

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-048
)
 3 State of New Hampshire Banking) Order to Show Cause
)
 4 Department,)
)
 5 Petitioner,)
)
 6 and)
)
 7 Birt and Briggs Mortgage Consultants)
)
 8 LLC, Charles J. Birt and Donna)
)
 9 Briggs,
)
 10 Respondents

11
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 Respondents 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 14, 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 \$8,850.00 should not be imposed against
Respondent Birt pursuant to RSA 397-A:11; and

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-048
)
 3 State of New Hampshire Banking) Staff Petition
)
 4 Department,)
)
 5 Petitioner,) February 14, 2008
)
 6 and)
)
 7 Birt and Briggs Mortgage Consultants)
)
 8 LLC, Charles J. Birt and Donna)
)
 9 Briggs,
 10 Respondent

11
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 August 20, 2007, the Department was scheduled to
16 begin an examination of Birt and Briggs Mortgage Consultants LLC
17 (hereinafter "Respondent Birt").
- 18 2. Respondent Donna Briggs is, or was at all relevant times, a
19 member of Respondent Birt.
- 20 3. Respondent Charles J. Birt is, or was at all relevant times, the
21 managing member of Respondent Birt.
- 22 4. Respondent Birt was licensed as a Mortgage Broker and at all
23 times relevant to this action held a Department license since at
24 least 1999.
- 25 5. The Department sent a notice of an upcoming examination to
Respondent Birt via US Certified Mail on July 25, 2007 (mail

1 piece number 7006 3450 0000 0611 9558). Said Respondent received
2 and signed for the notice on or about July 31, 2007.

3 6. Respondent Birt surrendered their license on August 21, 2007
4 without acknowledging the examination or providing materials for
5 review.

6 7. On or about September 21, 2007 the Department sent a second
7 notice to the Respondent via US Certified Mail (mail piece number
8 7006 2760 0002 2476 6845). The notice was returned to the
9 Department on October 18, 2007 by the US Post Office as
10 "unclaimed".

11 8. A final notice was sent to the Respondent via US Certified Mail
12 (mail piece number 7007 1490 0000 0422 2208) on or about October
13 19, 2007. The Respondent received and signed for the notice on
14 or about October 20, 2007.

15 9. To date the Respondent has failed to facilitate the examination.

16 10. August 21, 2007 was the end of the 21-day grace period.

17 11. It has been 177 days since August 21, 2007 without any production
18 of documents.

19 12. The Department sent an invoice in the amount of \$500.00 for the
20 cost of the examination to Respondent Birt on November 20, 2007.
21 To date the invoice remains unpaid.

22
23 **ISSUES OF LAW**

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

25 1. The Department realleges the above stated facts in paragraphs 1
through 10.

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

4 3. Pursuant to New Hampshire Banking law, RSA 397-A:12 the
5 Department may examine the business affairs of any licensee or
6 any other person, whether licensed or not, as it deems necessary
7 to determine compliance with this Chapter and the rules adopted
8 pursuant to it and with the Consumer Credit Protection Act, as
9 amended (15 U.S.C. 1601 et seq.). In determining compliance,
10 the Department may examine the books, accounts, records, files,
11 and other documents or matters of any licensee or person. RSA
12 397-A:12 further requires every person being examined, and all
13 of the officers, directors, employees, agents, and
14 representatives of such person shall make freely available to
15 the commissioner or his examiners, the accounts, records,
16 documents, files, information, assets, and matters in their
17 possession or control relating to the subject of the examination
18 and shall facilitate the examination. The Respondent violated
19 this provision by failing to facilitate the examination.

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

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

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

7. RSA 383:11 III provides that payments of the charges for the

1 cost of the examination be made within 60 days of receipt of the
2 notice.

3 8. RSA 397-A:21 IV provides that any person who, either knowingly
4 or negligently, violates any provision of Chapter 397-A, may
5 upon hearing, and in addition to any other penalty provided for
6 by law, be subject to an administrative fine not to exceed
7 \$2,500, or both. Each of the acts specified shall constitute a
8 separate violation, and such administrative action or fine may
9 be imposed in addition to any criminal penalties or civil
10 liabilities imposed by New Hampshire Banking laws.

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

