

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-076
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Quik Fund Inc, and Michael Tishman,)
)
 8 Respondents)
)
 9)

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 5, 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 Quik Fund Inc ("Respondent Quik Fund") shall show
18 cause why penalties in the amount of \$7,500.00 should not be
19 imposed against it;
- 20 2. Respondent Michael Tishman ("Respondent Tishman") shall show
21 cause why penalties in the amount of \$15,000.00 should not be
22 imposed against him;
- 23 3. The above named Respondents shall show cause why, in addition
24 to the penalties listed in Paragraphs 1 through 2 above, the
25

1 accrued fine of \$28,900.00 for failing to provide examination
2 materials should not be paid to the Department;

3 4. The above named Respondents shall be jointly and severally
4 liable for the above amounts alleged in Paragraphs 1 through
5 4 above;

6 5. The above named Respondents shall show cause why, in addition
7 to the penalties listed in Paragraphs 1 through 5 above,
8 Respondent Quik Fund's license should not be revoked.

9 It is hereby further ORDERED that:

10 6. Along with the administrative penalties listed for the above
11 named Respondents, the outstanding sum of \$28,900.00 shall be
12 immediately paid; and

13 7. Failure to request a hearing within 30 days of the date of
14 receipt or valid delivery of this Order shall result in a
15 default judgment being rendered and administrative penalties
16 imposed upon the defaulting Respondent(s).

17 SIGNED,

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19 Dated: 06/05/09

_____/s/_____
PETER C. HILDRETH
BANK COMMISSIONER

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3. Paragraphs 1 through 2 are hereby realleged as fully set forth herein.
4. The Department attempted to conduct an examination of Respondent Quik Fund on November 5, 2007, while Respondent Quik Fund was still licensed with the Department.
5. On October 8, 2007, the Department sent the notice of examination to Quik Fund via U.S. Certified Mail Return Receipt requested, which Respondents received on October 15, 2007.
6. The materials requested in the notice of examination were due on November 5, 2007, which is 21 days after the October 15, 2007 delivery of the notice of examination.
7. With no response from the above named Respondents, the Department submitted a second notice via U.S. Certified Mail Return Receipt requested on February 1, 2008, which Respondents received on February 6, 2008.
8. With no response from the above named Respondents, the Department submitted a third notice via U.S. Certified Mail Return Receipt requested on February 28, 2008 (for an expanded examination), which Respondents received on March 3, 2008.
9. To date, the Department has not received an acknowledgment nor the examination materials.
10. To date, fines have accrued for failing to provide the requested files. The current fine to date is \$28,900.00 (\$50.00 a day x 578 days) and still accruing.

1 and shall facilitate the examination. Each of the above named
2 Respondents violated this statute on at least one occasion as
3 alleged above.

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

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

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

24 9. RSA 397-A:21,IV provides that any person who, either knowingly or
25 negligently, violates any provision of RSA Chapter 397-A, may

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

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

