

1 State of New Hampshire Banking Department

2

3 In re the Matter of:) Case No.: 07-191
)
 4 State of New Hampshire Banking)
) Cease and Desist Order
 5 Department,)
)
 6 and)
)
 7 MortgageAll Express LLC and Robert)
)
 8 McAvoy,)
)
 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
21 cease and desist from violations of RSA 397-A.

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

25 Pursuant to RSA 383:10-d, the Commissioner shall have exclusive
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. Nothing in this cause will impair a
5 consumer's right of recovery under that statute.

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

7 The above named respondent has the right to request a hearing on
8 this Cease and Desist Order, as well as the right to be represented by
9 counsel. If the person to whom a cease and desist order is issued fails to
10 request a hearing within 30 calendar days of receipt of such order, then such
11 person shall be deemed in default, and the order shall, on the thirty-first
12 day, become permanent and shall remain in full force and effect until and
13 unless later modified or vacated by the commissioner, for good cause shown.
14 Any such request for a hearing shall be in writing, signed by the respondent
15 or by the duly authorized agent of the above named respondent, and shall be
16 delivered either by hand or certified mail, return receipt request, to the
17 Banking Department, State of New Hampshire, 64B Old Suncook Road, Concord, NH
18 03301.

19 A hearing shall be held not later than 10 days after the request for such
20 hearing is received by the commissioner. Within 20 days of the date of any such
21 hearing the commissioner shall issue a further order either vacating the cease
22 and desist order or making it permanent as the facts require. All hearings
23 shall comply with 541-A. If the person to whom a cease and desist order is
24 issued fails to appear at the requested hearing after being duly notified of
25 the date and time, such person shall be deemed in default, and the proceeding
may be determined against him or her upon consideration of the cease and desist
order, the allegations of which may be deemed to be true.

1 STATEMENT OF ALLEGATIONS

2 The allegations contained in the Staff Petition for Relief dated July
3 18, 2007 (a copy of which is attached hereto) are incorporated by reference
4 hereto.

5 ORDER

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

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

11 It is hereby ORDERED, that:

- 12 1. The Respondents shall immediately cease engaging in the
13 activity of a mortgage banker / broker on residential property
14 in New Hampshire; and
- 15 2. The Respondents shall repay to consumers all commissions
16 collected as a result of their unlicensed activity; and
- 17 3. Respondent MortgageAll shall show cause why it should not be
18 ordered to pay \$5,000.00 for violations of the Chapter; and
- 19 4. Respondent McAvoy shall show cause why he should not be
20 ordered to pay \$5,000.00 for violations of the Chapter; and
- 21 5. Failure to request a hearing within 30 days of the date of
22 receipt of this Order shall result in a default judgment being
23 rendered, administrative penalties being imposed upon the
24 defaulting Respondents, refunds of all commissions being
25 ordered and such further action as is necessary to determine
the proper amount of restitution.

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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 accepted mortgage originations from an
 17 entity they knew as MortgageAll Express LLC (hereinafter "Respondent
 18 MortgageAll").
- 19 2. Respondent MortgageAll's primary business location is Salem, NH.
- 20 3. Respondent Robert McAvoy (hereinafter "Respondent McAvoy") is the
 21 Manager of Respondent MortgageAll.
- 22 4. The EIC noted that Respondent MortgageAll originated at least 2 loans,
 23 then placed these loans with the licensed entity in expectation of
 24 compensation.
- 25 5. Respondent MortgageAll was not licensed as a mortgage broker nor was it
 entitled to any compensation. Respondent MortgageAll engaged in
 activity that required it to obtain a license.

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

- 3 1. The Banking Department ("Department"), has jurisdiction over the
4 licensing and regulation of persons engaged in first mortgage banker /
5 broker activities pursuant to NH RSA 397-A:3.
- 6 2. Pursuant to the New Hampshire Banking laws, RSA 397-A:3 requires any
7 person not exempt under RSA 397-A:4 that, in its own name or on behalf
8 of other persons, engages in the business of making or brokering first
9 mortgage loans secured by real property located in this state shall be
10 required to obtain a license from the banking department.
- 11 3. Pursuant to NH RSA 397-A:18, the Department has the power to issue and
12 to serve an order requiring persons to cease and desist from violations
13 of the chapter whenever it has reasonable cause to believe that any
14 person has engaged in any act or practice constituting a violation of
15 the banking laws, or any rule or order thereunder. Respondent has
16 violated RSA 397-A:3 by conducting unlicensed mortgage banker / broker
17 activities in New Hampshire.
- 18 4. Pursuant to RSA 397-A:1 originators may only work for one mortgage
19 broker at a time.
- 20 5. Pursuant to RSA 397-A:16 only licensed mortgage brokers and bankers are
21 entitled to retain commissions for their services.
- 22 6. Pursuant to RSA 397-A:21 any person who, either knowingly or
23 negligently, violates any provision of this chapter may, upon notice and
24 opportunity for hearing, and in addition to any such other penalty
25 provided for by law, be subject to suspension, revocation or denial of
any registration or license, including forfeiture of any application fee,
or an administrative fine not to exceed \$2,500, or both. Each of the
acts specified shall constitute a separate violation, and each such

1 administrative action or fine may be imposed in addition to any criminal
2 or civil penalties imposed.

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

15 8. Pursuant to RSA 383:10-d, the commissioner shall have exclusive
16 authority and jurisdiction to investigate conduct that is or may be an
17 unfair or deceptive act or practice under RSA 358-A and exempt under RSA
18 358-A:3, I or that may violate any of the provisions of Titles XXXV and
19 XXXVI and administrative rules adopted thereunder. The commissioner may
20 hold hearings relative to such conduct and may order restitution for a
21 person or persons adversely affected by such conduct.

22 **RELIEF REQUESTED**

23 The staff of the Banking Department requests the Commissioner take the
24 following action:

- 25 1. Find as fact the allegations contained in section I of the Statement of
Allegations of this petition.
2. Make conclusions of law relative to the allegations contained in section
II of the Statement of Allegations of this petition.

