

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 08-109  
 )  
 3 State of New Hampshire Banking )  
 )  
 4 Department, ) Order to Show Cause  
 )  
 5 Petitioner, )  
 )  
 6 and )  
 )  
 7 Foremost Mortgage Associates Inc, and )  
 )  
 8 Michael N. Keselica, )  
 )  
 9 Respondents )

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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 10, 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 Foremost Mortgage Associates Inc ("Respondent  
18 Foremost Mortgage") shall show cause why penalties in the  
19 amount of \$27,500.00 should not be imposed against it;
- 20 2. Respondent Michael N. Keselica ("Respondent Keselica") shall  
21 show cause why penalties in the amount of \$32,500.00 should  
22 not be 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 \$500.00 examination fee should not be paid to the Department;

- 1 4. The above named Respondents shall show cause why, in addition  
2 to the penalties listed in Paragraphs 1 through 3 above, the  
3 accrued fine of \$1,800.00 for the late filing of examination  
4 materials should not be paid to the Department;
- 5 5. The above named Respondents shall show cause why, in addition  
6 to the penalties listed in Paragraphs 1 through 4 above, the  
7 accrued fine of \$25,850.00 for failing to provide examination  
8 materials should not be paid to the Department;
- 9 6. The above named Respondents shall be jointly and severally  
10 liable for the above amounts alleged in Paragraphs 1 through  
11 5 above;
- 12 7. The above named Respondents shall show cause why, in addition  
13 to the penalties listed in Paragraphs 1 through 6 above,  
14 Respondent Foremost Mortgage's license should not be revoked.

15 It is hereby further ORDERED that:

- 16 8. Along with the administrative penalties listed for the above  
17 named Respondents, the outstanding sum of \$28,150.00 shall be  
18 immediately paid; and
- 19 9. Failure to request a hearing within 30 days of the date of  
20 receipt or valid delivery of this Order shall result in a  
21 default judgment being rendered and administrative penalties  
22 imposed upon the defaulting Respondent(s).

23 SIGNED,

24 Dated: 06/10/09

25 /s/  
PETER C. HILDRETH  
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 08-109  
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 3 State of New Hampshire Banking )  
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 4 Department, ) Staff Petition  
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 5 Petitioner, ) June 10, 2009  
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 6 and )  
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 7 Foremost Mortgage Associates Inc, and )  
 )  
 8 Michael N. Keselica, )  
 )  
 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 Foremost Mortgage Associates Inc (hereinafter  
15 "Respondent Foremost Mortgage") was licensed as a Mortgage  
16 Broker from at least November 25, 2003 until it surrendered its  
17 license on January 30, 2008.
- 18 2. Respondent Michael N. Keselica (hereinafter "Respondent  
19 Keselica") was the President of Respondent Foremost Mortgage,  
20 when licensed by the Department.

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

22 Files in a Timely Manner (1 Count):

- 23 3. Paragraphs 1 through 2 are hereby realleged as fully set forth  
24 herein.
- 25 4. The Department conducted an examination of Respondent Foremost

1 Mortgage in July and August of 2006, while Respondent Foremost  
2 Mortgage was still licensed with the Department.

3 5. Respondents received the Department's Notification of Examination  
4 on August 10, 2006.

5 6. The examination materials were due on August 31, 2006, which is 21  
6 days after the August 10, 2007 receipt of the Department's  
7 Notification of Examination.

8 7. The Department received the examination materials on October 6,  
9 2006, which was 36 days late.

10 8. Respondent Foremost Mortgage's late submittal of examination  
11 materials generated a fine of \$1,800.00 (\$50.00 per day x 36  
12 days).

13 9. To date, Respondents still owe \$1,800.00 for late submittal of  
14 examination materials.

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

16 **Violation of RSA 397-A:12,III Examinations: Failure to Provide Requested**  
17 **Files (1 Count):**

18 **Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested**  
19 **Files (1 Count):**

20 **Violation of RSA 397-A:10,IV Failure to Update Information on File with**  
21 **Commissioner (1 Count):**

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

24 10. Paragraphs 1 through 9 are hereby realleged as fully set forth  
25 herein.

1 11. The Department conducted an examination of Respondent Foremost  
2 Mortgage on January 7, 2008, while Respondent Foremost Mortgage  
3 was still licensed with the Department.

4 12. On December 17, 2007, the Department sent the Notice of  
5 Examination to Respondent Foremost Mortgage via U.S. Certified  
6 Mail Return Receipt requested, which Respondents received on  
7 December 20, 2007.

8 13. The materials requested in the Notice of Examination were due on  
9 January 10, 2008, which is 21 days after the December 20, 2007  
10 delivery of the Notice of Examination.

11 14. The Respondents submitted a loan list and acknowledgment on  
12 December 31, 2007 but did not file the exam loan files.

13 15. With no response from the above named Respondents, the Department  
14 submitted a second notice via U.S. Certified Mail Return Receipt  
15 requested on March 6, 2008, which the Respondents received on  
16 March 12, 2008.

17 16. The Department also emailed the Respondents on March 6, 2008 but  
18 the email was returned as undeliverable.

19 17. On March 18, 2008, a representative from Respondent Foremost  
20 Mortgage telephoned the Department and spoke with a Department  
21 Examiner. The representative explained it had surrendered its  
22 license and did not intend to comply.

23 18. Again with no response from the above named Respondents, the  
24 Department submitted a third notice, this time via UPS, on April  
25 23, 2008, which was returned to the Department on May 6, 2008 as

1 "received moved."

2 19. To date, the Department has not received an acknowledgment nor the  
3 examination materials.

4 20. To date, fines have accrued for failing to provide the requested  
5 files. The current fine to date is \$25,850.00 (\$50.00 a day x  
6 517 days) and still accruing.

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

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

9 **Department Inquiries (1 Count):**

10 21. Paragraphs 1 through 20 are hereby realleged as fully set forth  
11 herein.

12 22. On January 7, 2008, the Department conducted another examination  
13 of Respondent Foremost Mortgage as described above, while it was  
14 still licensed with the Respondent.

15 23. On May 7, 2008, the Department mailed the report of examination  
16 and invoice for \$500.00 to Respondent Foremost Mortgage, via U.S.  
17 Certified Mail Return Receipt requested, which Respondents  
18 received on May 12, 2008.

19 24. The above named Respondents failed to respond to the May 7, 2008  
20 correspondence from the Department.

21 25. The Department, via U.S. mail, mailed a second notice on June 24,  
22 2008 and a third notice on August 1, 2008.

23 26. The above named Respondents did not respond to any of the three  
24 notices for payment of the \$500.00 invoice.

25 27. To date, the above named Respondents still owe the \$500.00



1 examination fee for the one day examination.

2 Violation of Title 18 U.S.C. Section 1001, et seq. via RSA 397-A:2, III (1

3 Count):

4 Violation of RSA 397-A:6, I Failure to Supervise (1 Count):

5 Violation of RSA 397-A:17, I(g) Failure to Supervise (1 Count):

6 Violation of RSA 397-A:17, I(k) Dishonest or Unethical Practices (1 Count):

7 Violation of RSA 397-A:17, I(l) Violation of Federal Laws and Rules (1

8 Count):

9 28. Paragraphs 1 through 27 are hereby realleged as fully set forth  
10 herein.

11 29. The Department's July 24, 2006 examination resulted in the  
12 discovery of unethical business practices in a stated income low  
13 document loan product for Consumer A and Consumer B (a married  
14 couple).

15 30. The documents reviewed for the loan of Consumer A and Consumer B  
16 indicated a completed 1003 application dated December 20, 2005.

17 31. The December 20, 2005 1003 application indicated Consumer A's  
18 total gross monthly income was \$4,983.00 and Consumer B's total  
19 gross monthly income was \$3,558.00, with a combined total of  
20 \$8,541.00.

21 32. Calculating gross monthly incomes from Consumer A's and Consumer's  
22 B's paystubs resulted in a gross monthly income of \$5,594.65 and  
23 \$2,702.23, respectively, with a combined total of \$8,296.88.

24 33. However, Consumer A and Consumer B signed another 1003 application  
25 on January 27, 2006, which discloses their individual gross

1 monthly income as \$10,752.33 and \$4,582.60, respectively, with a  
2 combined total of \$15,334.93.

3 34. It appears that during the underwriting process, Respondents  
4 failed to supervise staff during the underwriting process as the  
5 overstated income does not appear to be questioned by the  
6 underwriter, Respondents or the lender who closed the loan.

7 **II. ISSUES OF LAW**

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

- 9 1. The Department realleges the above stated facts in Paragraphs 1  
10 through 34 as fully set forth herein.
- 11 2. The Department has jurisdiction over the licensing and regulation  
12 of persons engaged in mortgage banker or broker activities  
13 pursuant to NH RSA 397-A:2 and RSA 397-A:3.
- 14 3. RSA 397-A:2, III requires persons subject to or licensed under RSA  
15 Chapter 397-A to abide by applicable federal laws and  
16 regulations, the laws and rules of the State of New Hampshire,  
17 and the orders of the Commissioner. Any violation of such law,  
18 regulation, order, or rule is a violation of RSA Chapter 397-A.  
19 Each of the above named Respondents violated this statute on at  
20 least one occasion as alleged above.
- 21 4. RSA 397-A:6,I mandates that licensees supervise their employees,  
22 agents, loan originators, and branch offices. Each of the above  
23 named Respondents failed to adequately supervise and therefore  
24 violated this statute on at least one occasion as alleged above.

1 5. RSA 397-A:10,IV provides that persons licensed under RSA Chapter  
2 397-A are under a continuing obligation to update information on  
3 file with the Commissioner. Each of the above named Respondents  
4 violated this provision on at least one occasion as alleged  
5 above.

6 6. RSA 397-A:11,II provides that requested files and business records  
7 must be received by the Department within 21 calendar days of  
8 request. The licensee will be subject to a \$50.00 a day fine  
9 every day after the 21-day period the records are not produced.  
10 Respondents currently owe \$1,800.00 for late filed examination  
11 materials and \$25,850.00 for failure to file examination  
12 materials for a separate examination. Each of the above named  
13 Respondents violated this statute on at least two occasions as  
14 alleged above.

15 7. RSA 397-A:12,III requires licensees to comply with examination  
16 requests with or without prior notice. All books, papers, files,  
17 related material, and records of assets shall be subject to the  
18 Department's examination. Each of the above named Respondents  
19 violated this statute on at least one occasion as alleged above.

20 8. RSA 397-A:12,V provides that the expense of such examination shall  
21 be chargeable to and paid by the licensee. Each of the above  
22 named Respondents violated this provision on at least one  
23 occasion as alleged above. To date, the above named Respondents  
24 have failed to pay the \$500.00 examination invoice.  
25

1 9. RSA 397-A:12,VII provides that every person being examined, and  
2 all of the officers, directors, employees, agents, and  
3 representatives of such person shall make freely available to the  
4 Commissioner or his or her examiners, the accounts, records,  
5 documents, files, information, assets, and matters in their  
6 possession or control relating to the subject of the examination  
7 and shall facilitate the examination. Each of the above named  
8 Respondents violated this statute on at least one occasion as  
9 alleged above.

10 10. RSA 397-A:13,VI provides that any officer, owner, manager or  
11 agent of any licensee shall reply promptly in writing, or other  
12 designated form, to any written inquiry from the Department.  
13 Respondent Keselica violated this provision on at least two  
14 occasions as alleged above.

15 11. 18 U.S.C. Section 1001, et seq., provides that except as  
16 otherwise provided in this section, whoever, in any matter within  
17 the jurisdiction of the executive, legislative, or judicial  
18 branch of the Government of the United States, knowingly and  
19 willfully (1) falsifies, conceals, or covers up by any trick,  
20 scheme, or device a material fact; (2) makes any materially  
21 false, fictitious, or fraudulent statement or representation; or  
22 (3) makes or uses any false writing or document knowing the same  
23 to contain any materially false, fictitious, or fraudulent  
24 statement or entry; shall be fined under this title, imprisoned  
25 not more than 5 years... Each of the above named Respondents

1 violated this provision on at least one occasion as alleged  
2 above.

3 12. 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 13. RSA 397-A:17,I(g) provides that licensees engaging in business in  
14 New Hampshire must supervise their agents, originators, managers  
15 or employees. Each of the above named Respondents violated this  
16 statute on at least one occasion as alleged above.

17 14. Pursuant to RSA 397-A:17,I(k), licensees engaging in business in  
18 New Hampshire are prohibited from engaging in unethical business  
19 practices. Each of the above named Respondents violated this  
20 statute on at least one occasion as alleged above.

21 15. RSA 397-A:17,I(l) provides that licensees must abide by all  
22 federal laws or rules thereunder. Each of the above named  
23 Respondents violated several sections of Title 18 of the United  
24 States Code as defined below. Each of the above named  
25 Respondents violated federal law on at least one occasion as

1           alleged above.

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

7           17. RSA 397-A:21,IV provides that any person who, either knowingly or  
8           negligently, violates any provision of Chapter 397-A, may upon  
9           hearing, and in addition to any other penalty provided for by  
10          law, be subject to an administrative fine not to exceed  
11          \$2,500.00, or both. Each of the acts specified shall constitute  
12          a separate violation, and such administrative action or fine may  
13          be imposed in addition to any criminal penalties or civil  
14          liabilities imposed by New Hampshire Banking laws.

15          18. RSA 397-A:21,V provides that every person who directly or  
16          indirectly controls a person liable under this section, every  
17          partner, principal executive officer or director of such person,  
18          every person occupying a similar status or performing a similar  
19          function, every employee of such person who materially aids in the  
20          act constituting the violation, and every licensee or person acting  
21          as a common law agent who materially aids in the acts constituting  
22          the violation, either knowingly or negligently, may, upon notice  
23          and opportunity for hearing, and in addition to any other penalty  
24          provided for by law, be subject to suspension, revocation, or  
25          denial of any registration or license, including the forfeiture of

1 any application fee, or the imposition of an administrative fine  
2 not to exceed \$2,500, or both. Each of the acts specified shall  
3 constitute a separate violation, and such administrative action or  
4 fine may be imposed in addition to any criminal or civil penalties  
5 imposed.

6 **III. RELIEF REQUESTED**

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

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

