

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 08-111  
 )  
 3 State of New Hampshire Banking )  
 )  
 4 Department, ) Order to Show Cause  
 )  
 5 Petitioner, )  
 )  
 6 and )  
 )  
 7 Frankie Damiano (d/b/a A Better Choice )  
 )  
 8 Mortgage Company), and Frankie Damiano, )  
 )  
 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 Frankie Damiano (d/b/a A Better Choice Mortgage  
18 Company) ("Respondent Better Choice") shall show cause why  
19 penalties in the amount of \$5,000.00 should not be imposed  
20 against it;
- 21 2. Respondent Frankie Damiano ("Respondent Damiano") shall show  
22 cause why penalties in the amount of \$7,500.00 should not be  
23 imposed against her;
- 24 3. The above named Respondents shall show cause why, in addition  
25 to the penalties listed in Paragraphs 1 through 2 above, the



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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 Frankie Damiano (d/b/a A Better Choice Mortgage  
15 Company) (hereinafter "Respondent Better Choice") was licensed as  
16 a Mortgage Broker from at least October 6, 2006 until it  
17 surrendered its license on December 6, 2007.
- 18 2. Respondent Frankie Damiano (hereinafter "Respondent Damiano")  
19 was the 100% owner of Respondent Better Choice, when licensed by  
20 the Department.

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

22 Violation of RSA 397-A:13,VI Failure of Officer and Owner to Respond to  
23 Department Inquiries (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 Better  
2 Choice on September 24, 2007, while Respondent Better Choice was  
3 still licensed with the Department.

4 5. On January 4, 2008, the Department mailed the report of  
5 examination and invoice for \$500.00 to Respondent Better Choice,  
6 via U.S. Certified Mail Return Receipt requested, which the post  
7 office returned to the Department on January 25, 2008 as  
8 "unclaimed".

9 6. On January 28, 2008, the Department mailed the report of  
10 examination and invoice for \$500.00 to Respondent Better Choice,  
11 via UPS, which Respondents received on January 30, 2008.

12 7. The Department, via U.S. mail, mailed a second notice on February  
13 5, 2008 and a third notice on March 14, 2008.

14 8. The above named Respondents did not respond to any of the three  
15 notices for payment of the \$500.00 invoice.

16 9. To date, the above named Respondents still owe the \$500.00  
17 examination fee for the one day examination.

18 **Violation of RSA 397-A:13, I Failure to File Annual Report (1 Count):**

19 10. Paragraphs 1 through 9 are hereby realleged as fully set forth  
20 herein.

21 11. Respondent Better Choice was licensed in 2007, and thus subject  
22 to the filing of a 2007 annual report with the Department.

23 12. The 2007 annual report was due on or before February 1, 2008.

24 13. On December 5, 2007, the Department received Respondent Better  
25 Choice's surrender forms but not the 2007 annual report.

1 14. On February 5, 2008, the Department mailed a reminder letter  
2 that the annual report was due on February 1, 2008. The post  
3 office returned the letter to the Department as unclaimed with  
4 no forwarding address.

5 15. To date, Respondent Better Choice has failed to file the 2007  
6 annual report.

7 16. To date, the penalty for failing to file an annual report has  
8 accrued to the cap of \$2,500.00 (\$25.00 per day; maximum  
9 \$2,500.00).

## 10 **II. ISSUES OF LAW**

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

12 1. The Department realleges the above stated facts in Paragraphs 1  
13 through 16 as fully set forth herein.

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

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

22 4. RSA 397-A:13,I provides that a licensee shall file its annual  
23 report on or before February 1 each year concerning operations  
24 for the preceding year or license period ending December 31.  
25 Each of the above named Respondents violated this provision on at

1 least one occasion as alleged above. As calculated by RSA 397-  
2 A:13,IV, the above named Respondents reached the maximum  
3 statutory cap of \$2,500.00 for failing to file the 2007 annual  
4 report.

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

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

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

25 8. RSA 397-A:21,IV provides that any person who, either knowingly or



1 negligently, violates any provision of Chapter 397-A, may upon  
2 hearing, and in addition to any other penalty provided for by  
3 law, be subject to an administrative fine not to exceed  
4 \$2,500.00, or both. Each of the acts specified shall constitute  
5 a separate violation, and such administrative action or fine may  
6 be imposed in addition to any criminal penalties or civil  
7 liabilities imposed by New Hampshire Banking laws.

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

1 **III. RELIEF REQUESTED**

2 The staff of the Department requests the Commissioner take the following  
3 action:

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

17 **IV. RIGHT TO AMEND**

18 The Department reserves the right to amend this Staff Petition and to  
19 request that the Commissioner take additional administrative action.  
20 Nothing herein shall preclude the Department from bringing additional  
21 enforcement action under RSA 397-A or the regulations thereunder.

22 Respectfully submitted by:

23  
24                   /s/                    
Maryam Torben Desfosses  
25 Hearings Examiner

  06/10/09    
Date