

1 State of New Hampshire Banking Department

2	In re the Matter of:)	Case No.: 08-158
)	
3	State of New Hampshire Banking)	
4	Department,)	Order to Show Cause
)	
5	Petitioner,)	
)	
6	and)	
)	
7	American Lending Group, Inc. (d/b/a)	
)	
8	American Lending Group - STL MO), and)	
)	
9	Warin S. Kumar,)	
)	
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 7, 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 American Lending Group, Inc. (d/b/a American
20 Lending Group - STL MO) ("Respondent American Lending") shall
21 show cause why penalties in the amount of \$2,500.00 should
22 not be imposed against it;
- 23 2. Respondent Warin S. Kumar ("Respondent Kumar") shall show
24 cause why penalties in the amount of \$5,000.00 should not be
25 imposed against him;

1 State of New Hampshire Banking Department

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 7 American Lending Group, Inc. (d/b/a)
)
 8 American Lending Group - STL MO), and)
)
 9 Warin S. Kumar,)
)
 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 American Lending Group, Inc. (d/b/a American Lending
16 Group - STL MO) (hereinafter "Respondent American Lending") was
17 licensed as a Mortgage Banker from at least May 4, 2006 until it
18 surrendered its license on May 14, 2008.
- 19 2. Respondent Warin S. Kumar (hereinafter "Respondent Kumar") was
20 the President of Respondent American Lending, when licensed by
21 the Department.

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23
24 [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
25

1 Violation of RSA 397-A:13,IV Failure to Pay Late Penalty Owed for Late

2 Filing of Financial Statement(1 Count):

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

4 Department Inquiries (1 Count):

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

7 4. Respondent American Lending's financial statement was due on or
8 before September 28, 2007 based on its fiscal year end of June
9 30, 2007.

10 5. Respondent American Lending was still licensed at the time its
11 financial statement filing was due to the Department.

12 6. The Department received Respondent American Lending's financial
13 statement on August 8, 2007 (39 days late), which generated a
14 fine of \$975.00 (\$25.00 a day x 39 days).

15 7. The Department sent invoices to Respondent American Lending in
16 November 2007, December 2007 and February 4, 2008.

17 8. The Department's legal division sent a letter via U.S. Certified
18 Mail Return Receipt requested on May 8, 2008 requesting payment,
19 for which an R. Spiegel signed at 2:36 p.m. on May 12, 2008.

20 9. To date, Respondent American Lending has failed to pay the \$975.00
21 late filing of a financial statement fee.

22 **II. ISSUES OF LAW**

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

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

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

4 3. RSA 397-A:13,IV provides that any mortgage banker or mortgage
5 broker failing to file either the annual report or the financial
6 statement required by RSA Chapter 397-A within the time
7 prescribed may be required to pay to the Department a penalty of
8 \$25.00 for each calendar day the annual report or financial
9 statement is overdue, up to a maximum penalty of \$2,500.00 per
10 report or statement. Each of the above named Respondents violated
11 this provision on at least one occasion as alleged above. The
12 above named Respondents filed a financial statement that was 39
13 days late, and incurred a penalty of \$975.00.

14 4. RSA 397-A:13,VI provides that any officer, owner, manager or agent
15 of any licensee shall reply promptly in writing, or other
16 designated form, to any written inquiry from the Department.
17 Respondent Kumar violated this provision on at least one occasion
18 as alleged above.

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

24 6. RSA 397-A:21,IV provides that any person who, either knowingly or
25 negligently, violates any provision of RSA Chapter 397-A, may

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

7 7. RSA 397-A:21,V provides that every person who directly or
8 indirectly controls a person liable under this section, every
9 partner, principal executive officer or director of such person,
10 every person occupying a similar status or performing a similar
11 function, every employee of such person who materially aids in the
12 act constituting the violation, and every licensee or person acting
13 as a common law agent who materially aids in the acts constituting
14 the violation, either knowingly or negligently, may, upon notice
15 and opportunity for hearing, and in addition to any other penalty
16 provided for by law, be subject to suspension, revocation, or
17 denial of any registration or license, including the forfeiture of
18 any application fee, or the imposition of an administrative fine
19 not to exceed \$2,500, or both. Each of the acts specified shall
20 constitute a separate violation, and such administrative action or
21 fine may be imposed in addition to any criminal or civil penalties
22 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. Assess fines and administrative penalties in accordance with RSA
9 397-A:21, for violations of Chapter 397-A, in the number and amount
10 equal to the violations set forth in section II of this Staff
11 Petition; and
- 12 4. Take such other administrative and legal actions as necessary for
13 enforcement of the New Hampshire Banking Laws, the protection of
14 New Hampshire citizens, and to provide other equitable relief.

15 **IV. RIGHT TO AMEND**

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

20
21
22 Respectfully submitted by:

23
24 /s/
Maryam Torben Desfosses
25 Hearings Examiner

 01/07/09
Date