

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 07-273  
 )  
 3 State of New Hampshire Banking ) Order to Show Cause  
 )  
 4 Department, )  
 )  
 5 Petitioner, )  
 )  
 6 and )  
 )  
 7 CBSK Financial Group Inc, Brent )  
 )  
 8 McElwee, Cyndi McElwee, Lori Pendray, )  
 )  
 9 Dorita Kay, and William K. Halapin,  
 )  
 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:17, RSA 541-A, BAN 200 and JUS 800.

15 LEGAL AUTHORITY AND JURISDICTION

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

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

23 NOTICE OF RIGHT TO REQUEST A HEARING

24 The above named respondents have the right to request a hearing on this  
25 Order to Show Cause, as well as the right to be represented by counsel at  
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

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

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

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

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

18 **ORDER**

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

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

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

- 25 1. Administrative penalties of \$2,500.00 should not be imposed  
against each named Respondent; and
2. Statutory penalties of \$10,900.00 should not be imposed; and
3. Respondent CBSK's license should not be revoked; and



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12 STATEMENT OF ALLEGATIONS

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

- 15 1. On or about April 30, 2007, the Department began an examination  
16 of CBSK Financial Group Inc (hereinafter "Respondent CBSK").
- 17 2. Brent McElwee (hereinafter "Respondent B. McElwee") is President  
18 and 50% shareholder of Respondent CBSK.
- 19 3. Cyndi McElwee (hereinafter "Respondent C. McElwee") is Secretary-  
20 Director and 50% shareholder of Respondent CBSK.
- 21 4. Lori Pendray (hereinafter "Respondent Pendray") is Chief  
22 Financial Officer/Treasurer of Respondent CBSK.
- 23 5. Dorita Kay (hereinafter "Respondent Kay") is Vice President of  
24 Respondent CBSK.
- 25 6. William K. Halapin (hereinafter "Respondent Halapin") is Vice  
President of Respondent CBSK.

1 7. Respondent CBSK was licensed as a Mortgage Banker and at all  
2 times relevant to this action held a Department license since at  
3 least 2005.

4 8. The Department sent a notice of the second phase of the  
5 examination to Respondent CBSK via US Certified Mail on June 15,  
6 2007 (mail piece number 7002 2410 0005 1958 9298). The  
7 Respondent received and signed for the notice on or about June  
8 21, 2007.

9 9. Respondent CBSK faxed the Department on July 25, 2007 requesting  
10 until August 8, 2007 to provide the loan files to the Department.

11 10. To date Respondents have failed to facilitate the examination.

12 11. July 12, 2007 was the end of the 21-day grace period.

13 12. It has been 218 days since July 12th without any further  
14 production of documents.

15  
16 **ISSUES OF LAW**

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

18 1. The Department realleges the above stated facts in paragraphs 1  
19 through 12.

20 2. The Department has jurisdiction over the licensing and  
21 regulation of persons engaged in mortgage broker activities  
22 pursuant to NH RSA 397-A:3.

23 3. Pursuant to New Hampshire Banking law, RSA 397-A:12 the  
24 Department may examine the business affairs of any licensee or  
25 any other person, whether licensed or not, as it deems necessary  
to determine compliance with this Chapter and the rules adopted

1 pursuant to it and with the Consumer Credit Protection Act, as  
2 amended (15 U.S.C. 1601 et seq.). In determining compliance,  
3 the Department may examine the books, accounts, records, files,  
4 and other documents or matters of any licensee or person. RSA  
5 397-A:12 further requires every person being examined, and all  
6 of the officers, directors, employees, agents, and  
7 representatives of such person shall make freely available to  
8 the commissioner or his examiners, the accounts, records,  
9 documents, files, information, assets, and matters in their  
10 possession or control relating to the subject of the examination  
11 and shall facilitate the examination. The Respondent violated  
12 this provision by failing to facilitate the examination.

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

15 5. RSA 397-A:12 provides that the expense of such examination shall  
16 be chargeable to and paid by the licensee.

17 6. RSA 383:11 I provides that no institution shall be charged or  
18 pay less than one full day for the cost of the examination.

19 7. RSA 383:11 III provides that payments of the charges for the  
20 cost of the examination be made within 60 days of receipt of the  
21 notice.

22 8. RSA 397-A:21 IV provides that any person who, either knowingly  
23 or negligently, violates any provision of Chapter 397-A, may  
24 upon hearing, and in addition to any other penalty provided for  
25 by law, be subject to an administrative fine not to exceed  
\$2,500, or both. Each of the acts specified shall constitute a

1 separate violation, and such administrative action or fine may  
2 be imposed in addition to any criminal penalties or civil  
3 liabilities imposed by New Hampshire Banking laws.

4 9. RSA 397-A:21 V provides that every person who directly or  
5 indirectly controls a person liable under this section, every  
6 partner, principal executive officer or director of such person,  
7 every person occupying a similar status or performing a similar  
8 function, every employee of such person who materially aids in  
9 the act constituting the violation, and every licensee or person  
10 acting as a common law agent who materially aids in the acts  
11 constituting the violation, either knowingly or negligently, may,  
12 upon notice and opportunity for hearing, and in addition to any  
13 other penalty provided for by law, be subject to suspension,  
14 revocation, or denial of any registration or license, including  
15 the forfeiture of any application fee, or the imposition of an  
16 administrative fine not to exceed \$2,500, or both. Each of the  
17 acts specified shall constitute a separate violation, and such  
18 administrative action or fine may be imposed in addition to any  
19 criminal or civil penalties imposed.

20 **RELIEF REQUESTED**

21 The staff of the Department requests the Commissioner take the following  
22 Action:

- 23 1. Find as fact the allegations contained in section I of this petition;
- 24 2. Make conclusions of law relative to the allegations contained in  
25 section II of the this petition;
3. Order the Respondents to Show Cause why its license should not be

