

1 State of New Hampshire Banking Department

)Case No.: 08-127

2 In re the Matter of:

)

)

3 State of New Hampshire Banking

)

)Order to Show Cause

4 Department,

)

)

5 Petitioner,

)

)

6 and

)

)

7 B D Nationwide Mortgage Company (d/b/a

)

)

8 Home Equity Loans Direct), and Bryan

)

)

9 Dornan,

)

)

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. The  
12 Commissioner may utilize all remedies available under the Consumer  
13 Protection Act.

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

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

1 upon consideration of the Order to Show Cause, the allegations of which may be  
2 deemed to be true.

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

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

10 The Staff Petition dated January 5, 2009 (a copy of which is attached  
11 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 B D Nationwide Mortgage Company (d/b/a Home Equity  
20 Loans Direct) ("Respondent B D Nationwide") shall show cause  
21 why penalties in the amount of \$15,000.00 should not be  
22 imposed against it;
- 23 2. Respondent Bryan Dornan ("Respondent Dornan") shall show  
24 cause why penalties in the amount of \$27,500.00 should not be  
25 imposed against him;

- 1           3. The above named Respondents shall show cause why, in addition  
2           to the penalties listed in Paragraphs 1 through 2 above, the  
3           \$500.00 examination fee should not be paid to the Department;  
4           4. The above named Respondents shall show cause why, in addition  
5           to the penalties listed in Paragraphs 1 through 3 above, the  
6           accrued fine of \$20,100.00 for failing to provide examination  
7           materials(and still accruing)should not be paid to the  
8           Department;  
9           5. The above named Respondents shall show cause why, in addition  
10          to the penalties listed in Paragraphs 1 through 4 above,  
11          statutory penalties of \$2,500.00 should not be imposed for  
12          failing to file the 2007 Annual Report;  
13          6. The above named Respondents shall be jointly and severally  
14          liable for the above amounts alleged in Paragraphs 1 through  
15          5 above;  
16          7. The above named Respondents shall show cause why, in addition  
17          to the penalties listed in Paragraphs 1 through 6 above,  
18          Respondent B D Nationwide's license should not be revoked.

19          It is hereby further ORDERED that:

- 20          8. Along with the administrative penalties listed for the above  
21          named Respondents, the outstanding sum of \$23,100.00 shall be  
22          immediately paid; and  
23          9. Failure to request a hearing within 30 days of the date of  
24          receipt or valid delivery of this Order shall result in a  
25

1 default judgment being rendered and administrative penalties  
2 imposed upon the defaulting Respondent(s).

3 SIGNED,

4  
5 Dated: 01/05/09

/s/

PETER C. HILDRETH  
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 08-127  
 )  
 3 State of New Hampshire Banking )  
 )  
 4 Department, ) Staff Petition  
 )  
 5 Petitioner, ) January 5, 2009  
 )  
 6 and )  
 )  
 7 B D Nationwide Mortgage Company (d/b/a )  
 )  
 8 Home Equity Loans Direct), and Bryan )  
 )  
 9 Dornan, )  
 )  
 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 B D Nationwide Mortgage Company (d/b/a Home Equity  
16 Loans Direct) (hereinafter "Respondent B D Nationwide") was  
17 licensed as a Mortgage Broker from at least January 30, 2006  
18 (with an amended license date of October 04, 2006) until its  
19 license expired on December 31, 2007.
- 20 2. Respondent Bryan Dornan (hereinafter "Respondent Dornan") was  
21 the President of Respondent B D Nationwide, when licensed by the  
22 Department.

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

24 Violation of RSA 397-A:12,III Examinations: Failure to Provide Requested

25 Files (1 Count):

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

2 Files (1 Count):

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

4 Department Inquiries (2 Counts):

5 3. Paragraphs 1 through 2 are hereby realleged as fully set forth  
6 herein.

7 4. The Department conducted an examination of Respondent B D  
8 Nationwide on December 3, 2007.

9 5. On November 5, 2007, the Department sent the notice of examination  
10 to Respondent B D Nationwide via U.S. Certified Mail Return  
11 Receipt requested, which Respondents received on November 8,  
12 2007.

13 6. The materials requested in the notice of examination were due on  
14 November 29, 2007, which is 21 days after the November 8, 2007  
15 delivery of the notice of examination.

16 7. With no response from the above named Respondents, the Department  
17 submitted a second notice via U.S. Certified Mail Return Receipt  
18 requested on February 13, 2008, which Respondents received on  
19 February 20, 2007.

20 8. The Department also emailed Respondent Dornan on February 13,  
21 2007, which was returned as undeliverable.

22 9. To date, the Department has not received an acknowledgment nor the  
23 examination materials.

24 10. To date, fines have accrued for failing to provide the requested  
25 files. The current fine to date is \$20,100.00 (\$50.00 a day x

1 402 days) and still accruing.

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

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

5 11. Paragraphs 1 through 10 are hereby realleged as fully set forth  
6 herein.

7 12. As mentioned above, the Department conducted an examination of  
8 Respondent B D Nationwide on December 03, 2007 while Respondent B  
9 D Nationwide was still licensed with the Department.

10 13. On May 7, 2008, the Department mailed the report of examination  
11 and invoice for \$500.00 to Respondent B D Nationwide, via U.S.  
12 Certified Mail Return Receipt requested, which Respondents  
13 received on May 12, 2008.

14 14. The above named Respondents failed to respond to the September 6,  
15 2007 correspondence from the Department.

16 15. The Department, via U.S. mail, mailed a second notice on June 24,  
17 2008 and a third notice on August 1, 2008.

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

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

22 Violation of RSA 397-A:10-a,I(a) Failure to Properly Surrender License (1  
23 Count):

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

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

2 Department Inquiries (2 Counts):

3 18. Paragraphs 1 through 17 are hereby realleged as fully set forth  
4 herein.

5 19. The 2007 Annual Report was due on or before February 1, 2008.

6 20. On January 4, 2008, the Department sent a certified letter  
7 advising the Respondents that Respondent B D Nationwide's license  
8 had expired on December 31, 2007 and that Respondents had to file  
9 proper surrender forms and an annual report.

10 21. On February 5, 2008, the Department sent a certified letter that  
11 the annual report was due on February 1, 2008.

12 22. On February 19, 2008, the Department sent a certified reminder  
13 letter that Respondents still needed to complete the surrender  
14 forms, the publication notice and provide the annual report.  
15 This letter was returned to the Department as undeliverable.

16 23. To date, the Department has not received copies of the publication  
17 notice nor the expiration paperwork nor the 2007 annual report.

18 24. To date, the accrued penalty for failure to file an annual report  
19 has reached the maximum cap of \$2,500.00.

20 **II. ISSUES OF LAW**

21 The staff of the Department, alleges the following issues of law:

22 1. The Department realleges the above stated facts in Paragraphs 1  
23 through 24 as fully set forth herein.

24 2. The Department has jurisdiction over the licensing and regulation  
25 of persons engaged in mortgage banker or broker activities

1           pursuant to NH RSA 397-A:2 and RSA 397-A:3.

2           3. RSA 397-A:10-a,I(a) provides that a licensee who ceases to engage  
3           in the business of a mortgage banker or mortgage broker at any  
4           time during a license year for any cause shall surrender such  
5           license in person or by registered or certified mail to the  
6           Commissioner within 15 calendar days of such cessation, and shall  
7           cause to be published in a newspaper of general circulation in the  
8           licensee's market area a notice to such effect. Each of the above  
9           named Respondents violated this statute on at least one occasion  
10          as alleged above.

11          4. RSA 397-A:11,II provides that requested files and business records  
12          must be received by the Department within 21 calendar days of  
13          request. The licensee will be subject to a \$50.00 a day fine  
14          every day after the 21-day period the records are not produced.  
15          Respondents currently owe \$20,100.00 (and still accruing). Each  
16          of the above named Respondents violated this statute on at least  
17          one occasion as alleged above.

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

23          6. 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 7. RSA 397-A:12,VII provides that every person being examined, and  
4 all of the officers, directors, employees, agents, and  
5 representatives of such person shall make freely available to the  
6 Commissioner or his or her examiners, the accounts, records,  
7 documents, files, information, assets, and matters in their  
8 possession or control relating to the subject of the examination  
9 and shall facilitate the examination. Each of the above named  
10 Respondents violated this statute on at least one occasion as  
11 alleged above.

12 8. RSA 397-A:13,I provides that a licensee shall file its annual  
13 report on or before February 1 each year concerning operations  
14 for the preceding year or license period ending December 31.  
15 Each of the above named Respondents violated this provision on at  
16 least one occasion as alleged above.

17 9. RSA 397-A:13,IV provides that any mortgage banker or broker  
18 failing to file the annual report or financial statement within  
19 the time prescribed may be required to pay to the Department a  
20 penalty of \$25.00 per calendar day for each day the annual report  
21 is overdue, for a maximum of \$2,500.00. Each of the above named  
22 Respondents failed to file the annual report, which capped at the  
23 maximum of \$2,500.00.

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

1 designated form, to any written inquiry from the Department.  
2 Respondent Dornan violated this provision on at least five  
3 occasions as alleged above.

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

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

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

1 provided for by law, be subject to suspension, revocation, or  
2 denial of any registration or license, including the forfeiture of  
3 any application fee, or the imposition of an administrative fine  
4 not to exceed \$2,500, or both. Each of the acts specified shall  
5 constitute a separate violation, and such administrative action or  
6 fine may be imposed in addition to any criminal or civil penalties  
7 imposed.

8 **III. RELIEF REQUESTED**

9 The staff of the Department requests the Commissioner take the following  
10 action:

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

