

1 State of New Hampshire Banking Department

)Case No.: 08-277

2 In re the Matter of:

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3 State of New Hampshire Banking

)

)Order to Show Cause

4 Department,

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)

5 Petitioner,

)

)

6 and

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)

7 First National Lending Corporation

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8 (d/b/a AdvanceEquity), and Scott C.

)

)

9 Assali,

)

)

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 22, 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 First National Lending Corporation (d/b/a
20 AdvanceEquity) ("Respondent AdvanceEquity") shall show cause
21 why penalties in the amount of \$15,000.00 should not be
22 imposed against it;
- 23 2. Respondent Scott C. Assali ("Respondent Assali") shall show
24 cause why penalties in the amount of \$22,500.00 should not be
25 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 \$500.00 examination fee should not be paid to the Department;
4 4. The above named Respondents shall show cause why, in addition
5 to the penalties listed in Paragraphs 1 through 3 above, the
6 fine of \$14,850.00 (and accruing) for the failure to file
7 examination materials should not be paid to the Department;
8 5. The above named Respondents shall show cause why, in addition
9 to the penalties listed in Paragraphs 1 through 4 above, the
10 remaining unpaid portion of the fine for \$1,100.00 for the
11 late filing of the financial statement should not be paid to
12 the Department;
13 6. Respondents shall be jointly and severally liable for the
14 above amounts alleged in Paragraphs 1 through 5 above;
15 7. The above named Respondents shall show cause why, in addition
16 to the penalties listed in Paragraphs 1 through 6 above,
17 Respondent AdvanceEquity's license should not be revoked.

18 It is hereby further ORDERED that:

- 19 8. Along with the administrative penalties listed for the above
20 named Respondents, the outstanding sum of \$16,450.00 shall be
21 immediately paid; and
22
23
24
25

1 9. Failure to request a hearing within 30 days of the date of
2 receipt or valid delivery of this Order shall result in a
3 default judgment being rendered and administrative penalties
4 imposed upon the defaulting Respondent(s).

5
6 SIGNED,

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8 Dated: 01/22/09

9 /s/
PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-277
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) January 22, 2009
)
 6 and)
)
 7 First National Lending Corporation)
)
 8 (d/b/a AdvanceEquity), and Scott C.)
)
 9 Assali,)
)
 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 First National Lending Corporation (d/b/a
16 AdvanceEquity) (hereinafter "AdvanceEquity") was licensed as a
17 Mortgage Broker from at least March 21, 2007 (with an amended
18 license date of April 6, 2007) until its license expired on
19 December 31, 2008.
- 20 2. Respondent Scott C. Assali (hereinafter "Respondent Assali") was
21 the 100% owner and President of Respondent AdvanceEquity, when
22 licensed by the Department.

23 Violation of RSA 397-A:12,VII Failure to Facilitate Exam (1 Count):

24 Violation of RSA 397-A:12,III Examinations: Failure to Provide Requested

25 Files (1 Count):

1 Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested

2 Files (1 Count):

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

4 Department Inquiries (2 Counts):

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

7 4. The Department conducted an examination of Respondent
8 AdvanceEquity on March 17, 2008, while Respondent AdvanceEquity
9 was still licensed with the Department.

10 5. On February 26, 2008, the Department sent the notice of
11 examination to Respondent AdvanceEquity via U.S. Certified Mail
12 Return Receipt requested, which Respondents received on March 10,
13 2008.

14 6. The materials requested in the notice of examination were due on
15 March 31, 2008, which is 21 days after the March 10, 2008
16 delivery of the notice of examination.

17 7. On March 31, 2008, the Department only received Respondent
18 AdvanceEquity's 2007 tax return.

19 8. With no additional examination materials from the above named
20 Respondents, the Department sent a second notice of examination
21 on April 4, 2008 to Respondent AdvanceEquity via U.S. Certified
22 Mail Return Receipt requested, which Respondents received on
23 April 10, 2008.

24 9. Again with no additional examination materials from the above
25 named Respondents, the Department sent a third notice of

1 examination on April 24, 2008 to Respondent AdvanceEquity via
2 U.S. Cerified Mail Return Receipt requested, which Respondents
3 received on April 28, 2008.

4 10. To date, the Department has not received the additional
5 examination materials.

6 11. To date, fines have accrued for failing to provide the requested
7 files. The current fine to date is \$14,850.00 (\$50.00 a day x
8 297 days) and still accruing.

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

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

11 **Department Inquiries (1 Count):**

12 12. Paragraphs 1 through 11 are hereby realleged as fully set forth
13 herein.

14 13. The Department conducted an examination of Respondent
15 AdvanceEquity on March 17, 2008, while Respondent AdvanceEquity
16 was still licensed with the Department.

17 14. On July 17, 2008, the Department mailed the report of examination
18 and invoice for \$500.00 to Respondent AdvanceEquity, via U.S.
19 Certified Mail Return Receipt requested, which Respondents
20 received on July 21, 2008.

21 15. The above named Respondents failed to respond to the July 17, 2008
22 correspondence from the Department.

23 16. The Department, via U.S. mail, mailed a second notice on August
24 20, 2008 and a third notice on September 23, 2008.

25 17. The above named Respondents did not respond to any of the three

1 notices for payment of the \$500.00 invoice.

2 18. To date, the above named Respondents still owe the \$500.00
3 examination fee for the one day examination.

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

5 Filing of Financial Statement (1 Count):

6 Violation of RSA 397-A:5, III(c) Failure to Maintain Positive Net Worth (1
7 Count):

8 19. Paragraphs 1 through 18 are hereby realleged as fully set forth
9 herein.

10 20. On May 8, 2008, the Department submitted a letter to Respondent
11 AdvanceEquity that statements were due no later than 90 days
12 after a licensee's fiscal year end of December 31, 2007.
13 Consequently, the financial statement would be due on or before
14 March 31, 2008.

15 21. On May 14, 2008 (44 days late), the Department received a fax from
16 the above named Respondents of a financial statement with a
17 negative net worth.

18 22. The total due from Respondent AdvanceEquity for the late filed
19 financial statement is \$1,100.00 (\$25.00 per day x 44 days).

20 23. On May 15, 2008, the Department wrote for an amended financial
21 statement and noted that Respondent AdvanceEquity must maintain a
22 positive net worth at all times.

23 24. On June 2, 2008, the Department received a letter from Respondent
24 AdvanceEquity that indicated the reasons for Respondents' deficit
25 and that Respondent Assali was paying the employees and

1 supporting the business with his own funds.

2 25. On June 19, 2008, the Department again wrote to the above named
3 Respondents, reiterating the fact that an amended financial
4 statement reflecting an actual positive net worth must be
5 received by the Department.

6 26. To date, the above named Respondents have not paid the \$1,100.00
7 fee for the late filing of the financial statement or submitted
8 an updated financial statement reflecting a positive net worth.

9 **II. ISSUES OF LAW**

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

11 1. The Department realleges the above stated facts in Paragraphs 1
12 through 26 as fully set forth herein.

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

16 3. RSA 397-A:5,III(c) provides that licensees shall demonstrate and
17 maintain a positive net worth. Each of the above named
18 Respondents violated this provision on at least one occasion as
19 alleged above.

20 4. RSA 397-A:11,II provides that requested files and business records
21 must be received by the Department within 21 calendar days of
22 request. The licensee will be subject to a \$50.00 a day fine
23 every day after the 21-day period the records are not produced.
24 Each of the above named Respondents violated this provision on at
25

1 least one occasion as alleged above. Respondents currently owe
2 \$14,850.00 to date and the fine is still accruing.

3 5. RSA 397-A:12,III requires licensees to comply with examination
4 requests with or without prior notice. All books, papers, files,
5 related material, and records of assets shall be subject to the
6 Department's examination. Each of the above named Respondents
7 violated this statute on at least one occasion as alleged above.

8 6. RSA 397-A:12,V provides that the expense of such examination shall
9 be chargeable to and paid by the licensee. Each of the above
10 named Respondents violated this provision on at least one
11 occasion as alleged above. To date, the above named Respondents
12 have failed to pay the \$500.00 examination invoice.

13 7. RSA 397-A:12,VII provides that every person being examined, and
14 all of the officers, directors, employees, agents, and
15 representatives of such person shall make freely available to the
16 Commissioner or his or her examiners, the accounts, records,
17 documents, files, information, assets, and matters in their
18 possession or control relating to the subject of the examination
19 and shall facilitate the examination. Each of the above named
20 Respondents violated this statute on at least one occasion as
21 alleged above.

22 8. 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
25 prescribed may be required to pay to the Department a penalty of

1 \$25.00 for each calendar day the annual report or financial
2 statement is overdue, up to a maximum penalty of \$2,500.00 per
3 report or statement. Each of the above named Respondents violated
4 this provision on at least one occasion as alleged above. The
5 above named Respondents filed a financial statement, that was
6 forty-four days late, and incurred a penalty of \$1,100.00.

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

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

22 11. RSA 397-A:18,I provides that the Department may issue a complaint
23 setting forth charges whenever the Department is of the opinion
24 that the licensee or person over whom the Department has
25

1 jurisdiction, has violated any provision of RSA 397-A or orders
2 thereunder.

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

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

1 imposed.

2 **III. RELIEF REQUESTED**

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

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

18 **IV. RIGHT TO AMEND**

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

23 Respectfully submitted by:

24 /s/
25 Maryam Torben Desfosses
Hearings Examiner

 01/22/09
Date