

1 State of New Hampshire Banking Department

)Case No.: 08-098

2 In re the Matter of:

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3 State of New Hampshire Banking

)

)Order to Show Cause

4 Department,

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5 Petitioner,

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6 and

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)

7 FlexPoint Funding Corporation (d/b/a

)

)

8 FlexPoint Mortgage Funding), and Ryan

)

)

9 R. Knott,

)

)

10 Respondents

)

11 NOTICE OF ORDER

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

14 LEGAL AUTHORITY AND JURISDICTION

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

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

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

1 provisions of the Chapter.

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

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

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

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

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-098
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) June 5, 2009
)
 6 and)
)
 7 FlexPoint Funding Corporation (d/b/a)
)
 8 FlexPoint Mortgage Funding), and Ryan)
)
 9 R. Knott,)
)
 10 Respondents)

11 I. STATEMENT OF ALLEGATIONS

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

14 Facts Common on All Counts:

- 15 1. Respondent FlexPoint Funding Corporation (d/b/a FlexPoint
16 Mortgage Funding) (hereinafter "Respondent FlexPoint") was
17 licensed as a Mortgage Banker from at least October 18, 2004
18 until it surrendered its license on July 17, 2007.
- 19 2. Respondent Ryan R. Knott (hereinafter "Respondent Knott") was
20 the 48% owner and Chief Executive Officer of Respondent
21 FlexPoint, when licensed by the Department.

22 Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested
 23 Files in a Timely Manner (1 Count):

- 24 3. Paragraphs 1 through 2 are hereby realleged as fully set forth
25 herein.

1 4. The Department conducted an examination of Respondent FlexPoint on
2 August 13, 2007, for activities that occurred while Respondent
3 FlexPoint was still licensed with the Department.

4 5. Respondent FlexPoint received the July 24, 2007 notice of
5 examination on July 30, 2007.

6 6. The materials requested in the notice of examination were due on
7 August 20, 2007, which is 21 days after the July 30, 2007
8 delivery of the notice of examination.

9 7. The examination materials arrived at the Department on December 6,
10 2007, which is 108 days late.

11 8. The total late statutory penalty due would be \$5,400.00 (\$50.00 a
12 day x 108 days). The Department actually charged an overage of
13 one week (\$350.00), which should be deducted from the December
14 17, 2007 invoice total of \$5,750.00. To date, the \$5,400.00
15 amount has not been paid.

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

17 9. Paragraphs 1 through 8 are hereby realleged as fully set forth
18 herein.

19 10. The Department conducted an examination of Respondent FlexPoint on
20 August 13, 2007, for activities that occurred while Respondent
21 FlexPoint was still licensed with the Department.

22 11. On November 21, 2007, the Department mailed the invoice for
23 \$500.00 to Respondent FlexPoint, via U.S. Certified Mail Return
24 Receipt requested, which was returned to the Department by the
25 post office on December 28, 2007.

1 12. The Department then, via U.S. mail, mailed a second notice on
2 January 3, 2008 and a third notice on February 5, 2008.

3 13. On March 7, 2008, with no response from the above named
4 Respondents, the Department mailed a fourth notice and invoice,
5 via U.S. Certified Mail Return Receipt requested, which was
6 returned to the Department by the post office on March 10, 2008.

7 14. To date, the above named Respondents still owe the \$500.00
8 examination fee for the one day examination.

9 **II. ISSUES OF LAW**

10 The staff of the Department alleges the following issues of law:

11 1. The Department realleges the above stated facts in Paragraphs 1
12 through 14 as fully set forth herein.

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

16 3. RSA 397-A:11,II provides that requested files and business records
17 must be received by the Department within 21 calendar days of
18 request. The licensee will be subject to a \$50.00 a day fine
19 every day after the 21-day period the records are not produced.
20 Respondents currently owe \$5,400.00. Each of the above named
21 Respondents violated this statute on at least one occasion as
22 alleged above.

23 4. RSA 397-A:12,V provides that the expense of such examination shall
24 be chargeable to and paid by the licensee. Each of the above
25 named Respondents violated this provision on at least one

1 occasion as alleged above. To date, the above named Respondents
2 have failed to pay the \$500.00 examination invoice.

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

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

18 7. RSA 397-A:21,IV provides that any person who, either knowingly or
19 negligently, violates any provision of Chapter 397-A, may upon
20 hearing, and in addition to any other penalty provided for by
21 law, be subject to an administrative fine not to exceed
22 \$2,500.00, or both. Each of the acts specified shall constitute
23 a separate violation, and such administrative action or fine may
24 be imposed in addition to any criminal penalties or civil
25 liabilities imposed by New Hampshire Banking laws.

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

17 **III. RELIEF REQUESTED**

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

- 20 1. Find as fact the allegations contained in section I of this Staff
21 Petition;
- 22 2. Make conclusions of law relative to the allegations contained in
23 section II of this Staff Petition;
- 24 3. Pursuant to RSA 397-A:17, order each of the above named
25 Respondents to show cause why their license should not be revoked;

