Department, alleges the following issues of law:

- 4 1. The Department realleges the above stated facts in Paragraphs 1
5 through 27 as fully set forth herein.
- 6 2. The Department has jurisdiction over the licensing and regulation
7 of persons engaged in mortgage banker or broker activities
8 pursuant to NH RSA 397-A:2 and RSA 397-A:3.
- 9 3. RSA 397-A:10,IV provides that persons licensed under RSA Chapter
10 397-A are under a continuing obligation to update information on
11 file with the Commissioner. Each of the above named Respondents
12 failed to update the Commissioner on at least two occasions as
13 alleged above.
- 14 4. RSA 397-A:10-a,I(a) provides that a licensee who ceases to engage
15 in the business of a mortgage banker or mortgage broker at any
16 time during a license year for any cause shall surrender such
17 license in person or by registered or certified mail to the
18 Commissioner within 15 calendar days of such cessation, and shall
19 cause to be published in a newspaper of general circulation in the
20 licensee's market area a notice to such effect. Each of the above
21 named Respondents violated this statute on at least one occasion
22 as alleged above.
- 23 5. RSA 397-A:11,II provides that requested files and business records
24 must be received by the Department within 21 calendar days of
25 request. The licensee will be subject to a \$50.00 a day fine

1 every day after the 21-day period the records are not produced.
2 Respondents currently owe \$24,300.00 to date and the fine is
3 still accruing.

4 6. RSA 397-A:12,III requires licensees to comply with examination
5 requests with or without prior notice. All books, papers, files,
6 related material, and records of assets shall be subject to the
7 Department's examination. Each of the above named Respondents
8 violated this statute on at least one occasion as alleged above.

9 7. RSA 397-A:12,V provides that the expense of such examination shall
10 be chargeable to and paid by the licensee. Each of the above
11 named Respondents violated this provision on at least one
12 occasion as alleged above. To date, the above named Respondents
13 have failed to pay the \$500.00 examination invoice.

14 8. RSA 397-A:12,VII provides that every person being examined, and
15 all of the officers, directors, employees, agents, and
16 representatives of such person shall make freely available to the
17 Commissioner or his or her examiners, the accounts, records,
18 documents, files, information, assets, and matters in their
19 possession or control relating to the subject of the examination
20 and shall facilitate the examination. Each of the above named
21 Respondents violated this statute on at least one occasion as
22 alleged above.

23 9. RSA 397-A:13,I provides that a licensee shall file its annual
24 report on or before February 1 each year concerning operations
25 for the preceding year or license period ending December 31.

1 Each of the above named Respondents violated this provision on at
2 least one occasion as alleged above. RSA 397-A:13,II provides
3 that each licensee shall file a financial statement within 90
4 days from the date of its fiscal year end. Each of the above
5 named Respondents violated this statute on at least two occasions
6 as alleged above.

7 10. RSA 397-A:13,IV provides that any mortgage banker or mortgage
8 broker failing to file either the annual report or the financial
9 statement required by RSA Chapter 397-A within the time
10 prescribed may be required to pay to the Department a penalty of
11 \$25.00 for each calendar day the annual report or financial
12 statement is overdue, up to a maximum penalty of \$2,500.00 per
13 report or statement. To date, the statutory penalty is now
14 \$2,500.00.

15 11. RSA 397-A:13,V provides that in addition to the annual report and
16 financial statement, the Department may require such additional
17 special or regular reports as it may deem necessary under RSA
18 Chapter 397-A. Each of the above named Respondents violated this
19 provision on at least one occasion as alleged above.

20 12. RSA 397-A:13,VI provides that any officer, owner, manager or
21 agent of any licensee shall reply promptly in writing, or other
22 designated form, to any written inquiry from the Department.
23 Respondent Collins violated this provision on at least seven
24 occasions as alleged above.

25 13. RSA 397-A:18,I provides that the Department may issue a complaint

1 setting forth charges whenever the Department is of the opinion
2 that the licensee or person over whom the Department has
3 jurisdiction, has violated any provision of RSA 397-A or orders
4 thereunder.

5 14. RSA 397-A:21,IV provides that any person who, either knowingly or
6 negligently, violates any provision of Chapter 397-A, may upon
7 hearing, and in addition to any other penalty provided for by
8 law, be subject to an administrative fine not to exceed
9 \$2,500.00, or both. Each of the acts specified shall constitute
10 a separate violation, and such administrative action or fine may
11 be imposed in addition to any criminal penalties or civil
12 liabilities imposed by New Hampshire Banking laws.

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

