

1 State of New Hampshire Banking Department

2	In re the Matter of:) Case No.: 08-132
)
3	State of New Hampshire Banking)
4	Department,) Order to Show Cause
)
5	Petitioner,)
)
6	and)
)
7	Best Rate Funding Corp, and Wade)
)
8	Womack,)
)
9	Respondents)

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

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 541-A.
17 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 formal settlement with the
4 Department within that time frame, then such person shall likewise be deemed
5 in default, and the orders shall, on the thirty-first day, become permanent,
6 and shall remain in full force and effect until and unless later modified or
7 vacated by the Commissioner, for good cause shown.

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

9 The Staff Petition dated February 5, 2009 (a copy of which is attached
10 hereto) is incorporated by reference hereto.

11 **ORDER**

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

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

17 It is hereby ORDERED, that:

- 18 1. Respondent Best Rate Funding Corp ("Respondent Best Rate")
19 shall show cause why penalties in the amount of \$5,000.00
20 should not be imposed against it;
- 21 2. Respondent Wade Womack ("Respondent Womack") shall show cause
22 why penalties in the amount of \$10,000.00 should not be
23 imposed against him;
- 24 3. The above named Respondents shall show cause why, in addition
25 to the penalties listed in Paragraphs 1 through 2 above, the

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-132
)
 3 State of New Hampshire Banking)
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 4 Department,) Staff Petition
)
 5 Petitioner,) February 5, 2009
)
 6 and)
)
 7 Best Rate Funding Corp, and Wade)
)
 8 Womack,)
)
 9 Respondents)

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 Best Rate Funding Corp (hereinafter "Respondent Best
15 Rate") was licensed as a Mortgage Banker from at least September
16 3, 2002 until it surrendered its license on August 28, 2007.
- 17 2. Respondent Wade Womack (hereinafter "Respondent Womack") was the
18 Chief Executive Officer of Respondent Best Rate, when licensed
19 by the Department.

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

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

22 Department Inquiries (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 Best Rate on

1 November 6, 2006, while Respondent Best Rate was still licensed
2 with the Department.

3 5. On September 5, 2007, the Department mailed the report of
4 examination and invoice for \$3,835.00 to Respondent Best Rate,
5 via U.S. Certified Mail Return Receipt requested, which
6 Respondents received on September 14, 2007.

7 6. The above named Respondents failed to respond to the September 5,
8 2007 correspondence from the Department.

9 7. The Department, via U.S. mail, mailed a second notice on November
10 1, 2007 and a third notice on December 7, 2007.

11 8. The above named Respondents did not respond to any of the three
12 notices for payment of the \$3,835.00 invoice.

13 9. To date, the above named Respondents still owe the \$3,835.00
14 examination fee for the 7.67 day examination.

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

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

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

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

20 11. The 2007 Annual Report was due on or before February 1, 2008.

21 12. On January 17, 2008, the Department sent a letter and fax
22 regarding the annual report. A blank annual report was also e-
23 mailed to Respondent Best Rate. Both attempts were unsuccessful.

24 13. On February 5, 2008, the Department mailed via U.S. Certified Mail
25 Return Receipt requested a reminder letter that the annual report

1 was due on February 1, 2008. The letter was signed for by Jan
2 Willias on February 22, 2008.

3 14. To date, the accrued penalty for failure to file an annual report
4 has reached the maximum cap of \$2,500.00 (\$25.00/day).

5
6 **II. ISSUES OF LAW**

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

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

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

13 3. RSA 397-A:12,V provides that the expense of such examination shall
14 be chargeable to and paid by the licensee. Each of the above
15 named Respondents violated this provision on at least one
16 occasion as alleged above. To date, the above named Respondents
17 have failed to pay the \$3,835.00 examination invoice.

18 4. RSA 397-A:13,I provides that a licensee shall file its annual
19 report on or before February 1 each year concerning operations
20 for the preceding year or license period ending December 31.
21 Each of the above named Respondents violated this provision on at
22 least one occasion as alleged above. Respondents currently owe
23 the \$2,500.00 capped fine for this violation.

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 Respondent Womack violated this provision on at least two
3 occasions 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
10 any 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 397-A or orders
18 thereunder.

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

1 be imposed in addition to any criminal penalties or civil
2 liabilities imposed by New Hampshire Banking laws.

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

19 **III. RELIEF REQUESTED**

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

- 22 1. Find as fact the allegations contained in section I of this Staff
23 Petition;
- 24 2. Make conclusions of law relative to the allegations contained in
25 section II of this Staff Petition;

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- 3. Pursuant to RSA 397-A:17, order each of the above named Respondents to show cause why their license should not be revoked;
- 4. Assess fines and administrative penalties in accordance with RSA 397-A:21, for violations of Chapter 397-A, in the number and amount equal to the violations set forth in section II of this Staff Petition; and
- 5. Take such other administrative and legal actions as necessary for enforcement of the New Hampshire Banking Laws, the protection of New Hampshire citizens, and to provide other equitable relief.

IV. RIGHT TO AMEND

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

Respectfully submitted by:

 /s/
Maryam Torben Desfosses
Hearings Examiner

 02/05/09
Date