

1 State of New Hampshire Banking Department

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|---|---------------------------------------|-----------------------|
| 2 | In re the Matter of: |) Case No.: 07-328 |
| | |) |
| 3 | State of New Hampshire Banking |) |
| 4 | Department, |) Order to Show Cause |
| | |) |
| 5 | Petitioner, |) |
| | |) |
| 6 | and |) |
| | |) |
| 7 | Bennett Mortgage & Investment Company |) |
| | |) |
| 8 | Incorporated, and David J. Azanow, |) |
| | |) |
| 9 | Respondents |) |

10 NOTICE OF ORDER

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

13 LEGAL AUTHORITY AND JURISDICTION

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

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

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

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

5 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct
6 that is or may be an unfair or deceptive act or practice under RSA 358-A and
7 exempt under RSA 358-A:3,I or that may violate any of the provisions of
8 Titles XXXV and XXXVI and administrative rules adopted thereunder. The
9 Commissioner may hold hearings relative to such conduct and may order
10 restitution for a person or persons adversely affected by such conduct.

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

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

25 If any of the above named Respondents fails to request a hearing within

1 30 calendar days of receipt of such order or reach a formal written and
2 executed settlement with the Department within that time frame, then such
3 person shall likewise be deemed in default, and the orders shall, on the
4 thirty-first day, become permanent, and shall remain in full force and effect
5 until and unless later modified or vacated by the Commissioner, for good cause
6 shown.

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

8 The Staff Petition dated June 1, 2009 (a copy of which is attached
9 hereto) is incorporated by reference hereto.

10 **ORDER**

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

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

16 It is hereby ORDERED, that:

- 17 1. Respondent Bennett Mortgage & Investment Company Incorporated
18 ("Respondent Bennett Mortgage") shall show cause why
19 penalties in the amount of \$5,000.00 should not be imposed
20 against it;
- 21 2. Respondent David J. Azanow ("Respondent Azanow") shall show
22 cause why penalties in the amount of \$7,500.00 should not be
23 imposed against him;
- 24 3. The above named Respondents shall show cause why, in addition
25 to the penalties listed in Paragraphs 1 through 2 above, the

1 \$1,930.00 examination fee for the February 5, 2007
2 examination should not be paid to the Department;

3 4. The above named Respondents shall show cause why, in addition
4 to the penalties listed in Paragraphs 1 through 3 above, the
5 returned check fee of \$8.00 and NSF fee of \$96.50 (both for
6 the February 5, 2007 examination fee attempted payment)
7 should not be paid to the Department;

8 5. The above named Respondents shall show cause why, in addition
9 to the penalties listed in Paragraphs 1 through 4 above, the
10 \$500.00 examination fee for the July 21, 2008 examination
11 should not be paid to the Department;

12 6. Respondents shall be jointly and severally liable for the
13 above amounts alleged in Paragraphs 1 through 5 above;

14 7. The above named Respondents shall show cause why, in addition
15 to the penalties listed in Paragraphs 1 through 6 above,
16 Respondent Bennett Mortgage's license should not be revoked.

17 It is hereby further ORDERED that:

18 8. Along with the administrative penalties listed for the above
19 named Respondents, the outstanding sum of \$2,534.50 shall be
20 immediately paid; and

21
22
23 [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

1 9. Failure to request a hearing within 30 days of the date of
2 receipt or valid delivery of this Order shall result in a
3 default judgment being rendered and administrative penalties
4 imposed upon the defaulting Respondent(s).

5
6 SIGNED,

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8 Dated: 06/01/09

9 /s/
PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 07-328
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) June 1, 2009
)
 6 and)
)
 7 Bennett Mortgage & Investment Company)
)
 8 Incorporated, and David J. Azanow,)
)
 9 Respondents)

10 I. STATEMENT OF ALLEGATIONS

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

13 Facts Common on All Counts:

- 14 1. Respondent Bennett Mortgage & Investment Company Incorporated
 15 (hereinafter "Bennett Mortgage") was licensed as a Mortgage
 16 Broker from at least September 10, 2002 (with an amended license
 17 date of August 10, 2008) until it surrendered its license on
 18 December 31, 2008.
- 19 2. Respondent David J. Azanow (hereinafter "Respondent Azanow") was
 20 the 100% owner and President of Respondent Bennett Mortgage,
 21 when licensed by the Department.

1 2007 Examination:

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

3 Violation of RSA 397-A:13, VI Failure of Officer and Owner to Respond to

4 Department Inquiries (1 Count):

5 3. Paragraphs 1 through 2 are hereby realleged as fully set forth
6 herein.

7 4. The Department conducted an examination of Respondent Bennett
8 Mortgage on February 5, 2007, while Respondent Bennett Mortgage
9 was still licensed with the Department.

10 5. On August 23, 2007, the Department mailed the report of
11 examination and invoice for \$1,930.00 to Respondent Bennett
12 Mortgage, via U.S. Certified Mail Return Receipt requested, which
13 Respondents received on August 27, 2007.

14 6. The above named Respondents failed to respond to the August 23,
15 2007 correspondence from the Department.

16 7. The Department, via U.S. mail, mailed a second notice on September
17 24, 2007 and a third notice on November 1, 2007.

18 8. The above named Respondents did not respond to any of the three
19 notices for payment of the \$1,930.00 invoice.

20 9. To date, the above named Respondents still owe the \$1,930.00
21 examination fee for the 3.86 day examination.

22 10. Respondents then in 2008 attempted payment of the \$1,930.00
23 examination fee, but the check was returned to the Department by
24 the bank with an NSF fee of \$96.50 and a returned check fee of
25 \$8.00. Respondents still owe this money, as well, for a total of

1 \$2,034.50 (\$1,930.00 plus \$96.50 plus \$8.00).

2 **2008 Examination:**

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

4 11. Paragraphs 1 through 10 are hereby realleged as fully set forth
5 herein.

6 12. The Department conducted an examination of Respondent Bennett
7 Mortgage on July 21, 2008, while Respondent Bennett Mortgage was
8 still licensed with the Department.

9 13. On September 23, 2008, the Department mailed the invoice for
10 \$500.00 to Respondent Bennett Mortgage.

11 14. To date, the above named Respondents still owe the \$500.00
12 examination fee for the one 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 14 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 \$1,930.00 examination invoice, NSF fees of
25 \$96.50 and a returned check fee of \$8.00 all for the 2007

1 examination and a \$500.00 examination fee for the 2008
2 examination.

3 4. RSA 397-A:13,VI provides that any officer, owner, manager or agent
4 of any licensee shall reply promptly in writing, or other
5 designated form, to any written inquiry from the Department.
6 Respondent Azanow violated this provision on at least one
7 occasion as alleged above.

8 5. RSA 397-A:17,I provides in part that the Commissioner may by
9 order, upon due notice and opportunity for hearing, assess
10 penalties or deny, suspend, or revoke a license or application if
11 it is in the public interest and the applicant, respondent, or
12 licensee, any partner, officer, member, or director, any person
13 occupying a similar status or performing similar functions, or
14 any person directly or indirectly controlling the applicant,
15 respondent, or licensee: (a) has violated any provision of RSA
16 Chapter 397-A or rules thereunder, or (b) has not met the
17 standards established in RSA Chapter 397-A.

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

23 7. RSA 397-A:21,IV provides that any person who, either knowingly or
24 negligently, violates any provision of Chapter 397-A, may upon
25 hearing, and in addition to any other penalty provided for by

1 law, be subject to an administrative fine not to exceed
2 \$2,500.00, or both. Each of the acts specified shall constitute
3 a separate violation, and such administrative action or fine may
4 be imposed in addition to any criminal penalties or civil
5 liabilities imposed by New Hampshire Banking laws.

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

22 **III. RELIEF REQUESTED**

23 The staff of the Department requests the Commissioner take the following
24 action:

25 1. Find as fact the allegations contained in section I of this Staff

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Petition;

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

IV. RIGHT TO AMEND

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

Respectfully submitted by:

 /s/
Maryam Torben Desfosses
Hearings Examiner

 06/01/09
Date