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State of New Hampshire Banking Department

In re the Matter of:) Case No.: 08-281
)
)
State of New Hampshire Banking)
)
Department,) Order to Show Cause
)
)
Petitioner,)
)
)
and)
)
Arc Financial, Inc., and Kathy Ives,)
)
)
Respondents)

NOTICE OF ORDER

This Order commences an adjudicative proceeding under the provisions of RSA 397-A and RSA 541-A.

LEGAL AUTHORITY AND JURISDICTION

Pursuant to RSA 397-A:17, the Banking Department of the State of New Hampshire (hereinafter the "Department") has the authority to issue an order to show cause why license revocation and penalties for violations of New Hampshire Banking laws should not be imposed.

Pursuant to RSA 397-A:18, the Department has the authority to issue a complaint setting forth charges whenever the Department is of the opinion that the licensee or person over whom the Department has jurisdiction is violating or has violated any provision of RSA Chapter 397-A, or any rule or order thereunder.

Pursuant to RSA 397-A:20, the Commissioner may issue, amend, or rescind such orders as are reasonably necessary to comply with the provisions of the Chapter.

Pursuant to RSA 397-A:21, the Commissioner has the authority to

1 suspend, revoke or deny any license and to impose administrative penalties
2 of up to \$2,500.00 for each violation of New Hampshire banking law and
3 rules.

4 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct
5 that is or may be an unfair or deceptive act or practice under RSA 358-A and
6 exempt under RSA 358-A:3,I or that may violate any of the provisions of
7 Titles XXXV and XXXVI and administrative rules adopted thereunder. The
8 Commissioner may hold hearings relative to such conduct and may order
9 restitution for a person or persons adversely affected by such conduct. The
10 Commissioner may utilize all remedies available under the Consumer
11 Protection Act.

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 541-A.
16 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 If any of the above named Respondents fails to request a hearing within
2 30 calendar days of receipt of such order or reach formal settlement with the
3 Department within that time frame, then such person shall likewise be deemed
4 in default, and the orders shall, on the thirty-first day, become permanent,
5 and shall remain in full force and effect until and unless later modified or
6 vacated by the Commissioner, for good cause shown.

7 STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF

8 The Staff Petition dated January 22, 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 Arc Financial, Inc. ("Respondent Arc Financial")
18 shall show cause why penalties in the amount of \$5,000.00
19 should not be imposed against it;
- 20 2. Respondent Kathy Ives ("Respondent Ives") shall show cause
21 why penalties in the amount of \$12,500.00 should not be
22 imposed against her;
- 23 3. The above named Respondents shall show cause why, in addition
24 to the penalties listed in Paragraphs 1 through 2 above, a
25 statutory penalty of \$2,500.00 should not be imposed for

1 failing to file the 2007 annual report;

2 4. The above named Respondents shall show cause why, in addition
3 to the penalties listed in Paragraphs 1 through 3 above,
4 \$1,365.00 examination fee should not be paid to the
5 Department;

6 5. Respondents shall be jointly and severally liable for the
7 above amounts alleged in Paragraphs 1 through 4 above;

8 6. The above named Respondents shall show cause why, in addition
9 to the penalties listed in Paragraphs 1 through 5 above,
10 Respondent Arc Financial's license should not be revoked.

11 It is hereby further ORDERED that:

12 7. Along with the administrative penalties listed for the above
13 named Respondents, the outstanding sum of \$3,865.00 shall be
14 immediately paid; and

15 8. Failure to request a hearing within 30 days of the date of
16 receipt or valid delivery of this Order shall result in a
17 default judgment being rendered and administrative penalties
18 imposed upon the defaulting Respondent(s).

19
20 SIGNED,

21
22 Dated: 01/22/09

23 /s/
PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-281
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) January 22, 2009
)
 6 and)
)
 7 Arc Financial, Inc., and Kathy Ives,)
)
 8 Respondents)

9 I. STATEMENT OF ALLEGATIONS

10 The Staff of the Banking Department, State of New Hampshire (hereinafter
11 "Department") alleges the following facts:

12 Facts Common on All Counts:

- 13 1. Respondent Arc Financial, Inc. (hereinafter "Respondent Arc
14 Financial") was licensed as a Mortgage Broker from at least 1997
15 until December 31, 2006.
- 16 2. Respondent Arc Financial's license was revoked on March 13,
17 2007, due to a default judgment entered against it for Docket
18 #06-084.
- 19 3. Respondent Kathy Ives (hereinafter "Respondent Ives") was the
20 President and owner of Respondent Arc Financial, when licensed
21 by 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 4. Paragraphs 1 through 3 are hereby realleged as fully set forth

1 herein.

2 5. The Department conducted an examination of Respondent Arc
3 Financial on April 10, 2006, while Respondent Arc Financial was
4 still licensed with the Department.

5 6. On September 1, 2006, the Department mailed the report of
6 examination and invoice for \$1,365.00 to Respondent Arc
7 Financial, via U.S. Certified Mail Return Receipt requested,
8 which Respondents received on September 7, 2006.

9 7. The above named Respondents failed to respond to the September 1,
10 2006 correspondence from the Department.

11 8. The Department, via U.S. mail, mailed a second notice on October
12 10, 2006 and a third notice on November 20, 2006.

13 9. The above named Respondents did not respond to any of the three
14 notices for payment of the \$1,365.00 invoice.

15 10. To date, the above named Respondents still owe the \$1,365.00
16 examination fee for the 2.73 day examination.

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

18 11. Paragraphs 1 through 10 are hereby realleged as fully set forth
19 herein.

20 12. The 2007 Annual Report was due on or before February 1, 2008.

21 13. On January 10, 2008, the Department emailed a reminder letter that
22 the annual report was due on February 1, 2008.

23 14. The email delivery to the above named Respondents was
24 unsuccessful.

25 15. To date, the above named Respondents have failed to provide the

1 2007 annual report.

2 16. To date, the accrued penalty for failure to file an annual report
3 has reached the maximum cap of \$2,500.00.

4 **II. ISSUES OF LAW**

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

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

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

11 3. RSA 397-A:12,V provides that the expense of such examination shall
12 be chargeable to and paid by the licensee. Each of the above
13 named Respondents violated this provision on at least one
14 occasion as alleged above. To date, the above named Respondents
15 have failed to pay the \$1,365.00 examination invoice.

16 4. RSA 397-A:13,I provides that a licensee shall file its annual
17 report on or before February 1 each year concerning operations
18 for the preceding year or license period ending December 31.
19 Each of the above named Respondents violated this provision on at
20 least one occasion as alleged above.

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

1 statement is overdue, up to a maximum penalty of \$2,500.00 per
2 report or statement. To date, the statutory penalty is now
3 \$2,500.00.

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

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

19 8. 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 397-A or orders
23 thereunder.

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

1 hearing, and in addition to any other penalty provided for by
2 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 10. 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.

