

1 State of New Hampshire Banking Department

)Case No.:08-108

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,

)

)

6 and

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)

7 The Lending Connection Inc, Duane N.

)

)

8 Wellhoefer, Johnny Bowen, and Jon

)

)

9 Heidt,

)

)

10 Respondents

)

11 NOTICE OF ORDER

12 This Order to Show Cause commences an adjudicative proceeding under
13 the provisions of RSA Chapter 397-A and RSA Chapter 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,IV, 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 Chapter
8 358-A and exempt under RSA 358-A:3,I or that may violate any of the
9 provisions of Titles XXXV and XXXVI and administrative rules adopted
10 thereunder. The Commissioner may hold hearings relative to such conduct and
11 may order restitution for a person or persons adversely affected by such
12 conduct.

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

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

1 deemed to be true.

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

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

10 The Staff Petition dated November 25, 2009 (a copy of which is
11 attached hereto) is incorporated by reference hereto.

12 **ORDER**

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

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

18 It is hereby ORDERED, that:

19 1. Respondent The Lending Connection Inc ("Respondent Lending
20 Connection") shall show cause why penalties in the amount of
21 \$5,000.00 should not be imposed against it;

22 2. Respondent Duane N. Wellhoefer ("Respondent Wellhoefer")
23 shall show cause why penalties in the amount of \$7,500.00
24 should not be imposed against him;

1 3. Respondent Johnny Bowen ("Respondent Bowen") shall show cause
2 why penalties in the amount of \$7,500.00 should not be
3 imposed against him;

4 4. Respondent Jon Heidt ("Respondent Heidt") shall show cause
5 why penalties in the amount of \$7,500.00 should not be
6 imposed against him;

7 5. The above named Respondents shall show cause why, in addition
8 to the penalties listed in Paragraphs 1 through 4 above, the
9 \$500.00 examination fee should not be paid to the Department;

10 6. The above named Respondents shall show cause why, in addition
11 to the penalties listed in Paragraphs 1 through 5 above, the
12 accrued fine of \$4,350.00 for the late filing of examination
13 materials should not be paid to the Department;

14 7. The above named Respondents shall be jointly and severally
15 liable for the above amounts alleged in Paragraphs 1 through
16 6 above; and

17 8. The above named Respondents shall show cause why, in addition
18 to the penalties listed in Paragraphs 1 through 7 above,
19 Respondent Lending Connection's license should not be
20 revoked.

21 It is hereby further ORDERED that:

22 9. Along with the administrative penalties listed for the above
23 named Respondents, the outstanding sum of \$4,850.00 shall be
24 immediately paid; and

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-108
3 State of New Hampshire Banking)
4 Department,) Staff Petition
5 Petitioner,) November 25, 2009
6 and)
7 The Lending Connection Inc, Duane N.)
8 Wellhoefer, Johnny Bowen, and Jon)
9 Heidt,)
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 The Lending Connection Inc (hereinafter "Respondent
16 Lending Connection") was licensed as a Mortgage Broker from at
17 least August 9, 2002 until its license expired on December 31,
18 2007.
- 19 2. Respondent Duane N. Wellhoefer (hereinafter "Respondent
20 Wellhoefer") was the President of Respondent Lending Connection,
21 when licensed by the Department.
- 22 3. Respondent Johnny Bowen (hereinafter "Respondent Bowen") was the
23 Vice-President of Respondent Lending Connection, when licensed by
24 the Department.
- 25 4. Respondent Jon Heidt (hereinafter "Respondent Heidt") was the

1 Director of Compliance of Respondent Lending Connection, when
2 licensed by the Department.

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

4 **Violation of RSA 397-A:13,VI Failure of Officer and Owner to Respond to**
5 **Department Inquiries (1 Count):**

6 5. Paragraphs 1 through 4 are hereby realleged as fully set forth
7 herein.

8 6. The Department conducted an examination of Lending Connection on
9 August 20, 2007, while Respondent Lending Connection was still
10 licensed with the Department.

11 7. The Department sent Respondents the report of examination and
12 examination invoice for \$500.00 via U.S. Certified Mail Return
13 Receipt requested on December 10, 2007, which Respondents
14 received December 18, 2007.

15 8. The above named Respondents failed to respond to the December 10,
16 2007 correspondence from the Department.

17 9. The Department, via U.S. mail, mailed Respondents a second notice
18 on January 17, 2008 and a third notice on March 5, 2008.

19 10. The above named Respondents did not respond to any of the three
20 notices for payment of the \$500.00 invoice.

21 11. To date, the above named Respondents still owe the \$500.00
22 examination fee for the one day examination.

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

25 12. Paragraphs 1 through 11 are hereby realleged as fully set forth

1 herein.

2 13. As mentioned above, the Department conducted an examination of
3 Respondent Lending Connection on August 20, 2007.

4 14. The Department sent a notification of examination on July 25, 2007
5 via U.S. Certified Mail Return Receipt requested, which the
6 Respondents received on July 30, 2007.

7 15. Acknowledgement and the loan list were due 7 days after
8 Respondents' July 30, 2007 receipt of the notice of examination,
9 which would have been August 6, 2007.

10 16. The remaining examination material was due within 21 calendar days
11 from Respondents' July 30, 2007 receipt of the notice of
12 examination, which would have been August 20, 2007.

13 17. The Department received the loan list by email on August 3, 2007
14 and the acknowledgment by email on August 6, 2007.

15 18. The above named Respondents had failed to provide any other
16 examination materials to the Department.

17 19. The Department sent a reminder to the Respondents via U.S.
18 Certified Mail Return Receipt requested on October 22, 2007,
19 which the Respondents received on October 31, 2007.

20 20. The Department received the examination materials on November 15,
21 2007 (87 days late), which generated a fine of \$4,350.00 (87 days
22 x. \$50.00 a day).

23 21. On December 11, 2007, the Respondents wrote a letter to the
24 Department explaining the reason for the late filing of the
25 examination materials and a request to waive the \$4,350.00 fine.

1 22. On December 14, 2007, the Department wrote to Respondents
2 indicating it did not have sufficient cause to waive the fine.

3 23. To date, the above named Respondents have failed to pay the
4 \$4,850.00 fine for the late filing of examination materials.

5 **II. ISSUES OF LAW**

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

7 1. The Department realleges the above stated facts in Paragraphs 1
8 through 23 as fully set forth herein.

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

12 3. RSA 397-A:11,II provides that requested files and business records
13 must be received by the Department within 21 calendar days of
14 request. The licensee will be subject to a \$50.00 a day fine
15 every day after the 21-day period the records are not produced.
16 Respondents currently owe \$4,350.00. Each of the above named
17 Respondents violated this statute on at least one occasion as
18 alleged above.

19 4. RSA 397-A:12,V provides that the expense of such examination shall
20 be chargeable to and paid by the licensee. Each of the above
21 named Respondents violated this provision on at least one occasion
22 as alleged above. To date, the above named Respondents have
23 failed to pay the \$500.00 examination invoice.

24 5. RSA 397-A:13,VI provides that any officer, owner, manager or agent
25 of any licensee shall reply promptly in writing, or other

1 designated form, to any written inquiry from the Department.
2 Respondents Wellhoefer, Bowen and Heidt each violated this
3 provision on at least one occasion as alleged above.

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

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

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

1 by New Hampshire Banking laws.

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

18 **III. RELIEF REQUESTED**

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

- 21 1. Find as fact the allegations contained in section I of this Staff
22 Petition;
- 23 2. Make conclusions of law relative to the allegations contained in
24 section II of this Staff Petition;
- 25 3. Assess fines and administrative penalties in accordance with RSA

