1 State of New Hampshire Banking Department )Case No.: 08-061 In re the Matter of: 2 State of New Hampshire Banking 3 )Order to Show Cause Department, 4 5 Petitioner, 6 and Firststar Home Equity, LLC (d/b/a FSHE ) 7 OF INDIANA), and Richard J. Hocker, 8 Respondents 9 10 NOTICE OF ORDER This Order commences an adjudicative proceeding under the provisions 11 12 of RSA Chapter 397-A and RSA Chapter 541-A. 13 LEGAL AUTHORITY AND JURISDICTION 14 Pursuant to RSA 397-A:17, the Banking Department of the State of New Hampshire (hereinafter the "Department") has the authority to issue an order 15 to show cause why license revocation and penalties for violations of New 16 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 violating or has violated any provision of RSA Chapter 397-A, or any rule or 21 order thereunder. 22 23 Pursuant to RSA 397-A:20, IV the Commissioner may issue, amend, or rescind such orders as are reasonably necessary to comply with the 24 25 provisions of the Chapter. Order - 1

Pursuant to RSA 397-A:21, the Commissioner has the authority to suspend, revoke or deny any license and to impose administrative penalties of up to \$2,500.00 for each violation of New Hampshire banking law and 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 Chapter 7 358-A and exempt under RSA 358-A:3,I or that may violate any of the 8 provisions of Titles XXXV and XXXVI and administrative rules adopted 9 thereunder. The Commissioner may hold hearings relative to such conduct and 10 may order restitution for a person or persons adversely affected by such 11 conduct.

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## NOTICE OF RIGHT TO REQUEST A HEARING

13 The above named Respondents have the right to request a hearing on 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 Chapter 15 541-A. 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 18 shall be delivered either by hand or certified mail, return receipt 19 requested, to the Banking Department, State of New Hampshire, 53 Regional 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 23 deemed in default, and the proceeding may be determined against the Respondent upon consideration of the Order to Show Cause, the allegations of which may be 24 deemed to be true. 25

1 If any of the above named Respondents fails to request a hearing within 2 30 calendar days of receipt of such order or reach a formal written and 3 executed settlement with the Department within that time frame, then such 4 person shall likewise be deemed in default, and the orders shall, on the 5 thirty-first day, become permanent, and shall remain in full force and effect 6 until and unless later modified or vacated by the Commissioner, for good cause 7 shown.

## STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF

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The <u>Staff Petition</u> dated July 9, 2009 (a copy of which is attached hereto) is incorporated by reference hereto.

## ORDER

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

WHEREAS, finding that the allegations contained in the Staff Petition, if proved true and correct, form the legal basis of the relief requested; It is hereby ORDERED, that:

 Respondent Firststar Home Equity, LLC (d/b/a FSHE OF INDIANA) ("Respondent Firststar") shall show cause why penalties in the amount of \$7,500.00 should not be imposed against it;

- Respondent Richard J. Hocker ("Respondent Hocker") shall show cause why penalties in the amount of \$7,500.00 should not be imposed against him;
- 3. The above named Respondents shall show cause why, in addition to the penalties listed in Paragraphs 1 through 2 above,

Order - 3

1	statutory penalties of \$2,500.00 should not be imposed for
2	failing to file the 2007 Annual Report;
3	4. Respondents shall be jointly and severally liable for the
4	above amounts alleged in Paragraphs 1 through 3 above;
5	5. The above named Respondents shall show cause why, in addition
6	to the penalties listed in Paragraphs 1 through 4 above,
7	Respondent Firststar's license should not be revoked.
8	It is hereby further ORDERED that:
9	6. Along with the administrative penalties listed for the above
10	named Respondents, the outstanding sum of \$2,500.00 shall be
11	immediately paid; and
12	7. Failure to request a hearing within 30 days of the date of
13	receipt or valid delivery of this Order shall result in a
14	default judgment being rendered and administrative penalties
15	imposed upon the defaulting Respondent(s).
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17	SIGNED,
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19	Dated: 07/09/09 /s/
20	PETER C. HILDRETH BANK COMMISSIONER
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	Order - 4

1	Chata of New Homeshire	- Parking Dependence
1	State of New Hampshir	)Case No.: 08-061
2	In re the Matter of:	)
3	State of New Hampshire Banking	)
4	Department,	)Staff Petition )
5	Petitioner,	)July 9, 2009 )
6	and	)
7	Firststar Home Equity, LLC (d/b/a FSHE	
8	OF INDIANA), and Richard J. Hocker,	)
9	Respondents	) _)
10	I. <u>STATEMENT</u> C	F ALLEGATIONS
11	The Staff of the Banking Department,	State of New Hampshire (hereinafter
12	"Department") alleges the following fac	ts:
13	Facts Common on All Counts:	
14	1. Respondent Firststar Home Ed	quity, LLC (d/b/a FSHE OF INDIANA)
15	(hereinafter "Respondent Fir:	ststar") was licensed as a Mortgage
16	Banker from at least August 1	2, 2005 until its license expired on
17	December 31, 2007.	
18	2. Respondent Richard J. Hocke	r (hereinafter "Respondent Hocker")
19	was the President of Respond	ent Firststar, when licensed by the
20	Department.	
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23	[REMAINDER OF PAGE INTE	NTIONALLY LEFT BLANK]
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1	<u>Violatio</u>	n of RSA 397-A:10-a,I(a) Failure to Properly Surrender License (1
2	<u>Count):</u>	
3	<u>Violatio</u>	n of RSA 397-A:13,I Failure to File Annual Report (1 Count):
4	Violation	n of RSA 397-A:10,IV Failure to Update Information on File with
5	Commissio	oner (1 Count):
6	3.	Paragraphs 1 through 2 are hereby realleged as fully set forth
7		herein.
8	4.	The 2007 Annual Report was due on or before February 1, 2008.
9	5.	On February 5, 2008, the Department sent correspondence, via U.S.
10		Certified Mail Return Receipt requested, advising the above named
11		Respondents to submit annual report. The U.S. Postal Service
12		returned the letter to the Department as "not deliverable" and
13		"unable to forward".
14	6.	On March 17, 2008, the Department mailed a reminder letter (via
15		U.S. Certified Mail Return Receipt requested) that Respondents'
16		license had expired on December 31, 2007 and directed the
17		Respondents to the Department's website to obtain
18		surrender/expiration forms and the procedure to follow for an
19		expired license. The post office returned this letter to the
20		Department on March 31, 2008 as "not deliverable as addressed"
21		and "unable to forward".
22	7.	To date, the accrued penalty for failure to file an annual report
23		has reached the maximum cap of \$2,500.00.
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1	II. <u>ISSUES OF LAW</u>
2	The staff of the Department alleges the following issues of law:
3	1. The Department realleges the above stated facts in Paragraphs 1
4	through 7 as fully set forth herein.
5	2. The Department has jurisdiction over the licensing and regulation
6	of persons engaged in mortgage banker or broker activities
7	pursuant to NH RSA 397-A:2 and RSA 397-A:3.
8	3. RSA 397-A:10,IV provides that persons licensed under RSA Chapter
9	397-A are under a continuing obligation to update information on
10	file with the Commissioner. Each of the above named Respondents
11	failed to update the Commissioner on at least one occasion as
12	alleged above.
13	4. RSA 397-A:10-a, I (a) provides that a licensee who ceases to
14	engage in the business of a mortgage banker or mortgage broker at
15	any time during a license year for any cause shall surrender such
16	license in person or by registered or certified mail to the
17	Commissioner within 15 calendar days of such cessation, and shall
18	cause to be published in a newspaper of general circulation in the
19	licensee's market area a notice to such effect. Each of the above
20	named Respondents violated this statute on at least one occasion
21	as alleged above.
22	5. RSA 397-A:13,I provides that a licensee shall file its annual
23	report on or before February 1 each year concerning operations for
24	the preceding year or license period ending December 31. Each of
25	the above named Respondents violated this provision on at least

Staff Petition - 3

one occasion as alleged above. The maximum fine for this specific violation has reached \$2,500.00 (\$25.00 per day; maximum \$2,500.00) since no annual report was filed for 2007.

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- 6. RSA 397-A:17,I provides in part that the Commissioner may by order, upon due notice and opportunity for hearing, assess penalties or deny, suspend, or revoke a license or application if it is in the public interest and the applicant, respondent, or licensee, any partner, officer, member, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant, respondent, or licensee: (a) has violated any provision of RSA Chapter 397-A or rules thereunder, or (b) has not met the standards established in RSA Chapter 397-A.
  - 7. RSA 397-A:18,I provides that the Department may issue a complaint setting forth charges whenever the Department is of the opinion that the licensee or person over whom the Department has jurisdiction, has violated any provision of RSA 397-A or orders thereunder.
  - 8. RSA 397-A:21,IV provides that any person who, either knowingly or negligently, violates any provision of Chapter 397-A, may upon hearing, and in addition to any other penalty provided for by law, be subject to an administrative fine not to exceed \$2,500.00, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal penalties or civil liabilities imposed

by New Hampshire Banking laws.

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

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## III. RELIEF REQUESTED

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

- Find as fact the allegations contained in section I of this Staff 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

1 Respondents to show cause why their license should not be revoked; 4. Assess fines and administrative penalties in accordance with RSA 2 397-A:21, for violations of Chapter 397-A, in the number and 3 amount equal to the violations set forth in section II of this 4 5 Staff Petition; and 5. Take such other administrative and legal actions as necessary for 6 7 enforcement of the New Hampshire Banking Laws, the protection of New Hampshire citizens, and to provide other equitable relief. 8 IV. RIGHT TO AMEND 9 10 The Department reserves the right to amend this Staff Petition and to 11 request that the Commissioner take additional administrative action. Nothing herein shall preclude the Department from bringing additional 12 enforcement action under RSA Chapter 397-A or the regulations thereunder. 13 14 Respectfully submitted by: 15 16 <u>07/</u>09/09 /s/ 17 Maryam Torben Desfosses Date Hearings Examiner 18 19 20 21 22 23 24 25 Staff Petition - 6