

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-272
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Southcoast Mortgage & Investment)
)
 8 Corporation, and Paul Matos,)
)
 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 8, 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 Southcoast Mortgage & Investment Corporation
18 ("Respondent Southcoast Mortgage") shall show cause why
19 penalties in the amount of \$5,000.00 should not be imposed
20 against it;
- 21 2. Respondent Paul Matos ("Respondent Matos") shall show cause
22 why penalties in the amount of \$7,500.00 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

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 7 Southcoast Mortgage & Investment)
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 8 Corporation, and Paul Matos,)
)
 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 Southcoast Mortgage & Investment Corporation
15 (hereinafter "Respondent Southcoast Mortgage") was licensed as a
16 Mortgage Broker from at least November 3, 2003 (with an amended
17 license date of August 15, 2005) until its license was revoked
18 on April 1, 2008.

19 2. Respondent Paul Matos (hereinafter "Respondent Matos") was the
20 President of Respondent Southcoast Mortgage, when licensed by
21 the Department.

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

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

24 Department Inquiries (1 Count):

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

1 herein.

2 4. The Department conducted an examination of Respondent Southcoast
3 Mortgage on September 24, 2007, while Respondent Southcoast
4 Mortgage was still licensed with the Department.

5 5. On July 17, 2008, the Department mailed the cost of examination
6 letter and invoice for \$500.00 to Respondent Southcoast Mortgage,
7 via U.S. Certified Mail Return Receipt requested, which
8 Respondents received on July 19, 2008.

9 6. The above named Respondents failed to respond to the July 17, 2008
10 correspondence from the Department.

11 7. The Department, via U.S. mail, mailed a second notice on August
12 20, 2008 and a third notice on September 3, 2008.

13 8. The above named Respondents did not respond to any of the three
14 notices for payment of the \$500.00 invoice.

15 9. To date, the above named Respondents still owe the \$500.00
16 examination fee for the one day examination.

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

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

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

21 11. Respondent Southcoast Mortgage was licensed in 2007 and therefore,
22 subject to the filing of the 2007 annual report of business.

23 12. Respondent Southcoast Mortgage's 2007 annual report was due on or
24 before February 1, 2008.

25 13. Respondent Southcoast Mortgage filed its 2007 annual report on

1 February 4, 2008 (3 days late), generating a fine of \$75.00
2 (\$25.00 a day x 3 days).

3 14. The Department sent the above named Respondents invoices in
4 February, March and finally on April 16, 2008.

5 15. With no response from the above named Respondents, the Department
6 sent a final letter on April 17, 2008, which the post office
7 returned to the Department on May 5, 2008. The Department then
8 sent the letter to a new address on May 8, 2008.

9 16. To date, Respondent Southcoast Mortgage has failed to pay the
10 \$75.00 late filing of the 2007 annual report fee.

11 **II. ISSUES OF LAW**

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

13 1. The Department realleges the above stated facts in Paragraphs 1
14 through 16 as fully set forth herein.

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

18 3. RSA 397-A:12,V provides that the expense of such examination shall
19 be chargeable to and paid by the licensee. Each of the above
20 named Respondents violated this provision on at least one
21 occasion as alleged above. To date, the above named Respondents
22 have failed to pay the total of \$500.00 for the examination
23 invoice.

24 4. RSA 397-A:13,IV provides that any mortgage banker or mortgage
25 broker failing to file either the annual report or the financial

1 statement required by RSA Chapter 397-A within the time
2 prescribed may be required to pay to the Department a penalty of
3 \$25.00 for each calendar day the annual report or financial
4 statement is overdue, up to a maximum penalty of \$2,500.00 per
5 report or statement. Each of the above named Respondents violated
6 this provision on at least one occasion as alleged above. The
7 above named Respondents filed an annual report that was three
8 days late, and incurred a penalty of \$75.00.

9 5. 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 Matos violated this provision on at least one occasion
13 as alleged above.

14 6. 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
20 any 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 7. 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 397-A or orders
3 thereunder.

4 8. 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
7 law, be subject to an administrative fine not to exceed
8 \$2,500.00, or both. Each of the acts specified shall constitute
9 a separate violation, and such administrative action or fine may
10 be imposed in addition to any criminal penalties or civil
11 liabilities imposed by New Hampshire Banking laws.

12 9. 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. Assess fines and administrative penalties in accordance with RSA
11 397-A:21, for violations of Chapter 397-A, in the number and
12 amount equal to the violations set forth in section II of this
13 Staff Petition; and
- 14 4. Take such other administrative and legal actions as necessary for
15 enforcement of the New Hampshire Banking Laws, the protection of
16 New Hampshire citizens, and to provide other equitable relief.

17 **IV. RIGHT TO AMEND**

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

22 Respectfully submitted by:

23
24 /s/
Maryam Torben Desfosses
25 Hearings Examiner

 06/08/09
Date