

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-239
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 UMS, LLC (d/b/a Unique Mortgage)
)
 8 Solutions and d/b/a 1st Mortgage)
)
 9 Solutions), and Alexander Ramirez,)
)
 10 Respondents)

11 NOTICE OF ORDER

12 This Order commences an adjudicative proceeding under the provisions
13 of RSA Chapter 397-A and RSA Chapter 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,IV, 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 Chapter
8 358-A and exempt under RSA 358-A:3,I or that may violate any of the
9 provisions of Titles XXXV and XXXVI and administrative rules adopted
10 thereunder. The Commissioner may hold hearings relative to such conduct and
11 may order restitution for a person or persons adversely affected by such
12 conduct.

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

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

10 The Staff Petition dated July 15, 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 UMS, LLC (d/b/a Unique Mortgage Solutions and
20 d/b/a 1st Mortgage Solutions) ("Respondent UMS") shall show
21 cause why penalties in the amount of \$5,000.00 should not be
22 imposed against it;
- 23 2. Respondent Alexander Ramirez ("Respondent Ramirez") shall
24 show cause why penalties in the amount of \$5,000.00 should
25 not be 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 fine for \$1,050.00 for the late filing of the 2007 annual
4 report should not be paid to the Department;

5 4. The above named Respondents shall show cause why, in addition
6 to the penalties listed in Paragraphs 1 through 3 above,
7 statutory penalties of \$2,500.00 should not be imposed for
8 failing to file the 2008 annual report;

9 5. The above named Respondents shall be jointly and severally
10 liable for the above amounts alleged in Paragraphs 1 through
11 4 above;

12 6. The above named Respondents shall show cause why, in addition
13 to the penalties listed in Paragraphs 1 through 5 above,
14 Respondent UMS's license should not be revoked.

15 It is hereby further ORDERED that:

16 7. Along with the administrative penalties listed for the above
17 named Respondents, the outstanding sum of \$3,550.00 shall be
18 immediately paid; and

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21
22 [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
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 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 UMS, LLC (d/b/a Unique Mortgage Solutions and d/b/a 1st
 16 Mortgage Solutions) (hereinafter "Respondent UMS") was licensed
 17 as a Mortgage Banker from at least October 17, 2007 until it
 18 surrendered its license on March 14, 2008.
- 19 2. Respondent Alexander Ramirez (hereinafter "Respondent Ramirez")
 20 was the President of Respondent UMS, when licensed by the
 21 Department.

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

23 Filing of Annual Report (1 Count):

- 24 3. Paragraphs 1 through 2 are hereby realleged as fully set forth
 25 herein.

- 1 4. Respondent UMS was licensed in 2007 and therefore, subject to the
2 filing of the 2007 annual report of business.
- 3 5. Respondent UMS's 2007 annual report was due on or before February
4 1, 2008.
- 5 6. Respondent UMS filed its 2007 annual report on March 14, 2008 (42
6 days late), generating a fine of \$1,050.00 (\$25.00 a day x 42
7 days).
- 8 7. The Department sent the above named Respondents invoices in March
9 and May of 2008 and a third and final notice on June 24, 2008.
- 10 8. With no response from the above named Respondents, the Department
11 sent a final letter on July 8, 2008, to which the above named
12 Respondents have failed to respond.
- 13 9. To date, Respondent UMS has failed to pay the \$1,050.00 late
14 filing of the 2007 annual report fee.

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

- 16 10. Paragraphs 1 through 9 are hereby realleged as fully set forth
17 herein.
- 18 11. Respondent UMS was licensed in 2008, and thus subject to the
19 filing of a 2008 annual report with the Department.
- 20 12. The 2008 annual report was due on or before March 31, 2009.
- 21 13. Respondent UMS sent its original license and surrender forms to
22 the Department, which the Department received on March 14, 2008.
- 23 14. On March 17, 2008, the Department sent a letter to the above
24 named Respondents requesting a copy of the publication notice
25 and a reminder that the 2008 annual report would be due on

1 February 1, 2009. The law has since been amended, and thus the
2 annual report was not due until March 31, 2009.

3 15. With no response, on April 30, 2008, the Department mailed a
4 certified letter with a copy of the March 17, 2008 letter as a
5 reminder to Respondents of the documentation still due to the
6 Department. The post office returned the April 30, 2008 letter
7 to the department on May 21, 2008 as "unclaimed".

8 16. To date, Respondent UMS has failed to file the 2008 annual
9 report or publication notice.

10 17. To date, the penalty for failing to file an annual report has
11 accrued to the maximum cap of \$2,500.00 (\$25.00 a day, maximum
12 \$2,500).

13 **II. ISSUES OF LAW**

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

- 15 1. The Department realleges the above stated facts in Paragraphs 1
16 through 17 as fully set forth herein.
- 17 2. The Department has jurisdiction over the licensing and regulation
18 of persons engaged in mortgage banker or broker activities
19 pursuant to NH RSA 397-A:2 and RSA 397-A:3.
- 20 3. The operative RSA 397-A:13,I for the late filed annual report
21 herein provided that a licensee shall file its annual report on or
22 before February 1 each year concerning operations for the
23 preceding year or license period ending December 31. The late fine
24 totaled \$1,050.00, as calculated by RSA 397-A:13,IV below.

1 4. The operative RSA 397-A:13,I for the unfiled annual report
2 provided that a licensee shall file its annual report on or before
3 March 31 each year concerning operations for the preceding year or
4 license period ending December 31. Each of the above named
5 Respondents violated this provision on at least one occasion as
6 alleged above. The fine has totaled to a maximum of \$2,500.00
7 pursuant to the calculations provided by RSA 397-A:13,IV below.

8 5. RSA 397-A:13,IV provides that any mortgage banker or mortgage
9 broker failing to file either the annual report or the financial
10 statement required by RSA Chapter 397-A within the time prescribed
11 may be required to pay to the Department a penalty of \$25.00 for
12 each calendar day the annual report or financial statement is
13 overdue, up to a maximum penalty of \$2,500.00 per report or
14 statement. Each of the above named Respondents violated this
15 provision on at least one occasion as alleged above. The above
16 named Respondents filed an annual report that was 42 days late,
17 and incurred a penalty of \$1,050.00.

18 6. RSA 397-A:17,I provides in part that the Commissioner may by
19 order, upon due notice and opportunity for hearing, assess
20 penalties or deny, suspend, or revoke a license or application if
21 it is in the public interest and the applicant, respondent, or
22 licensee, any partner, officer, member, or director, any person
23 occupying a similar status or performing similar functions, or any
24 person directly or indirectly controlling the applicant,
25 respondent, or licensee: (a) has violated any provision of RSA

1 Chapter 397-A or rules thereunder, or (b) has not met the
2 standards established in RSA Chapter 397-A.

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

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

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

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

7 **III. RELIEF REQUESTED**

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

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

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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

07/15/09
Date