

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-247
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Star One Funding Inc, and Kelly G.)
)
 8 Mulholland,)
)
 9 Respondents)

10 NOTICE OF ORDER

11 This Order commences an adjudicative proceeding under the provisions
12 of RSA Chapter 397-A and RSA Chapter 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,IV, 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 Chapter
7 358-A and exempt under RSA 358-A:3,I or that may violate any of the
8 provisions of Titles XXXV and XXXVI and administrative rules adopted
9 thereunder. The Commissioner may hold hearings relative to such conduct and
10 may order restitution for a person or persons adversely affected by such
11 conduct.

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

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

1 \$1,100.00 examination fee should not be paid to the
2 Department;

3 4. The above named Respondents shall show cause why, in addition
4 to the penalties listed in Paragraphs 1 through 3 above, the
5 fine for \$2,500.00 for the failure to file the financial
6 statement should not be paid to the Department;

7 5. The above named Respondents shall show cause why, in addition
8 to the penalties listed in Paragraphs 1 through 4 above, the
9 fine for \$150.00 for the late filing of the 2007 annual
10 report should not be paid to the Department;

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

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

16 It is hereby further ORDERED that:

17 8. Along with the administrative penalties listed for the above
18 named Respondents, the outstanding sum of \$3,750.00 shall be
19 immediately paid; and

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-247
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) July 24, 2009
)
 6 and)
)
 7 Star One Funding Inc, and Kelly G.)
)
 8 Mulholland,)
)
 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 Star One Funding Inc (hereinafter "Respondent Star
15 One") was licensed as a Mortgage Broker from at least March 3,
16 2006 (with an amended license date of August 15, 2007) until it
17 surrendered its license on August 26, 2008.

18 2. Respondent Kelly G. Mulholland (hereinafter "Respondent
19 Mulholland") was the President of Respondent Star One, 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 Star One on
2 September 15, 2008, while Respondent Star One was still licensed
3 with the Department.

4 5. On January 23, 2009, the Department mailed the report of
5 examination and invoice for \$1,100.00 to Respondent Star One, via
6 U.S. Certified Mail Return Receipt requested, which the
7 Respondents received on February 13, 2009.

8 6. The Respondents failed to respond to the Department's February 13,
9 2009 correspondence.

10 7. The Department, via U.S. mail, mailed a second notice on February
11 27, 2009 and a third notice on April 17, 2009. A fourth notice
12 was sent on April 20, 2009.

13 8. A Department Examiner was able to make telephone contact with the
14 Respondents, who told the Department it did not have the money to
15 pay and they are closing the business.

16 9. The above named Respondents did not respond to any of the notices
17 for payment of the \$1,100.00 invoice. The Department had to make
18 telephone contact.

19 10. To date, the above named Respondents still owe the \$1,100.00
20 examination fee for the 2.2 day examination.

21 **Violation of RSA 397-A:13,II Failure to File Financial Statement (1 Count):**

22 11. Paragraphs 1 through 10 are hereby realleged as fully set forth
23 herein.

24 12. The Respondents' fiscal year end was December 31, 2007 and the
25 financial statement was due on or before March 31, 2008.

1 13. Respondent Star One was licensed on the date the financial
2 statement filing was due the Department.

3 14. The Department sent Respondent Star One a reminder letter on
4 January 24, 2008, with a follow-up on April 9, 2008 and the final
5 follow-up letter via U.S. Certified Mail Return Receipt requested
6 on May 8, 2008. This May 8, 2008 letter was returned to the
7 Department by the post office on May 28, 2008 as "unclaimed".

8 15. Respondents have failed to respond to the Department's reminder
9 letters regarding the financial statement.

10 16. To date, the accrued penalty for failure to file a financial
11 statement has reached the maximum cap of \$2,500.00 (\$25.00 a day,
12 maximum \$2,500.00).

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

14 **Filing of Annual Report (1 Count):**

15 17. Paragraphs 1 through 16 are hereby realleged as fully set forth
16 herein.

17 18. Respondent Star One was licensed in 2007 and therefore, subject to
18 the filing of the 2007 annual report of business.

19 19. Respondent Star One's 2007 annual report was due on or before
20 February 1, 2008.

21 20. Respondent Star One filed its 2007 annual report on February 7,
22 2008 (6 days late), generating a fine of \$150.00 (\$25.00 a day x
23 6 days).

24 21. The Department sent the above named Respondents invoices in
25 February, March and a third and final one on April 16, 2008. The

1 Licensing Division within the Department also sent a letter on
2 April 17, 2008.

3 22. To date, Respondent Star One has failed to pay the \$150.00 late
4 filing of the 2007 annual report fee.

5 **II. ISSUES OF LAW**

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

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

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

12 3. RSA 397-A:12,V provides that the expense of such examination shall
13 be chargeable to and paid by the licensee. Each of the above
14 named Respondents violated this provision on at least one occasion
15 as alleged above. To date, the above named Respondents have
16 failed to pay the \$1,100.00 examination invoice.

17 4. RSA 397-A:13,II provides that each licensee shall file a financial
18 statement within 90 days from the date of its fiscal year end.
19 Each of the above named Respondents violated this statute on at
20 least one occasion as alleged above. The maximum fine has accrued
21 to \$2,500.00 as calculated by RSA 397-A:13,IV below.

22 5. RSA 397-A:13,IV provides that any mortgage banker or mortgage
23 broker failing to file either the annual report or the financial
24 statement required by RSA Chapter 397-A within the time prescribed
25 may be required to pay to the Department a penalty of \$25.00 for

1 each calendar day the annual report or financial statement is
2 overdue, up to a maximum penalty of \$2,500.00 per report or
3 statement. The above named Respondents failed to file a financial
4 statement, the fine of which has accrued to the maximum cap of
5 \$2,500.00. Further, Respondents filed the annual report six days
6 late, which generated a fine of \$150.00. Each of the above named
7 Respondents violated this provision on at least one occasion as
8 alleged above.

9 6. RSA 397-A:13,VI provides that any officer, owner, manager or agent
10 of any licensee shall reply promptly in writing, or other
11 designated form, to any written inquiry from the Department.
12 Respondent Mulholland violated this provision on at least one
13 occasion as alleged above.

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

24 8. RSA 397-A:18,I provides that the Department may issue a complaint
25 setting forth charges whenever the Department is of the opinion

1 that the licensee or person over whom the Department has
2 jurisdiction, has violated any provision of RSA Chapter 397-A or
3 orders thereunder.

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

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

1 fine may be imposed in addition to any criminal or civil penalties
2 imposed.

3 **III. RELIEF REQUESTED**

4 The staff of the Department requests the Commissioner take the following
5 action:

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

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