

1 State of New Hampshire Banking Department

2	In re the Matter of:	) Case No.: 07-215
		)
3	State of New Hampshire Banking	)
4	Department,	) Order to Show Cause
		)
5	Petitioner,	)
		)
6	and	)
		)
7	Royal Capital Funding LLC, and John J.	)
		)
8	McMahon,	)
		)
9	Respondents	)

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10 NOTICE OF ORDER

11 This Order commences an adjudicative proceeding under the provisions  
12 of RSA 397-A and RSA 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, 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 358-A and  
7 exempt under RSA 358-A:3,I or that may violate any of the provisions of  
8 Titles XXXV and XXXVI and administrative rules adopted thereunder. The  
9 Commissioner may hold hearings relative to such conduct and may order  
10 restitution for a person or persons adversely affected by such conduct.

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

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

25 If any of the above named Respondents fails to request a hearing within

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

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

8 The Staff Petition dated June 5, 2009 (a copy of which is attached  
9 hereto) is incorporated by reference hereto.

10 **ORDER**

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

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

16 It is hereby ORDERED, that:

- 17 1. Respondent Royal Capital Funding LLC ("Respondent Royal  
18 Capital") shall show cause why penalties in the amount of  
19 \$10,000.00 should not be imposed against it;
- 20 2. Respondent John J. McMahon ("Respondent McMahon") shall show  
21 cause why penalties in the amount of \$17,500.00 should not be  
22 imposed against him;
- 23 3. The above named Respondents shall show cause why, in addition  
24 to the penalties listed in Paragraphs 1 through 2 above, the  
25 \$500.00 examination fee should not be paid to the Department;



1 State of New Hampshire Banking Department

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 4 Department, ) Staff Petition  
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 5 Petitioner, ) June 5, 2009  
 )  
 6 and )  
 )  
 7 Royal Capital Funding LLC, and John J. )  
 )  
 8 McMahan, )  
 )  
 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 Royal Capital Funding LLC (hereinafter "Respondent  
15 Royal Capital") was licensed as a Mortgage Broker from at least  
16 January 5, 2006 until its license expired on December 31, 2006.
- 17 2. Respondent John J. McMahan (hereinafter "Respondent McMahan")  
18 was the President of Respondent Royal Capital, when licensed by  
19 the Department.

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

21 Violation of RSA 397-A:12,III Examinations: Failure to Provide Requested

22 Files (1 Count):

23 Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested

24 Files (1 Count):

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

1 Department Inquiries (2 Counts):

- 2 3. Paragraphs 1 through 2 are hereby realleged as fully set forth  
3 herein.
- 4 4. The Department conducted an examination of Respondent Royal  
5 Capital on February 5, 2007, for activities that occurred while  
6 Respondent Royal Capital was licensed with the Department.
- 7 5. On January 2, 2007, the Department sent the notice of examination  
8 to Respondent Royal Capital via U.S. Certified Mail Return  
9 Receipt requested, which Respondents received on January 5, 2007.
- 10 6. The materials requested in the notice of examination were due on  
11 January 26, 2007, which is 21 days after the January 5, 2007  
12 delivery of the notice of examination.
- 13 7. With no response from the above named Respondents, the Department  
14 submitted a second notice via U.S. Certified Mail Return Receipt  
15 requested on March 2, 2007, which Respondents received on March  
16 7, 2007.
- 17 8. With no response from the above named Respondents, the Department  
18 submitted a third notice via U.S. Certified Mail Return Receipt  
19 requested on July 20, 2007, which the post office returned to the  
20 Department on August 20, 2007.
- 21 9. To date, the Department has not received an acknowledgment nor the  
22 examination materials.
- 23 10. To date, fines have accrued for failing to provide the requested  
24 files. The current fine to date is \$34,000.00 (\$50.00 a day x  
25 680 days) and still accruing.

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

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

3 Department Inquiries (1 Count):

4 11. Paragraphs 1 through 10 are hereby realleged as fully set forth  
5 herein.

6 12. The Department conducted an examination of Respondent Royal  
7 Capital on February 5, 2007, for activities that occurred while  
8 Respondent Royal Capital was still licensed with the Department.

9 13. On February 5, 2008, the Department mailed the report of  
10 examination and invoice for \$500.00 to Respondent Royal Capital,  
11 via U.S. Certified Mail Return Receipt requested, which the post  
12 office returned to the Department on February 19, 2008 as "moved,  
13 left no address".

14 14. The Department, via U.S. mail, mailed a second notice on March 14,  
15 2008 and a third notice on April 16, 2008.

16 15. On May 21, 2008, the Department mailed a letter to a different  
17 address for Respondent Royal Capital, via U.S. Certified Mail  
18 Return Receipt requested, which stated that the failure to pay  
19 the exam fee has been referred as a recommendation for an  
20 enforcement action. Respondent Royal Capital received this  
21 letter on May 24, 2008.

22 16. The above named Respondents did not respond to any of the notices  
23 for payment of the \$500.00 invoice.

24 17. To date, the above named Respondents still owe the \$500.00  
25 examination fee for the one day examination.





1           6. RSA 397-A:12,VII provides that every person being examined, and  
2           all of the officers, directors, employees, agents, and  
3           representatives of such person shall make freely available to the  
4           Commissioner or his or her examiners, the accounts, records,  
5           documents, files, information, assets, and matters in their  
6           possession or control relating to the subject of the examination  
7           and shall facilitate the examination. Each of the above named  
8           Respondents violated this statute on at least one occasion as  
9           alleged above.

10          7. RSA 397-A:13,VI provides that any officer, owner, manager or agent  
11          of any licensee shall reply promptly in writing, or other  
12          designated form, to any written inquiry from the Department.  
13          Respondent McMahon violated this provision on at least three  
14          occasions as alleged above.

15          8. RSA 397-A:17,I provides in part that the Commissioner may by  
16          order, upon due notice and opportunity for hearing, assess  
17          penalties or deny, suspend, or revoke a license or application if  
18          it is in the public interest and the applicant, respondent, or  
19          licensee, any partner, officer, member, or director, any person  
20          occupying a similar status or performing similar functions, or  
21          any person directly or indirectly controlling the applicant,  
22          respondent, or licensee: (a) has violated any provision of RSA  
23          Chapter 397-A or rules thereunder, or (b) has not met the  
24          standards established in RSA Chapter 397-A.

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

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

14 11. RSA 397-A:21,V provides that every person who directly or  
15 indirectly controls a person liable under this section, every  
16 partner, principal executive officer or director of such person,  
17 every person occupying a similar status or performing a similar  
18 function, every employee of such person who materially aids in the  
19 act constituting the violation, and every licensee or person acting  
20 as a common law agent who materially aids in the acts constituting  
21 the violation, either knowingly or negligently, may, upon notice  
22 and opportunity for hearing, and in addition to any other penalty  
23 provided for by law, be subject to suspension, revocation, or  
24 denial of any registration or license, including the forfeiture of  
25 any application fee, or the imposition of an administrative fine

1 not to exceed \$2,500, or both. Each of the acts specified shall  
2 constitute a separate violation, and such administrative action or  
3 fine may be imposed in addition to any criminal or civil penalties  
4 imposed.

5 **III. RELIEF REQUESTED**

6 The staff of the Department requests the Commissioner take the following  
7 action:

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

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22  
23 [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]  
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