

1 State of New Hampshire Banking Department

2	In re the Matter of:)Case No.: 08-291
)
3	State of New Hampshire Banking)
)
4	Department,)Order to Show Cause and
)
5	Petitioner,)Cease and Desist Order
)
6	and)
)
7	American Heritage Mortgage Corp, and)
)
8	Thomas A. Lantry,)
)
9	Respondents)
)

11 NOTICE OF ORDER

12 This Order commences an adjudicative proceeding under the provisions of
13 RSA 397-A, RSA 541-A, BAN 200 and JUS 800 as applicable.

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 Banking Department of the State of New
20 Hampshire (hereinafter the "Department") has the authority to issue a
21 complaint setting forth charges whenever the Department is of the opinion
22 that the licensee or person over whom the Department has jurisdiction is
23 violating or has violated any provision of RSA Chapter 397-A, rule or order
thereunder.

24 Pursuant to RSA 397-A:18 II, the Banking Department of the State of New
25 Hampshire (hereinafter the "Department") has the authority to issue and cause

1 to be served an order requiring any person engaged in any act or practice
2 constituting a violation of RSA 397-A or any rule or order thereunder, to
3 cease and desist from violations of RSA 397-A.

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

7 Pursuant to RSA 397-A:21, the Commissioner has the authority to
8 suspend, revoke or deny any license and to impose administrative penalties of
9 up to \$2,500.00 for each violation of New Hampshire banking law and rules.

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

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

18 The above named Respondents have the right to request a hearing on this
19 Order to Show Cause and Cease and Desist Order, as well as the right to be
20 represented by counsel at each Respondent's own expense. All hearings shall
21 comply with RSA 541-A. Any such request for a hearing shall be in writing, and
22 signed by the Respondent or the duly authorized agent of the above named
23 Respondent, and shall be delivered either by hand or certified mail, return
24 receipt requested, to the Banking Department, State of New Hampshire, 53
25 Regional Drive, Suite 200, Concord, NH 03301.

Such hearings will be scheduled within 10 days of the request. Within 20
days of the date of any such hearing, the Commissioner shall issue a further

1 order either vacating this Order or making it permanent as the facts require.
2 All hearings shall comply with RSA 541-A. If the Respondent fails to appear at
3 the hearing after being duly notified, such person shall be deemed in default,
4 and the proceeding may be determined against the Respondents upon consideration
5 of the Order to Show Cause and Cease and Desist Order, the allegations of which
6 may be deemed to be true.

7 If any of the above named Respondents fails to request a hearing within
8 30 calendar days of receipt of such order or reach formal settlement with the
9 Department within that time frame, then such person shall likewise be deemed in
10 default, and the orders shall, on the thirty-first day, become permanent, and
11 shall remain in full force and effect until and unless later modified or
12 vacated by the commissioner, for good cause shown.

13 **STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF**

14 The Staff Petition dated September 25, 2008 (a copy of which is
15 attached hereto) is incorporated by reference hereto.

16 **ORDER**

17 WHEREAS, finding it necessary and appropriate and in the public
18 interest, and consistent with the intent and purposes of the New Hampshire
19 banking laws, and

20 WHEREAS, finding that the allegations contained in the Staff Petition,
21 if proved true and correct, form the legal basis of the relief requested,

22 It is hereby ORDERED, that:

- 23 1. Respondent American Heritage Mortgage Corp ("Respondent
24 American Heritage Mortgage") shall show cause why penalties in
25 the amount of \$82,500.00 should not be imposed against it
individually and therefore, \$165,000.00 jointly and severally;

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-291
)
 3 State of New Hampshire Banking) Staff Petition
)
 4 Department,)
)
 5 Petitioner,) September 25, 2008
)
 6 and)
)
 7 American Heritage Mortgage Corp, and)
)
 8 Thomas A. Lantry,)
)
 9 Respondents)
)
 10)
)
 11)

12 I. STATEMENT OF ALLEGATIONS

13 The Staff of the Banking Department, State of New Hampshire (hereinafter
14 referred to as the "Department") alleges the following facts:

15 Facts Common on All Counts:

- 16 1. Respondent American Heritage Mortgage Corp ("Respondent American
17 Heritage Mortgage") is licensed as a Mortgage Banker and at all
18 times relevant to this action has held a Department license since
19 at least 1997.
- 20 2. Respondent American Heritage Mortgage's principal office is
21 currently located at 39 Simon Street, Unit 9, Nashua, NH 03060.
- 22 3. Respondent Thomas A. Lantry ("Respondent Lantry") is currently
23 President and 100% Owner of Respondent American Heritage Mortgage.
24
25

1 Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for
2 Safeguarding Customer Information, 16 C.F.R. Section 314.4(a) via RSA 397-

3 A:2, III (1 Count):

4 Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for
5 Safeguarding Customer Information, 16 C.F.R. Section 314.4(b) via RSA 397-

6 A:2, III (1 Count):

7 Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for
8 Safeguarding Customer Information, 16 C.F.R. Section 314.4(c) via RSA 397-

9 A:2, III (1 Count):

10 Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for
11 Safeguarding Customer Information, 16 C.F.R. Section 314.4(d) via RSA 397-

12 A:2, III (1 Count):

13 Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for
14 Safeguarding Customer Information, 16 C.F.R. Section 314.4(e) via RSA 397-

15 A:2, III (1 Count):

16 4. Paragraphs 1 through 3 are hereby realleged as fully set forth
17 herein.

18 5. Respondent American Heritage Mortgage has the following policy in
19 place with respect to its information security program:

20 a. All loan files are kept in offices and filing cabinets that have
21 locks,

22 b. Annual report documents are kept filed in locked drawers and
23 locked offices that are locked up every night and weekend, and

24 c. All financial records and documents are maintained in a password
25 protected computer and filing cabinets that are kept in a locked

1 office.

2 6. Office keys are not handed out to all personnel of Respondent
3 American Heritage Mortgage.

4 7. Only Respondent Lantry and the office manager/loan processor have
5 keys to the locked offices and cabinets.

6 8. Respondent American Heritage Mortgage's safeguarding policy is
7 over-simplified and does not meet the above-mentioned requirements.

8 9. Respondent American Heritage Mortgage's policy does not identify an
9 employee to coordinate the program.

10 10. Respondent American Heritage Mortgage has failed to provide any
11 documentation evidencing a company-wide risk assessment.

12 11. Respondent American Heritage Mortgage could not provide any
13 documentation of internal audits that had been performed.

14 12. Respondent American Heritage Mortgage employs the services of a
15 number of third party providers, however there appear to be no
16 third party contracts in place.

17 13. Respondent American Heritage Mortgage does not appear to have
18 evaluated or adjusted the program since its inception.

19 **REGARDING THE APPRAISAL FORM**

20 **Violation of RSA 397-A:6, I Failure to Supervise (1 Counts):**

21 **Violation of RSA 397-A:17, I(g) Failure to Supervise (1 Count):**

22 **Violation of RSA 397-A:17, I(k) Dishonest or Unethical Practices (1 Count):**

23 14. Paragraphs 1 through 13 are hereby realleged as fully set forth
24 herein.

1 15. Respondent American Heritage Mortgage routinely uses a form
2 entitled "Appraisal Request Form".

3 16. Respondent American Heritage Mortgage sends this form to appraisers
4 requesting that an appraisal be done on a particular property.

5 17. The Appraisal Request Form includes sections labeled "Value or Sale
6 price" and "Loan Amount".

7 18. The purpose of an appraisal is to provide an estimated value of a
8 property from a neutral third party.

9 19. Respondent American Heritage Mortgage failed to properly supervise
10 its employees to ensure that there were no attempts to influence
11 the appraisers' opinion of value.

12 **REGARDING THE DISCLOSURES TO CONSUMERS**

13 **Violation of RSA 397-A:6, I Failure to Supervise (3 Counts):**

14 **Violation of RSA 397-A:17, I(g) Failure to Supervise (3 Counts):**

15 **Violation of RSA 397-A:17, I(k) Dishonest or Unethical Practices (3 Count):**

16 20. Paragraphs 1 through 19 are hereby realleged as fully set forth
17 herein.

18 21. Respondent American Heritage Mortgage uses a HUD form that states
19 "I [mortgage broker] am your agent and I will get you the most
20 favorable mortgage loan that meets your stated objectives. I will
21 shop for your loan from amount 0 lender(s). For my services, I
22 will charge you a fee, but I will not receive any additional fee
23 for your mortgage from a lender."

1 22. The same HUD form described above states that the mortgage broker
2 is not collecting any compensation for its involvement in the
3 process.

4 23. Consumer A's file contains a mortgage broker contract stating zero
5 compensation. However, a good faith estimate dated August 8, 2007
6 and another dated August 9, 2008 show both a loan origination fee
7 payable from the borrower and a yield spread premium payable from
8 the lender. Despite disclosing zero compensation on the mortgage
9 broker contract, Respondent American Heritage Mortgage collected
10 \$3,632.10 for its services at closing.

11 24. Consumer B and Consumer C (a married couple) had a file containing
12 the mortgage broker contract stating zero compensation. Consumer B
13 and Consumer C were also provided a good faith estimate on the same
14 day disclosing fees payable from the borrower and a yield spread
15 premium payable from the lender. Respondent American Heritage
16 Mortgage subsequently re-disclosed the good faith estimate on
17 September 8, 2006, which failed to disclose the yield spread
18 premium. At closing, Respondent American Heritage Mortgage
19 collected \$5,368.39 (including a yield a spread premium) for its
20 services.

21 25. Consumer D's file contained a mortgage broker contract stating zero
22 compensation. A good faith estimate was provided Consumer D on the
23 same day, disclosing fees payable from the borrower and a yield
24 spread premium payable from the lender. Despite disclosing zero
25 compensation on the mortgage broker contract, Respondent American

1 Heritage Mortgage collected \$350.00 at application and at closing, an
2 additional \$3,125.00 for its services.

3 26. Respondents failed to properly supervise employees to ensure
4 consumers were not given incorrect and misleading disclosures
5 relative to the mortgage broker relationship and compensation
6 received.

7 **Violation of RSA 397-A:10, IV Failure to Update Information on File with**

8 **Commissioner (1 Count):**

9 27. Paragraphs 1 through 26 are hereby realleged as fully set forth
10 herein.

11 28. Respondent American Heritage Mortgage has registered the trade name
12 "American Heritage Mortgage" with the New Hampshire Secretary of
13 State.

14 **Violation of RSA 397-A:6, I Failure to Supervise (5 Counts):**

15 **Violation of RSA 397-A:17, I(g) Failure to Supervise (5 Counts):**

16 **Violation of RSA 397-A:17, I(k) Dishonest or Unethical Practices (5 Counts):**

17 29. Paragraphs 1 through 28 are hereby realleged as fully set forth
18 herein.

19 30. Respondent American Heritage Mortgage has a file for Consumer E.

20 31. Consumer E's file contained an application that was signed and
21 dated by Consumer E in red ink.

22 32. The date was subsequently "whited out" and replaced with another
23 date in blue ink, which was not in the same handwriting as the
24 signature.

25

1 33. Consumer E's file also contained a Truth in Lending Disclosure
2 Statement and a Good Faith Estimate (both hereinafter collectively
3 "Documents") with pre-computed dates of March 5, 2007. Both
4 Documents were signed and dated by Consumer E, but the dates were
5 subsequently "whited out" and no other date was written or typed in
6 to replace the initial signature date.

7 34. Consumer E's file also contained a Good Faith Estimate that had a
8 handwritten note on the bottom right of the disclosure that stated
9 "Mailed 3/7/07". This disclosure, which is to be mailed to
10 Consumer E to be signed and dated by Consumer E, had the date of
11 Consumer E's signature as the same date the document was mailed to
12 Consumer E.

13 35. Further, Consumer E's file includes an application signed and dated
14 by Consumer E on 1/24/07. However, the application also had a
15 handwritten note on the bottom of the page stating the application
16 was "Mailed 3/2/07". This means the application was mailed to
17 Consumer E in March, even though the date states he received it
18 close to two months prior in January 2007.

19 **II. ISSUES OF LAW**

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

- 21 1. The Department realleges the above stated facts in paragraphs 1
22 through 35 above.
- 23 2. The Department has jurisdiction over the licensing and regulation
24 of persons engaged in mortgage banker activities pursuant to RSA
25 397-A:2 and RSA 397-A:3.

- 1 3. RSA 397-A:3 requires those in the business of making or brokering
2 mortgage loans secured by real property located in this state, and
3 not exempt from licensure, to obtain a license from the Department.
- 4 4. RSA 397-A:2, II requires any mortgage loans made or brokered under
5 RSA Chapter 397-A to be further governed by any other applicable
6 laws of the state of New Hampshire.
- 7 5. RSA 397-A:2, III requires persons subject to or licensed under RSA
8 Chapter 397-A to abide by applicable federal laws and regulations,
9 the laws and rules of the State of New Hampshire, and the orders of
10 the Commissioner. Any violation of such law, regulation, order, or
11 rule is a violation of RSA Chapter 397-A. Each of the above named
12 Respondents violated this statute on five occasions as alleged
13 above.
- 14 6. The Gramm-Leach-Bliley Act, Title V, Sec. 501(a) states that it is
15 the policy of the Congress that each financial institution has an
16 affirmative and continuing obligation to respect the privacy of its
17 customers and to protect the security and confidentiality of those
18 customers' nonpublic personal information.
- 19 7. 16 C.F.R. Section 314.4(a), Standards for Safeguarding Customer
20 Information, states that the licensee's information security
21 program is required to designate an employee or employees to
22 coordinate the program. The Respondents have violated this
23 provision on one occasion as alleged above.
- 24 8. 16 C.F.R. Section 314.4(b), Standards for Safeguarding Customer
25 Information, states that the licensee is required to perform and

1 document a risk assessment. The Respondents have violated this
2 provision on one occasion as alleged above.

3 9. 16 C.F.R. Section 314.4(c), Standards for Safeguarding Customer
4 Information, states that the licensee is required to design,
5 implement and regularly test safeguards in place. The Respondents
6 have violated this provision on one occasion as alleged above.

7 10. 16 C.F.R. Section 314.4(d), Standards for Safeguarding Customer
8 Information, states that the licensee is required to enter into
9 contracts with third party providers to ensure those parties
10 implement and maintain safeguards. The Respondents have violated
11 this provision on one occasion as alleged above.

12 11. 16 C.F.R. Section 314.4(e), Standards for Safeguarding Customer
13 Information, states that the licensee is required to evaluate and
14 adjust the information security program. The Respondents have
15 violated this provision on one occasion as alleged above.

16 12. RSA 397-A:6, I mandates that licensees supervise their employees,
17 agents, loan originators, and branch offices. Each of the above
18 named Respondents failed to adequately supervise and therefore
19 violated this statute on at least nine occasions as alleged above.

20 13. RSA 397-A:10, IV provides that persons licensed under RSA Chapter
21 397 are under a continuing obligation to update information on file
22 with the Commissioner. Each of the above named Respondents failed
23 to update the Commissioner on at least one occasion as alleged
24 above.

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1 14. Pursuant to RSA 397-A:17, the Commissioner may issue an order
2 requiring a person to whom any license has been granted or any
3 person under the Commissioner's jurisdiction to show cause why the
4 license should not be revoked, suspended, or penalties imposed, or
5 both, for violations of RSA Chapter 397-A. Pursuant to RSA 397-
6 A:17 (a) and (b), Respondent American Heritage Mortgage is subject
7 to license revocation for violating provision of RSA Chapter 397-A
8 and for not meeting the standards established by RSA Chapter 397-A.

9 15. Pursuant to RSA 397-A:17,I(g), licensees engaging in business in
10 New Hampshire must supervise their agents, originators, managers or
11 employees. Each of the above named Respondents violated this
12 statute on at least nine occasions as alleged above.

13 16. Pursuant to RSA 397-A:17,I(k), licensees engaging in business in
14 New Hampshire are prohibited from engaging in unethical business
15 practices. Each of the above named Respondents violated this
16 statute on at least nine occasions as alleged above.

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

22 18. RSA 397-A:18, II the Commissioner may issue a Cease and Desist
23 order against any licensee or person who has reasonable cause to
24 believe is in violation of the provisions of the chapter or any
25 rule or order under RSA Chapter 397-A.

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

11 20. 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. Respondent Lantry is subject to
24 revocation and/or administrative fines for the above-stated
25 violations.

1 III. RELIEF REQUESTED

2 III. The staff of the Department requests the Commissioner take the following
3 Action:

- 4 1. Find as fact the allegations contained in section I of this Staff
5 Petition;
- 6 2. Make conclusions of law relative to the allegations contained in
7 section II of the this Staff Petition;
- 8 3. Pursuant to RSA 397-A:17, order each of the above named Respondents
9 to show cause why their license should not be revoked;
- 10 4. Pursuant to RSA 397-A:18, order each of the above named Respondents
11 to immediately **Cease and Desist** from violations of this chapter;
- 12 5. Assess fines and administrative penalties in accordance with RSA
13 397-A:21, for violations of Chapter 397-A, in the number and amount
14 equal to the violations set forth in section II of this Staff
15 Petition; and
- 16 6. 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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