

1 State of New Hampshire Banking Department

)Case No.: 08-283

2 In re the Matter of:)

3 State of New Hampshire Banking)

4 Department,)

5 Petitioner,)

6 and)

7 Martin W Day, Sr (d/b/a American East)

8 Mortgage Services), and Martin W. Day,)

9 Sr.,)

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 5, 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 Martin W Day, Sr (d/b/a American East Mortgage
20 Services) ("Respondent American East Mortgage") shall show
21 cause why penalties in the amount of \$2,500.00 should not be
22 imposed against it;
- 23 2. Respondent Martin W. Day, Sr. shall show cause why penalties
24 in the amount of \$2,500.00 should not be imposed against him;
- 25

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-283
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 3 State of New Hampshire Banking)
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 4 Department,) Staff Petition
)
 5 Petitioner,) January 5, 2009
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 6 and)
)
 7 Martin W Day, Sr (d/b/a American East)
)
 8 Mortgage Services), and Martin W. Day,)
)
 9 Sr.,)
)
 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 Martin W Day, Sr (d/b/a American East Mortgage
16 Services) (hereinafter "Respondent American East Mortgage") was
17 licensed as a Mortgage Broker from at least 1999 until its
18 license was revoked on April 30, 2007 in Docket #07-030.
- 19 2. Respondent Martin W. Day, Sr. (hereinafter "Respondent Day") was
20 the owner of Respondent American East Mortgage, when licensed by
21 the Department.

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

- 23 3. Paragraphs 1 through 2 are hereby realleged as fully set forth
24 herein.
- 25 4. The 2007 Annual Report was due on or before February 1, 2008.

1 5. On January 9, 2008, the Department emailed a reminder letter that
2 the annual report was due on February 1, 2008.

3 6. The email delivery to the above named Respondents was
4 unsuccessful.

5 7. To date, the above named Respondents have failed to provide the
6 2007 annual report.

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

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 8 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: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 4. 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 5. RSA 397-A:18,I provides that the Department may issue a complaint
5 setting forth charges whenever the Department is of the opinion
6 that the licensee or person over whom the Department has
7 jurisdiction, has violated any provision of RSA 397-A or orders
8 thereunder.

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

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

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

8 **III. RELIEF REQUESTED**

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

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

