

1 State of New Hampshire Banking Department

)Case No.: 08-073

2 In re the Matter of: )

3 State of New Hampshire Banking )

4 Department, )

5 Petitioner, )

6 and )

7 America Best Mortgage LLC, and Steven )

8 Vo, )

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

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

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

9 **ORDER**

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

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

15 It is hereby ORDERED, that:

- 16 1. Respondent America Best Mortgage LLC ("Respondent America  
17 Best Mortgage") shall show cause why penalties in the amount  
18 of \$20,000.00 should not be imposed against it;
- 19 2. Respondent Steven Vo ("Respondent Vo") shall show cause why  
20 penalties in the amount of \$22,500.00 should not be imposed  
21 against her;
- 22 3. The above named Respondents shall show cause why, in addition  
23 to the penalties listed in Paragraphs 1 through 2 above, the  
24 accrued fine of \$24,950.00 for failing to provide examination  
25 materials should not be paid to the Department;



1 State of New Hampshire Banking Department

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 7 America Best Mortgage LLC, and Steven )  
 )  
 8 Vo, )  
 )  
 9 Respondents )

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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 America Best Mortgage LLC (hereinafter "Respondent  
15 America Best") was licensed as a Mortgage Broker from at least  
16 February 22, 2005 (with an amended license date of September 26,  
17 2007) until it surrendered its license November 4, 2008.
- 18 2. Respondent Steven Vo (hereinafter "Respondent Vo") was the  
19 Manager/Member and President of Respondent America Best  
20 Mortgage.

21 Violation of RSA 397-A:12,VII Failure to Facilitate Exam (1 Count):

22 Violation of RSA 397-A:12,III Examinations: Failure to Provide Requested  
23 Files (3 Counts):

24 Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested

25 Files (3 Counts):

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

2 Department Inquiries (1 Count):

- 3 3. Paragraphs 1 through 2 are hereby realleged as fully set forth  
4 herein.
- 5 4. The Department attempted to conduct an examination of Respondent  
6 America Best Mortgage on December 24, 2007.
- 7 5. On December 3, 2007, the Department sent the November 30, 2007  
8 notice of examination to Respondent America Best Mortgage via  
9 U.S. Certified Mail Return Receipt requested, which was returned  
10 to the Department as unclaimed.
- 11 6. The Department sent a second notice via U.S. Certified Mail Return  
12 Receipt requested on January 15, 2008, which the Respondents  
13 received on January 19, 2008.
- 14 7. The above named Respondents submitted some materials but did not  
15 include certain closed loan files, a questionnaire, and copy of  
16 Respondent America Best Mortgage's most recent tax return.
- 17 8. On February 25, 2008, the Department sent a third notice via U.S.  
18 Certified Mail Return Receipt requested, which the Respondents  
19 received on March 17, 2008.
- 20 9. To date, the above named Respondents have failed to acknowledge  
21 the February 25, 2008 reminder and request letter and have not  
22 provided the requested materials for the Department's review.
- 23 10. To date, fines have accrued for failing to provide the requested  
24 files. The current fine to date is \$24,950.00 (\$50.00 a day x  
25 499 days) and still accruing.

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

2 11. Paragraphs 1 through 10 are hereby realleged as fully set forth  
3 herein.

4 12. The Department conducted an examination of Respondent America Best  
5 Mortgage on April 25, 2008.

6 13. A \$606.80 examination fee for a 1.13 day examination was accrued  
7 prior to Respondent America Best Mortgage's license expiration.

8 14. The Department sent the invoice for \$606.80 to Respondent America  
9 Best Mortgage on August 19, 2008, which came back as  
10 undeliverable.

11 15. A second notice was submitted to the above named Respondents on  
12 September 23, 2008.

13 16. A third notice was submitted to the above named Respondents on  
14 November 21, 2008.

15 17. To date, the above named Respondents have failed to pay the  
16 \$606.80 examination invoice for the 1.13 day exam.

17 II. ISSUES OF LAW

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

19 1. The Department realleges the above stated facts in Paragraphs 1  
20 through 17 as fully set forth herein.

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

24 3. RSA 397-A:11,II provides that requested files and business records  
25 must be received by the Department within 21 calendar days of

1 request. The licensee will be subject to a \$50.00 a day fine  
2 every day after the 21-day period the records are not produced.  
3 Each of the above named Respondents violated this provision on at  
4 least one occasion as alleged above. Respondents currently owe  
5 \$24,950.00 to date and the fine is still accruing.

6 4. RSA 397-A:12,III requires licensees to comply with examination  
7 requests with or without prior notice. All books, papers, files,  
8 related material, and records of assets shall be subject to the  
9 Department's examination. Each of the above named Respondents  
10 violated this statute on at least three occasions as alleged  
11 above.

12 5. RSA 397-A:12,V provides that the expense of such examination shall  
13 be chargeable to and paid by the licensee. Each of the above  
14 named Respondents violated this provision on at least one  
15 occasion as alleged above. To date, the above named Respondents  
16 have failed to pay the \$606.80 examination invoice.

17 6. RSA 397-A:12,VII provides that every person being examined, and  
18 all of the officers, directors, employees, agents, and  
19 representatives of such person shall make freely available to the  
20 Commissioner or his or her examiners, the accounts, records,  
21 documents, files, information, assets, and matters in their  
22 possession or control relating to the subject of the examination  
23 and shall facilitate the examination. Each of the above named  
24 Respondents violated this statute on at least one occasion as  
25 alleged above.



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

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

11          9. RSA 397-A:21,IV provides that any person who, either knowingly or  
12          negligently, violates any provision of RSA 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          \$2,500.00, or both. Each of the acts specified shall constitute  
16          a 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          10. 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 the  
24          act constituting the violation, and every licensee or person acting  
25          as a common law agent who materially aids in the acts constituting

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

10 **III. RELIEF REQUESTED**

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

- 13 1. Find as fact the allegations contained in section I of this Staff  
14 Petition;
- 15 2. Make conclusions of law relative to the allegations contained in  
16 section II of this Staff Petition;
- 17 3. Pursuant to RSA 397-A:17, order each of the above named  
18 Respondents to show cause why their license should not be revoked;
- 19 4. Assess fines and administrative penalties in accordance with RSA  
20 397-A:21, for violations of Chapter 397-A, in the number and amount  
21 equal to the violations set forth in section II of this Staff  
22 Petition; and
- 23 5. Take such other administrative and legal actions as necessary for  
24 enforcement of the New Hampshire Banking Laws, the protection of  
25 New Hampshire citizens, and to provide other equitable relief.

