

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 07-272
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3 State of New Hampshire Banking) Order to Show Cause
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4 Department,)
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5 Petitioner,)
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6 and)
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7 America's Choice Mortgage Inc, James)
))
8 C. Young and Rose Y. Young,)
))
9 Respondents

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11 NOTICE OF ORDER

12 This Order commences an adjudicative proceeding under the provisions of
13 RSA 397-A:17, RSA 541-A, BAN 200 and JUS 800.

14 LEGAL AUTHORITY AND JURISDICTION

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

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

22 NOTICE OF RIGHT TO REQUEST A HEARING

23 The above named respondents have the right to request a hearing on this
24 Order to Show Cause, as well as the right to be represented by counsel at
25 each Respondent's own expense. All hearings shall comply with RSA 541-A. Any
such request for a hearing shall be in writing, and signed by the respondents
or the duly authorized agent of the above named respondents, and shall be

1 delivered either by hand or certified mail, return receipt requested, to the
2 Banking Department, State of New Hampshire, 64B Old Suncook Road, Concord, NH
3 03301. Such hearings will be scheduled within 10 days of the request. If the
4 Respondents fail to appear at the hearing after being duly notified, such
5 person shall be deemed in default, and the proceeding may be determined against
6 the Respondent upon consideration of the Order to Show Cause, the allegations
7 of which may be deemed to be true.

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

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

15 The Staff Petition dated February 15, 2008 (a copy of which is attached
16 hereto) is incorporated by reference hereto.

17 **ORDER**

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

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

23 It is hereby ORDERED, that the Respondent shall show cause why:

- 24 1. Administrative penalties of \$2,500.00 should not be imposed
25 against each named Respondent; and
2. Statutory penalties of \$8,600.00 should not be imposed; and
3. Respondent America's license should not be revoked; and

1 It is hereby ORDERED that:

2 4. Failure to request a hearing within 30 days of the date of
3 receipt of this Order shall result in a default judgment being
4 rendered, license revocation and administrative penalties
5 imposed upon the defaulting Respondent.

6 SIGNED,

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8 Dated: 3/10/08

9 /SRAF/
10 PETER C. HILDRETH
11 BANK COMMISSIONER
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1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 07-272
)
 3 State of New Hampshire Banking) Staff Petition
)
 4 Department,)
)
 5 Petitioner,) February 15, 2008
)
 6 and)
)
 7 America's Choice Mortgage Inc, James)
)
 8 C. Young and Rose Y. Young,)
)
 9 Respondent

10
11 STATEMENT OF ALLEGATIONS

12 The Staff of the Banking Department, State of New Hampshire (hereinafter
13 referred to as the "Department) alleges the following facts:

- 14 1. On or about August 27, 2007, the Department was scheduled to
 15 begin an examination of America's Choice Mortgage Inc
 16 (hereinafter "Respondent America's").
- 17 2. James C. Young (hereinafter "Respondent J. Young") is President
 18 and 50% owner of Respondent America's.
- 19 3. Rose Y. Young (hereinafter "Respondent R. Young") is Secretary
 20 and 50% owner of Respondent America's.
- 21 4. Respondent was licensed as a Mortgage Banker and at all times
 22 relevant to this action held a Department license since at least
 23 2003.
- 24 5. The Department sent a notice of an upcoming examination to the
 25 Respondent via US Certified Mail on August 1, 2007 (mail piece
 number 7006 3450 0000 0611 6649). The Respondent received and

1 signed for the notice on or about August 6, 2007.

2 6. The Respondent returned the examination notice with the license
3 indicating they wanted to surrender the license.

4 7. The Department sent a second notice to the Respondent via US
5 Certified Mail on August 15, 2007 (mail piece number 7006 3450
6 0000 0611 7059). The Respondent received and signed for the
7 notice on or about August 20, 2007.

8 8. To date the Respondent has failed to facilitate the examination.

9 9. August 27, 2007 was the end of the 21-day grace period.

10 10. It has been 172 days since August 27, 2007 without any production
11 of documents.

12 **ISSUES OF LAW**

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

14 1. The Department realleges the above stated facts in paragraphs 1
15 through 9.

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

19 3. Pursuant to New Hampshire Banking law, RSA 397-A:12 the
20 Department may examine the business affairs of any licensee or
21 any other person, whether licensed or not, as it deems necessary
22 to determine compliance with this Chapter and the rules adopted
23 pursuant to it and with the Consumer Credit Protection Act, as
24 amended (15 U.S.C. 1601 et seq.). In determining compliance,
25 the Department may examine the books, accounts, records, files,
and other documents or matters of any licensee or person. RSA

1 397-A:12 further requires every person being examined, and all
2 of the officers, directors, employees, agents, and
3 representatives of such person shall make freely available to
4 the commissioner or his 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. The Respondent violated
8 this provision by failing to facilitate the examination.

9 4. RSA 397-A:11 provides for a fine of \$50 per day for every day
10 that records are not produced after 21 days.

11 5. RSA 397-A:21 IV provides that any person who, either knowingly
12 or negligently, violates any provision of Chapter 397-A, may
13 upon hearing, and in addition to any other penalty provided for
14 by law, be subject to an administrative fine not to exceed
15 \$2,500, or both. Each of the acts specified shall constitute a
16 separate violation, and such administrative action or fine may
17 be imposed in addition to any criminal penalties or civil
18 liabilities imposed by New Hampshire Banking laws.

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

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

9 **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 petition;
- 13 2. Make conclusions of law relative to the allegations contained in
14 section II of the this petition;
- 15 3. Order the Respondents to Show Cause why its license should not be
16 revoked;
- 17 4. Assess fines and administrative penalties in accordance with RSA 397-
18 A:21, for violations of Chapter 397-A, in the number and amount equal
19 to the violations set forth in section II of this petition; and
- 20 5. Take such other administrative and legal actions as necessary for
21 enforcement of the New Hampshire Banking Laws, the protection of New
22 Hampshire citizens, and to provide other equitable relief.

23 **RIGHT TO AMEND**

24 The Department reserves the right to amend this Staff Petition and to
25 request that the Commissioner take additional administrative action.

