

1 State of New Hampshire Banking Department

2

3 In re the Matter of:) Case No.: 07-216
)
 4 State of New Hampshire Banking) Order to Show Cause
)
 5 Department,) And
)
 6 and) Cease and Desist Order
)
 7 American Home Mortgage Corp, Michael)
)
 8 J. Strauss, Stephen A. Hozie, and)
)
 9 Alan B. Horn,)
)
 10 Respondents)
)

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12 NOTICE OF ORDER

13 This Order commences an adjudicative proceeding under the provisions of
14 RSA 397-A, RSA 383:10-d RSA 541-A:31 and BAN 200 et seq.

15 LEGAL AUTHORITY AND JURISDICTION

16 Pursuant to RSA 397-A:18 II, the Banking Department of the State of New
17 Hampshire (hereinafter the "Department") has the authority to issue and cause
18 to be served an order requiring any person engaged in any act or practice
19 constituting a violation of RSA 397-A or any rule or order thereunder, to
20 cease and desist from violations of RSA 397-A.

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

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

Pursuant to RSA 383:10-d, the Commissioner shall have exclusive
authority and jurisdiction to investigate conduct that is or may be an unfair

1 or deceptive act or practice under RSA 358-A and exempt under RSA 358-A:3, I or
2 that may violate any of the provisions of Titles XXXV and XXXVI and
3 administrative rules adopted thereunder. The Commissioner may hold hearings
4 relative to such conduct and may order restitution for a person or persons
5 adversely affected by such conduct.

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

21 A hearing shall be held not later than 10 days after the request for
22 such hearing is received by the commissioner. Within 20 days of the date of
23 any such hearing the commissioner shall issue a further order either vacating
24 the cease and desist order or making it permanent as the facts require. All
25 hearings shall comply with 541-A. If the person to whom a cease and desist
order is issued fails to appear at the requested hearing after being duly
notified of 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.

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STATEMENT OF ALLEGATIONS

The allegations contained in the Staff Petition dated August 2, 2007 (a copy of which is attached hereto) are incorporated by reference hereto.

ORDER

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

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

It is hereby ORDERED, that:

1. The Respondents are hereby Ordered to immediately cease and desist from violations of New Hampshire law.
2. The Respondents are hereby Ordered to cease taking applications for mortgage loans until such time as this Order is rescinded.
3. The Respondents are hereby Ordered to Show Cause why their license should not be Revoked.
4. Failure to request a hearing within 30 days of the date of receipt of this Order shall result in a default judgment being rendered, administrative penalties being imposed upon the defaulting Respondents, and such further action as is necessary to determine the proper amount of restitution.

SIGNED,

Dated: 8/2/07

/s/
PETER C. HILDRETH
BANK COMMISSIONER

NOTE: VIOLATION OF A CEASE AND DESIST ORDER IS A CRIMINAL OFFENSE.

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 07-216
)
 3 State of New Hampshire Banking) Staff Petition
)
 4 Department,) August 2, 2007
)
 5 Petitioner,)
)
 6 and)
)
 7 American Home Mortgage Corp, Michael)
)
 8 J. Strauss, Stephen A. Hozie, Alan B.)
)
 9 Horn, and American Home Mortgage
 10 Holdings Inc.

11 Respondents

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13 STATEMENT OF ALLEGATIONS

14 I. The Staff of the Banking Department, State of New Hampshire
15 (hereinafter referred to as the "Department) alleges the following
16 facts:

- 17 1. American Home Mortgage Corp (hereinafter, "Respondent AHMC") is
18 currently licensed as a Mortgage Banker.
- 19 2. Respondent Michael J. Strauss (hereinafter "Respondent Strauss")
20 is the President of Respondent AHMC.
- 21 3. Respondent Stephen A. Hozie (hereinafter "Respondent Hozie") is
22 the Chief Financial Officer of Respondent AHMC.
- 23 4. Respondent Alan B. Horn (hereinafter "Respondent Horn") is the
24 Secretary of Respondent AHMC.

- 1 5. Respondent AHMC is a wholly owned subsidiary of Respondent
2 American Home Mortgage Holdings Inc, a publicly traded real estate
3 investment trust listed on the New York Stock Exchange.
- 4 6. On or about July 31, 2007 the Department became aware of the
5 financial instability of Respondent AHMC.
- 6 7. Respondent failed to notify the Department of problems related to
7 its lines of credit and of its repurchase liabilities.
- 8 8. Respondents are currently unable to operate with the financial
9 integrity necessary to warrant the public confidence.
- 10 9. In a letter dated July 31, 2007 to the Department AHMC advised via
11 counsel that they would no longer fund loans.
- 12 10. There are currently at least three New Hampshire consumers
13 affected by Respondents' decision to cease funding loans according
14 to Respondent AHMC's pipeline report.
- 15 11. Respondent AHMC's Northern New England District Manage informed
16 the Department that Respondent AHMC did not have any closed but
17 unfunded loans in New Hampshire.
- 18 12. Contrary to the agent's assertion, the Department has learned that
19 Respondent AHMC closed or committed to close at least three New
20 Hampshire loans and subsequently failed to fund them forcing those
21 consumers to find financing elsewhere under conditions
22 disadvantageous to the consumer.
- 23 13. The Department has information that Respondent AHMC continues to
24 accept mortgage applications despite its apparent inability to
25 fund loans.

1 14. If these conditions existed at time of Respondent's application
2 the Commissioner would have been justified in denying the license.

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4 ISSUES OF LAW

5 II. The staff of the Department, alleges the following issues of law:

6 1. The Department realleges the above stated facts in paragraphs 1
7 through 11.

8 2. The Department has jurisdiction over the licensing and
9 regulation of persons engaged in mortgage banker activities
10 pursuant to NH RSA 397-A:3.

11 3. Pursuant to New Hampshire Banking law, RSA 397-A:5 the
12 Commissioner at time of completed application has 120 days to
13 determine whether the applicant's financial resources,
14 experience, personnel, and record of past or proposed conduct
15 warrant the public's confidence and issuance of a license.

16 4. Licensees must notify the Department within 5 business days of
17 the occurrence of certain events according to BAN 2407.01. Said
18 events include the termination or default of existing lines of
19 credit and the exercise of recourse rights by investors.

20 5. Pursuant to RSA 397-A:14-b licensee's must fund loans at
21 closing.

22 6. Pursuant to RSA 397-A:17 the Commissioner may issue an order
23 requiring a person to whom any license has been granted or any
24 person under the commissioner's jurisdiction to show cause why
25 the license should not be revoked, suspended, or penalties
imposed, or both, for violations of this chapter.

- 1 7. Pursuant to RSA 397-A:17 the Commissioner may issue an order
2 requiring a person to whom any license has been granted or any
3 person under the commissioner's jurisdiction to show cause why
4 the license should not be revoked, suspended, or penalties
5 imposed when the licensee or a person under its control is not
6 qualified on the basis of such factors as experience, knowledge,
7 and financial integrity.
- 8 8. Pursuant to RSA 397-A:18 the Department may issue a Cease and
9 Desist Order against anyone who it has reasonable cause to
10 believe is in violation of the provisions of the Chapter or a
11 rule or order under the Chapter.
- 12 9. Pursuant to RSA 397-A:20 the Commissioner may issue such order
13 as are reasonably necessary to carry out the provisions of the
14 Chapter.
- 15 10. RSA 397-A:21 IV provides that any person who, either knowingly or
16 negligently, violates any provision of this chapter may, upon
17 notice and opportunity for hearing, and in addition to any such
18 other penalty provided for by law, be subject to suspension,
19 revocation or denial of any registration or license, including
20 forfeiture of any application fee, or an administrative fine not
21 to exceed \$2,500, or both. Each of the acts specified shall
22 constitute a separate violation, and such administrative action
23 or fine may be imposed in addition to any criminal penalties or
24 civil liabilities imposed by New Hampshire Banking laws.

25 **RELIEF REQUESTED**

1 III. The staff of the Department requests the Commissioner take the
2 following Action:

- 3 1. Find as fact the allegations contained in section I of this
4 petition;
- 5 2. Make conclusions of law relative to the allegations contained
6 in section II of the this petition;
- 7 3. Assess fines and administrative penalties in accordance with
8 RSA 397-A:21, for violations of Chapter 397-A, in the number
9 and amount equal to the violations set forth in section II of
10 this petition against each Respondent; and
- 11 4. Order Respondents to show cause why their license should not be
12 Revoked; and
- 13 5. In accordance with RSA 397-A:18, Order the Respondents to Cease
14 and Desist from violations of New Hampshire Law; and
- 15 6. In accordance with RSA 397-A:20, Order the Respondents to
16 immediately cease taking mortgage applications; and
- 17 7. Take such other administrative and legal actions as necessary
18 for enforcement of the New Hampshire Banking Laws, the
19 protection of New Hampshire citizens, and to provide other
20 equitable relief.

21 **RIGHT TO AMEND**

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

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Respectfully submitted by:

 /S/
James Shepard
Staff Attorney

8/2/07
Date