

1 State of New Hampshire Banking Department

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3 In re the Matter of: ) Case No.: 07-216  
 )  
 4 State of New Hampshire Banking )  
 )  
 5 Department, )  
 ) Adjudicative Decision:  
 6 Complainant, ) Order to Pay Fines and for Revocation  
 ) of License as Result of Violation of  
 7 and ) RSA 397-A:14-b  
 )  
 8 American Home Mortgage Corp, Michael )  
 )  
 9 J. Strauss, Stephen A. Hozie, Alan B. )  
 )  
 10 Horn, and American Home Mortgage )  
 )  
 11 Holdings, Inc., )  
 )  
 12 Respondent

13  
14 PROCEDURAL CASE HISTORY

15 The Commissioner issued an Order to Show Cause and Cease and Desist  
 16 Order (along with a Staff Petition) in this case on August 2, 2007. The  
 17 Petitioner alleged violations of RSA 397-A:14-b (entitled "Compliance with  
 18 Requirements for Funding of Loans at Real Estate Closings") and New Hampshire  
 19 Administrative Rule BAN 2407.01 (entitled "Notice of Significant Events").  
 20 The Presiding Officer held an adjudicative hearing on these two issues on  
 21 September 29, 2007 at the New Hampshire Banking Department.

22 Subsequent to the hearing, the Commissioner requested briefs related to  
 23 the issues of an omission of RSA 397-A:10, the statute which is implemented  
 24 by New Hampshire Administrative Rule BAN 2407.01. Both parties submitted  
 25 these briefs.

1 Subsequent to the requested briefs, the Presiding Officer received  
2 numerous motions and requests, ranging from motions to dismiss to motions to  
3 stay the proceedings. The Presiding Officer has reviewed the file in its  
4 entirety (including the transcript, the briefs and evidence.)

5 **STATUTORY AUTHORITY**

6 The Commissioner has the power, as granted by RSA 397-A:21 (entitled  
7 "Penalty"), to suspend, revoke or deny any license and also to impose  
8 administrative penalties of up to \$2,500 for each violation of New Hampshire  
9 banking laws. Pursuant to RSA 397-A:21, V, this includes liability by every  
10 person who directly or indirectly controls a person liable under RSA Section  
11 397-A:21, every partner, principal executive officer or director of such  
12 person...

13 RSA 397-A:14-b states:

14 A licensee shall comply with the provisions of RSA 477:52  
15 relative to the requirements for the funding of loans at  
16 real estate closings. At a minimum, a closing requires the  
17 delivery of a deed if the transaction is a conveyance, the  
18 signing of a note, and the disbursement of the mortgage  
19 loan funds.

20 RSA 397-A:17 states:

21 The Commissioner may be order, revoke a license...if it is in  
22 the public interest and...the licensee: (a) has violated any  
23 provision of this chapter; or...(j) is not qualified on the  
24 bases of such factors as...financial integrity.

25 RSA 397-A:18, II allows the Commissioner to make permanent the  
Cease and Desist order

1 FACTUAL FINDINGS

2 **A. Identification and Activity of Respondents**

- 3 1. American Home Mortgage Corp (hereinafter "Respondent AHMC") was at the  
4 time of the August 2, 2007 Staff Petition licensed by the New Hampshire  
5 Banking Department (hereinafter "Department") as a mortgage licensee.  
6 See Respondents' Ex. B (i.e., Petitioner's Ex. 1) and Tr. At 29.
- 7 2. Respondent AHMC was also doing business as American Broker Conduit  
8 (hereinafter "ABC"), which funded wholesale loans. See Respondents'  
9 Ex. C2 and Tr. at 139-141.
- 10 3. Respondent Michael J. Strauss (hereinafter "Respondent Strauss") was at  
11 the time of the August 2, 2007 Staff Petition the Chairman, Chief  
12 Executive Officer and President of American Home Mortgage Investment  
13 Corp, which is a Maryland Corporation and parent company of Respondent  
14 American Home Mortgage Holdings, Inc, a Delaware Corporation  
15 (hereinafter "Respondent AHMH"). See Respondents' Ex. A and Tr. at 145.
- 16 4. Respondent Stephen A. Hozie (hereinafter "Respondent Hozie"), was the  
17 time of the August 2, 2007 Staff Petition the Chief Financial Officer  
18 of American Home Mortgage Investment Corp. and its subsidiary  
19 companies. See Tr. at 141.
- 20 5. Respondent Alan B. Horn (hereinafter "Respondent Horn") was at the time  
21 of the August 2, 2007 Staff Petition the Executive Vice President,  
22 General Counsel and Corporate Secretary of Respondent AHMC. See  
23 Respondents' Ex. B (i.e. Petitioner's Ex. 1), Respondents' List of  
24 Witnesses and Exhibits dated September 21, 2007, and Tr. at 112-113.
- 25 6. Respondent AHMC is wholly owned subsidiary of Respondent AHMH. See  
Respondent's Ex. A.

1 7. Respondents Horn, Hozie and Strauss were at the time of the August 2,  
2 2007 Staff Petition corporate officers of Respondent AHMC and  
3 Respondent AHMH. See Tr. at 111-113 and 116-117.

4 8. The law firm of Weiner, Brodsky, Sidman & Kider, at Respondent Horn's  
5 directive, submitted the July 31, 2007 to regulators informing them of  
6 the Respondent AHMC's liquidity and funding problems. See Respondent's  
7 Ex. B and Tr. at 132.

8 9. Respondents Horn, Hozie and Strauss also actively participated in  
9 efforts to obtain new warehouse lines, sell parts of the business and  
10 undertake efforts to obtain funding or the ability for Respondent AHMC  
11 to continue funding. See Tr. at 129-131 and 141.

12 **B. Failure to Fund Loans: Timeline and Analysis**

13 1. Respondent AHMC temporarily ceased funding loans due to an inability  
14 draw upon its warehouse lines. See Respondents' Ex. B (also  
15 Petitioner's Ex. 1) and Tr. at 141-142 and Tr. at 156.

16 2. There were inconsistencies with the pipeline report, which is the list  
17 of loans in the licensee's account for funding. See Tr. at 33-34.

18 3. Four borrowers were affected by Respondent AHMC's (and therefore  
19 Respondent AHMH's) failure to fund loans. See Tr. at 35.

20 4. However, only two (2) borrowers (Kristen Jernigan and Ashley  
21 Noseworthy/Frederick Bassett) actually went through a closing: ABC  
22 closed their loans but did not have their loans funded. See  
23 Petitioner's Ex. 4 and 5 and Tr. at 74 and 86-87.

24 5. The Bruno Bernard loan was scheduled to close with ABC at 4pm on July  
25 31, 2007 but did not close with ABC because ABC contacted Title

1 Mortgage Solution at 1:30 pm to inform them of the freeze on funding.

2 See Petitioner's Ex. 2 and Tr. at 74 and 86-87.

3 6. The Katarina Prieberova/Earnest Leonard III loan was scheduled to close  
4 with ABC at noon on July 31, 2007 but did not actually close with ABC  
5 because ABC contacted The Loan Arranger LLC the morning of July 31<sup>st</sup> to  
6 inform them that nothing from the previous day had funded and to give  
7 them the option to continue with closing this loan. See Petitioner's  
8 Ex. 3 and Tr. at 74 and 86-87.

9 7. The Kristen Jernigan loan did close on July 31, 2007 with ABC but was  
10 not funded. See Petitioner's Ex. 4 and Tr. at 35 and 46-57.

11 8. The Kristen Jernigan loan did not close with another lender until on or  
12 about August 8, 2007 with GN Mortgage, a subsidiary of Guaranty Bank.  
13 See Petitioner's Ex. 4 and Tr. at 35 and 46-57.

14 9. The Ashley Noseworthy/Frederick Bassett loan did close on July 24, 2007  
15 at the Law Office of Gould and Burke (the settlement agent) with a  
16 three day right of rescission expiring at midnight on July 27, 2007.  
17 See Petitioner's Ex. 5 and Tr. 35 and 74-76.

18 10. The Noseworthy/Bassett loan was set to fund on July 30, 2007. See  
19 Petitioner's Ex. 5 and Tr. 74-76.

20 11. Sarah Lasata, a paralegal with Gould and Burke, recorded the mortgage  
21 documents with the Merrimack County Registry of Deeds on July 30, 2007.  
22 See Petitioner's Ex. 5.

23 12. Communications ensued between Sarah Lasata, ABC and Noseworthy/Bassett  
24 because ABC informed Ms. Lasata it was have trouble with its wire  
25 transfers and the loan had not yet funded. See Petitioner's Ex. 5.

1 13. On July 31, 2007, the closing agent's title insurer sent Gould & Burke  
2 a notice that ABC was no longer funding loans and was facing  
3 liquidation of assets. See Petitioner's Ex. 5.

4 14. On or about July 31, 2007, Nancy E. O'Connor, Mortgage Underwriter for  
5 Financial Resources & Assistance of the Lakes Region, Inc. received  
6 notice from ABC that would not be funding loans due to a loss of  
7 confidence by its investors. See Petitioner's Ex. 5.

8 15. Gould & Burke had to discharge the previously recorded mortgage in  
9 order to remove the encumbrance from an unfunded loan. See Petitioner's  
10 Ex. 5.

11 16. The Noseworthy/Bassett loan did not close with another lender until  
12 August 24, 2007 and did not fund until August 29, 2007 with Mortgage  
13 IT. See Petitioner's Ex. 5.

14 17. Respondent AHMC (again whose dba is ABC) did not file bankruptcy until  
15 August 6, 2007. See Defendant's Ex. A and Tr. at 123-124.

16 18. Templated pipeline reports dated August 8<sup>th</sup> and 9<sup>th</sup> reveal Respondent  
17 AHMC failed to fund loans on or after August 8<sup>th</sup>, 2007, as well. See  
18 Respondents' Ex. C2 and C1, respectively, and Tr. at 139-141.

19 19. Respondent AHMC, directly or through its dba of ABC, submitted letters  
20 similar to the templated ones in evidence to its customer, both in the  
21 wholesale and retail lines. See Respondents' Ex. C1 and C2 Tr. at 139-  
22 141.

23 20. These templated letters explained that Respondents would no longer be  
24 able to process or fund the customer's loan. See Respondents' Ex. C1  
25 and C2 and Tr. at 139-141.

1 21. The bankruptcy hearing date was schedule for October 17, 2007. See  
2 Defendant's Ex. D.

3 CONCLUSIONS OF LAW

4 1. Respondents collectively have violated RSA 397-A:14-b by failing to  
5 fund the Jernigan loan after the closing.

6 2. Respondents collectively have violated RSA 397-A:14-b by failing to  
7 fund the Noseworthy/Bassett loan after the closing.

8 3. The active participation of all natural person Respondents (Hozie, Horn  
9 and Strauss) makes each of them liable for the failure of Respondents  
10 AHMH, AHMC, and ABC (a dba for Respondent AHMC) to fund the Jernigan  
11 loan.

12 4. The active participation of all natural person Respondents (Hozie, Horn  
13 and Strauss) makes each of them liable for the failure of Respondents  
14 AHMH, AHMC, and ABC (a dba for Respondent AHMC) to fund the  
15 Noseworthy/Bassett loan.

16 5. Respondent AHMH, as the sole shareholder and parent of Respondent AHMC,  
17 is liable for the failure to fund the Jernigan loan.

18 6. Respondent AHMH, as the sole shareholder and parent of Respondent AHMC,  
19 is liable for the failure to fund the Noseworthy/Bassett loan.

20 7. Respondent AHMC, whose dba was ABC, is liable for the failure to fund  
21 the Noseworthy/Bassett loan.

22 8. Respondent AHMC, whose dba was ABC, is liable for the failure to fund  
23 the Jernigan loan.

24 9. The bankruptcy filed by Respondents and the inability to fund loans  
25 indicates that Respondents lacked the financial integrity to continue  
operating its mortgage lending operations.

1 ORDER

2 Having considered the evidence and motions submitted by the parties and  
3 the Presiding Officer, it is this 5th day of March, 2008 ORDERED:

4 1. I find in favor of the Department on the following proposed findings of  
5 fact submitted by Hearing Counsel James Shepard: 7 through 10 and 15  
6 through 18.

7 2. I find against the Department on the following proposed findings of  
8 fact submitted by Hearing Counsel James Shepard: 11 through 14.

9 3. I find the following proposed findings of fact submitted by Hearing  
10 Counsel James Shepard to be moot: 1 through 6.

11 4. I find in favor of the Respondents collectively on the following  
12 proposed findings of fact submitted by Respondents' counsel: 4-6, 10,  
13 11, 13, 16, 18, 19-24 and 26-32.

14 5. I find against Respondents collectively on the following proposed  
15 findings of fact submitted by Respondents' counsel since these are  
16 inaccurate reflections of the record: 8, 9, 12, 14, 15, 17, 25

17 6. I find the following proposed findings of fact submitted by  
18 Respondents' counsel to be moot in that they do not address the  
19 substantive facts of the case: 1-3.

20 7. I find the following proposed findings of fact submitted by  
21 Respondents' counsel to be moot since the recommended decision(s)  
22 herein shall be solely based on violations of RSA 397-A:14-b and  
23 therefore, any proposed findings of fact regarding violations of BAN  
24 2407.01 are moot: 7, 9

25 8. I hereby find each above-named Respondent, jointly and severally liable  
for the violation of RSA 397-A:14-b in the Kristen Jernigan loan.



1 9. I hereby find each above-named Respondent, jointly and severally liable  
2 for the violation of RSA 397-A:14-b in the Ashley Noseworthy/Frederick  
3 Bassett loan.

4 10. I hereby find that Respondent American Home Mortgage Corp. shall  
5 be assessed a fine of \$2,500 for each violation of RSA 397-A:14-b, for  
6 a total of \$5,000.

7 11. I hereby find that Respondent American Home Holdings, Inc. shall  
8 be assessed a fine of \$2,500 for each violation of RSA 397-A:14-b, for  
9 a total of \$5,000.

10 12. I hereby find that Respondent Michael J. Strauss shall be  
11 assessed a fine of \$2,500 for each violation of RSA 397-A:14-b, for a  
12 total of \$5,000.

13 13. I hereby find that Respondent Stephen A. Hozie shall be assessed  
14 a fine of \$2,500 for each violation of RSA 397-A:14-b, for a total of  
15 \$5,000.

16 14. I hereby find that Respondent Alan B. Horn shall be assessed a  
17 fine of \$2,500 for each violation of RSA 397-A:14-b, for a total of  
18 \$5,000.

19 15. I hereby find that for the approximate eight day delay in finding  
20 replacement funding for the Kristen Jernigan loan, Ms. Jernigan shall  
21 be awarded \$2,500.

22 16. I hereby find that for the approximate one month delay in  
23 finding replacement funding for the Ashley Noseworthy/Frederick Bassett  
24 loan, Ms. Noseworthy and Mr. Bassett shall each be awarded \$6,000.

25 17. Therefore, each Respondent is jointly and severally liable for a  
total fine of \$39,500 to be paid within sixty days from the date of

1 this Order, unless an agreement is reached between the New Hampshire  
2 Banking Department and Respondents for a later time.

3 18. I hereby order that Respondent and Licensee American Home  
4 Mortgage Corp.'s license is hereby revoked.

5 19. I hereby order that the Petitioner's cease and desist order shall  
6 be made permanent.

7 20. I hereby order that the remaining allegation of a BAN 2407.01  
8 violation is hereby moot due to the ordered revocation and permanent  
9 cease and desist order.

10  
11 /S/

12 \_\_\_\_\_  
Maryam Torben-Desfosses  
13 Presiding Officer

14  
15 This 5th day of March 2008.

16  
17 /S/

18 \_\_\_\_\_  
Peter Hildreth,  
19 Bank Commissioner

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