

1 State of New Hampshire Banking Department

)Case No.: 07-219

2 In re the Matter of:

)

)

3 State of New Hampshire Banking

)

)Order to Show Cause

4 Department,

)

)

5 Petitioner,

)

)

6 and

)

)

7 Loancity, Inc., Banc of America

)

)

8 Strategic Investments Corporation,

)

)

9 Richard D. Soukoulis, Nicholas Labao,

)

)

10 William Dallas, Gary Tsuyuki, Rodger

)

11 Rickard, and Mark MacLennan,

12 Respondents

13 NOTICE OF ORDER

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

16 LEGAL AUTHORITY AND JURISDICTION

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

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

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

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

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

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

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

1 to appear at the hearing after being duly notified, such person shall be
2 deemed in default, and the proceeding may be determined against the Respondent
3 upon consideration of the Order to Show Cause and Cease and Desist Order, the
4 allegations of which may be deemed to be true.

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

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

12 The Staff Petition dated January 15, 2009 (a copy of which is attached
13 hereto) is incorporated by reference hereto.

14 **ORDER**

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

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

20 It is hereby ORDERED, that:

21 1. Respondent Loancity, Inc. ("Respondent Loancity") shall show
22 cause why penalties in the amount of \$2,500.00 should not be
23 imposed against it;

24 2. Respondent Banc of America Strategic Investments Corporation
25 ("Respondent Banc of America Strategic Investment

1 Corporation") shall show cause why penalties in the amount of
2 \$2,500.00 should not be imposed against it;

3 3. Respondent Richard D. Soukoulis ("Respondent Soukoulis")
4 shall show cause why penalties in the amount of \$5,000.00
5 should not be imposed against him;

6 4. Respondent Nicholas Labao ("Respondent Labao") shall show
7 cause why penalties in the amount of \$5,000.00 should not be
8 imposed against him;

9 5. Respondent William Dallas ("Respondent Dallas") shall show
10 cause why penalties in the amount of \$2,500.00 should not be
11 imposed against him;

12 6. Respondent Gary Tsuyuki ("Respondent Tsuyuki") shall show
13 cause why penalties in the amount of \$2,500.00 should not be
14 imposed against him;

15 7. Respondent Rodger Rickard ("Respondent Rickard") shall show
16 cause why penalties in the amount of \$2,500.00 should not be
17 imposed against him;

18 8. Respondent Mark MacLennan ("Respondent MacLennan") shall show
19 cause why penalties in the amount of \$2,500.00 should not be
20 imposed against him;

21 9. The above named Respondents shall show cause why, in addition
22 to the penalties listed in Paragraphs 1 through 8 above,
23 \$3,365.00 examination fee should not be paid to the
24 Department;

25 10. Respondents shall be jointly and severally liable for the

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 07-219
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) January 15, 2009
)
 6 and)
)
 7 Loancity, Inc., Banc of America)
)
 8 Strategic Investments Corporation,)
)
 9 Richard D. Soukoulis, Nicholas Labao,)
)
 10 William Dallas, Gary Tsuyuki, Rodger)
)
 11 Rickard, and Mark MacLennan,
 12 Respondents

13 I. STATEMENT OF ALLEGATIONS

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

16 Facts Common on All Counts:

- 17 1. Respondent Loancity, Inc. (hereinafter "Respondent Loancity")
 18 was licensed as a Mortgage Banker from at least September 18,
 19 2003 (with an amended license of August 2, 2005) until its
 20 license surrender date of March 21, 2007.
- 21 2. Respondent Banc of America Strategic Investments Corporation
 22 (hereinafter "Respondent Banc of America Strategic Investments
 23 Corporation") was the 40% direct owner of Respondent Loancity,
 24 when licensed by the Department.
- 25 3. Respondent Richard D. Soukoulis (hereinafter "Respondent

1 Soukoullis") was the President and 19% owner of Respondent
2 Loancity, when licensed by the Department.

3 4. Respondent Nicholas Labao (hereinafter "Respondent Labao") was
4 the Executive Vice President of Finance and Treasurer of
5 Respondent Loancity, when licensed by the Department.

6 5. Respondent William Dallas (hereinafter "Respondent Dallas") was
7 the Director of Respondent Loancity, when licensed by the
8 Department.

9 6. Respondent Gary Tsuyuki (hereinafter "Respondent Tsuyuki") was
10 the Director of Respondent Loancity, when licensed by the
11 Department.

12 7. Respondent Rodger Rickard (hereinafter "Respondent Rickard") was
13 the Director of Respondent Loancity, when licensed by the
14 Department.

15 8. Respondent Mark MacLennan (hereinafter "Respondent MacLennan")
16 was the Director of Respondent Loancity, when licensed by the
17 Department.

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

19 **Violation of RSA 397-A:13,VI Failure of Officer and Owner to Respond to**
20 **Department Inquiries (1 Count):**

21 9. Paragraphs 1 through 8 are hereby realleged as fully set forth
22 herein.

23 10. The Department conducted an examination of Respondent Loancity on
24 September 11, 2006, while Respondent Loancity was still licensed
25 with the Department.

1 11. On February 16, 2007, the Department mailed Respondent Loancity,
2 via U.S. Mail Certified Return Receipt, the report of examination
3 and invoice for \$3,365.00, which Respondents received on February
4 20, 2007.

5 12. The above named Respondents failed to respond to the February 16,
6 2007 correspondence from the Department.

7 13. The Department, via U.S. mail, mailed a second notice on April 17,
8 2007 and a third notice on June 8, 2007.

9 14. The above named Respondents did not respond to any of the three
10 notices for payment of the \$3,365.00 invoice.

11 15. To date, the above named Respondents still owe the \$3,365.00
12 examination fee for the 6.73 day examination.

13 **II. ISSUES OF LAW**

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

15 1. The Department realleges the above stated facts in Paragraphs 1
16 through 15 as fully set forth herein.

17 2. The Department has jurisdiction over the licensing and regulation
18 of persons engaged in mortgage banker or broker activities
19 pursuant to NH RSA 397-A:2 and RSA 397-A:3.

20 3. RSA 397-A:12,V provides that the expense of such examination shall
21 be chargeable to and paid by the licensee. Each of the above
22 named Respondents violated this provision on at least one
23 occasion as alleged above. To date, the above named Respondents
24 have failed to pay the \$3,365.00 examination invoice.

25 4. RSA 397-A:13,VI provides that any officer, owner, manager or agent

1 of any licensee shall reply promptly in writing, or other
2 designated form, to any written inquiry from the Department.
3 Respondents Soukoulis and Labao violated this provision on at
4 least one occasion as alleged above.

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

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

18 7. RSA 397-A:21,V provides that every person who directly or
19 indirectly controls a person liable under this section, every
20 partner, principal executive officer or director of such person,
21 every person occupying a similar status or performing a similar
22 function, every employee of such person who materially aids in the
23 act constituting the violation, and every licensee or person acting
24 as a common law agent who materially aids in the acts constituting
25 the violation, either knowingly or negligently, may, upon notice

1 and opportunity for hearing, and in addition to any other penalty
2 provided for by law, be subject to suspension, revocation, or
3 denial of any registration or license, including the forfeiture of
4 any application fee, or the imposition of an administrative fine
5 not to exceed \$2,500, or both. Each of the acts specified shall
6 constitute a separate violation, and such administrative action or
7 fine may be imposed in addition to any criminal or civil penalties
8 imposed.

9 **III. RELIEF REQUESTED**

10 The staff of the Department requests the Commissioner take the following
11 action:

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

