

1 State of New Hampshire Banking Department

2	In re the Matter of:	)	Case No.: 08-136
		)	
3	State of New Hampshire Banking	)	
4	Department,	)	Order to Show Cause
		)	
5	Petitioner,	)	
		)	
6	and	)	
		)	
7	Clearlight Mortgage Corp., and John T.	)	
		)	
8	Michael,	)	
		)	
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.

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 1, 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 Clearlight Mortgage Corp. ("Respondent Clearlight  
18 Mortgage") shall show cause why penalties in the amount of  
19 \$5,000.00 should not be imposed against it;
- 20 2. Respondent John T. Michael ("Respondent Michael") shall show  
21 cause why penalties in the amount of \$7,500.00 should not be  
22 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 \$3,515.00 examination fee should not be paid to the

1 Department;

2 4. The above named Respondents shall show cause why, in addition  
3 to the penalties listed in Paragraphs 1 through 3 above,  
4 statutory penalties of \$2,500.00 should not be imposed for  
5 failing to file the 2007 annual report;

6 5. Respondents shall be jointly and severally liable for the  
7 above amounts alleged in Paragraphs 1 through 4 above;

8 6. The above named Respondents shall show cause why, in addition  
9 to the penalties listed in Paragraphs 1 through 5 above,  
10 Respondent Clearlight Mortgage's license should not be  
11 revoked.

12 It is hereby further ORDERED that:

13 7. Along with the administrative penalties listed for the above  
14 named Respondents, the outstanding sum of \$6,015.00 shall be  
15 immediately paid; and

16 8. Failure to request a hearing within 30 days of the date of  
17 receipt or valid delivery of this Order shall result in a  
18 default judgment being rendered and administrative penalties  
19 imposed upon the defaulting Respondent(s).

20  
21 SIGNED,

22  
23 Dated: 06/01/09

24 /s/  
PETER C. HILDRETH  
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 08-136  
 )  
 3 State of New Hampshire Banking )  
 )  
 4 Department, ) Staff Petition  
 )  
 5 Petitioner, ) June 1, 2009  
 )  
 6 and )  
 )  
 7 Clearlight Mortgage Corp., and John T. )  
 )  
 8 Michael, )  
 )  
 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 Clearlight Mortgage Corp. (hereinafter "Respondent  
15 Clearlight Mortgage") was licensed as a Mortgage Banker from at  
16 least April 17, 2002 (with an amended license date of November  
17 22, 2006) until it surrendered its license on March 29, 2007.
- 18 2. Respondent John T. Michael (hereinafter "Respondent Michael")  
19 was the President of Respondent Clearlight Mortgage, when  
20 licensed by 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 Clearlight  
2 Mortgage on November 13, 2006, for activities that occurred while  
3 Respondent Clearlight Mortgage was licensed with the Department.
- 4 5. On September 26, 2007, the Department mailed the report of  
5 examination and invoice for \$3,515.00 to Respondent Clearlight  
6 Mortgage, via U.S. Certified Mail Return Receipt requested, which  
7 Respondents received on November 1, 2007.
- 8 6. The above named Respondents failed to respond to the September 26,  
9 2007 correspondence from the Department.
- 10 7. The Department, via U.S. mail, mailed a second notice on November  
11 1, 2007 and a third notice on December 7, 2007.
- 12 8. The above named Respondents did not respond to any of the three  
13 notices for payment of the \$3,515.00 invoice.
- 14 9. To date, the above named Respondents still owe the \$3,515.00  
15 examination fee for the 7.03 day examination.

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

- 17 10. Paragraphs 1 through 9 are hereby realleged as fully set forth  
18 herein.
- 19 11. The 2007 Annual Report was due on or before February 1, 2008.
- 20 12. On February 5, 2008, the Department sent a letter that the annual  
21 report was due on February 1, 2008.
- 22 13. To date, the Respondents have failed to file the 2007 annual  
23 report.
- 24 14. To date, the accrued penalty for failure to file an annual report  
25 has reached the maximum cap of \$2,500.00 (\$25.00 per day; maximum

1           \$2,500.00).

2                           **II. ISSUES OF LAW**

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

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

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

9           3. RSA 397-A:12,V provides that the expense of such examination shall  
10           be chargeable to and paid by the licensee. Each of the above  
11           named Respondents violated this provision on at least one  
12           occasion as alleged above. To date, the above named Respondents  
13           have failed to pay the \$3,515.00 examination invoice.

14           4. RSA 397-A:13,I provides that a licensee shall file its annual  
15           report on or before February 1 each year concerning operations  
16           for the preceding year or license period ending December 31.  
17           Each of the above named Respondents violated this provision on at  
18           least one occasion as alleged above. The \$2,500.00 is calculated  
19           pursuant to RSA 397-A:13,IV below.

20           5. RSA 397-A:13,IV provides that any mortgage banker or broker  
21           failing to file the annual report or financial statement within  
22           the time prescribed may be required to pay to the Department a  
23           penalty of \$25.00 per calendar day for each day the annual report  
24           is overdue, for a maximum of \$2,500.00.

25           6. RSA 397-A:13,VI provides that any officer, owner, manager or agent

1 of any licensee shall reply promptly in writing, or other  
2 designated form, to any written inquiry from the Department.  
3 Respondent Michael violated this provision on at least one  
4 occasion as alleged above.

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

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

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



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

3 10. 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;

