

1 State of New Hampshire Banking Department

)Case No.: 08-327

2 In re the Matter of:)

3 State of New Hampshire Banking)

4 Department,)

5 Petitioner,)

6 and)

7 Arista Lending Solutions Inc, David G.)

8 Robison, and Heather A. Stanley,)

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 formal settlement with the
2 Department within that time frame, then such person shall likewise be deemed
3 in default, and the orders shall, on the thirty-first day, become permanent,
4 and shall remain in full force and effect until and unless later modified or
5 vacated by the Commissioner, for good cause shown.

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

7 The Staff Petition dated April 28, 2009 (a copy of which is attached
8 hereto) is incorporated by reference hereto.

9 **ORDER**

10 WHEREAS, finding it necessary and appropriate and in the public
11 interest, and consistent with the intent and purposes of the New Hampshire
12 banking laws, and

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

15 It is hereby ORDERED, that:

- 16 1. Respondent Arista Lending Solutions Inc ("Respondent Arista
17 Lending") shall show cause why penalties in the amount of
18 \$47,500.00 should not be imposed against it;
- 19 2. Respondent David G. Robison ("Respondent Robison") shall show
20 cause why penalties in the amount of \$50,000.00 should not be
21 imposed against him;
- 22 3. Respondent Heather A. Stanley ("Respondent Stanley") shall
23 show cause why penalties in the amount of \$50,000.00 should
24 not be imposed against her;
- 25 4. The above named Respondents shall show cause why, in addition

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

to the penalties listed in Paragraphs 1 through 3 above, the \$3,920.00 examination fee should not be paid to the Department;

- 5. Consumer restitution for Consumer B in the amount of \$4,200.00 and for Consumer C in the amount of \$8.727.00.
- 6. Respondents shall be jointly and severally liable for the above amounts alleged in Paragraphs 1 through 5 above;
- 7. The above named Respondents shall show cause why, in addition to the penalties listed in Paragraphs 1 through 6 above, Respondent Arista Lending's license should not be revoked.

It is hereby further ORDERED that:

- 8. Along with the administrative penalties listed for the above named Respondents, the outstanding sum of \$3,920.00 shall be immediately paid, as well as the consumer restitution; and
- 9. Failure to request a hearing within 30 days of the date of receipt or valid delivery of this Order shall result in a default judgment being rendered and administrative penalties imposed upon the defaulting Respondent(s).

SIGNED,

Dated: 04/28/09

_____/s/
PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-327
3 State of New Hampshire Banking)
4 Department,) Staff Petition
5 Petitioner,) April 28, 2009
6 and)
7 Arista Lending Solutions Inc, David G.)
8 Robison, and Heather A. Stanley,)
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 Arista Lending Solutions Inc (hereinafter "Respondent
15 Arista Lending") was licensed as a Mortgage Broker from at least
16 September 20, 2004 (with an amended license date of January 31,
17 2008) until it surrendered its license on June 30, 2008.
- 18 2. Respondent David G. Robison (hereinafter "Respondent Robison")
19 was the 34% owner and President of Respondent Arista Lending,
20 when licensed by the Department.
- 21 3. Respondent Heather A. Stanley (hereinafter "Respondent Stanley")
22 was the 66% owner and Vice-President of Respondent Arista
23 Lending, when licensed by the Department.
- 24
25

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

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

3 Department Inquiries (1 Count):

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

6 5. The Department conducted an examination of Respondent Arista
7 Lending on October 22, 2007, while Respondent Arista Lending was
8 still licensed with the Department.

9 6. On May 12, 2008, the Department mailed the report of examination
10 and invoice for \$3,920.00 to Respondent Arista Lending, via U.S.
11 Certified Mail Return Receipt requested, which Respondents
12 received on May 14, 2008.

13 7. The above named Respondents contacted the Department and requested
14 a structured payment plan. The Department agreed to accept such
15 payments and on May 22, 2008 mailed, via U.S. mail, a payment
16 plan letter requiring Respondent Robison's signature.

17 8. To date, the above named Respondents did not remit payment or
18 submit a signed payment plan agreement.

19 9. To date, the above named Respondents still owe the \$3,920.00
20 examination fee for the 7.84 day examination.

21 REGARDING THE APPRAISAL FORMS: CONSUMER A and CONSUMER B

22 Violation of RSA 397-A:6,I Failure to Supervise (2 Counts):

23 Violation of RSA 397-A:17,I(g) Failure to Supervise (2 Counts):

24 Violation of RSA 397-A:17,I(k) Dishonest or Unethical Practices (2 Counts):

25 10. Paragraphs 1 through 9 are hereby realleged as fully set forth

1 herein.

2 11. Attempting to influence an appraisal in any way or influence the
3 appraiser in any way is a dishonest or unethical business
4 practice.

5 12. In Consumer A's file, the above named Respondents stated the
6 following to the appraiser in the Comments section of the
7 Appraisal Request form: "We are trying to close this months [sic]
8 end. Now I know I said 435K is what we needed however [sic] 429
9 is the absolute lowest that will get it done. Please let me know
10 if you think this will be OK. And finally as always THANK
11 YOU!!!"

12 13. In Consumer B's file, an employee of Respondent Arista Lending
13 emailed an appraiser and indicated she thought the appraisal the
14 lender ordered was extremely low at \$300,000 and "was hoping for
15 \$375k".

16 REGARDING THE LOAN APPLICATION: CONSUMER B

17 Violation of RSA 397-A:6,I Failure to Supervise (1 Count):

18 Violation of RSA 397-A:2,VI(a) Employ Any Device, Scheme, or Artifice to

19 Defraud (1 Count):

20 Violation of RSA 397-A:2,VI(b) Make Any Untrue Statement of a Material Fact

21 Appear Not Misleading (1 Count):

22 Violation of RSA 397-A:2,VI(c) Engage in Any Act, Practice or Course of

23 Business Which Operates or Would Operate as a Fraud or Deceit Upon Any

24 Person (1 Count):

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

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

2 14. Paragraphs 1 through 13 are hereby realleged as fully set forth
3 herein.

4 15. Respondents' employee (loan officer) falsified the income of
5 Consumer B in order for the lender to approve the loan
6 application. Thus, Respondents failed to supervise its employee
7 (loan officer) in the processing of Consumer B's loan
8 application.

9 16. Consumer B was an acquaintance of the loan officer, appears to
10 have had plenty of equity, and a low mortgage balance but was on
11 a fixed income of \$2,200.00 monthly from Social Security and
12 \$500.00 from a part-time job.

13 17. During the loan officer's discussion of the loan application with
14 a prospective lender, the prospective lender instructed the loan
15 officer to drop the income from Social Security and "call in a
16 P/T job for more income and go stated" because the lender does
17 not need a Verification of Employment if the LTV (loan to value)
18 is under 70%.

19 18. When the appraisal came in lower than expected, the loan amount
20 dropped from \$225,000.00 to \$210,000.00 in order to keep the LTV
21 at or below the 70% threshold.

22 19. The final application and subsequent loan approval documents
23 reflect two sources of income for the borrower, one listed as a
24 monthly base income of \$2,700.00 and the other listed as Social
25 Security, Pension, Annuity and other income of \$3,031.25. The

1 combination of these amounts equals \$5,731.25, more than double
2 what Consumer B originally disclosed to Respondents as his
3 income.

4 20. Respondent Arista Lending received a fee of \$4,200.00 for Consumer
5 B's loan transaction. This amount should be refunded to Consumer
6 B.

7 REGARDING THE LOAN APPLICATION: CONSUMER B

8 Violation of RSA 397-A:6,I Failure to Supervise (1 Count):

9 Violation of RSA 397-A:2,VI(a) Employ Any Device, Scheme, or Artifice to
10 Defraud (1 Count):

11 Violation of RSA 397-A:2,VI(b) Make Any Untrue Statement of a Material Fact
12 Appear Not Misleading (1 Count):

13 Violation of RSA 397-A:2,VI(c) Engage in Any Act, Practice or Course of
14 Business Which Operates or Would Operate as a Fraud or Deceit Upon Any
15 Person (1 Count):

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

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

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

20 22. Respondents altered Consumer C's loan documents during the
21 origination process and thus failed to supervise Respondent
22 Arista Lending's employees.

23 23. Consumer C's employer submitted a Verification of Employment to
24 the above named Respondents.

25 24. Respondents used white-out to conceal Consumer C's gross income

1 over the past two years, including the year to date for the
2 current year as set out in the Gross Earnings section of the
3 Verification of Employment.

4 25. The Department's Examiner also discovered a copy of the original
5 Verification of Employment before the white-out in the file.

6 26. The Department's Examiner, through the review of the original
7 Verification of Employment, whited-out original and W-2 form,
8 discovered Consumer C's monthly income of about \$3,843.00 or
9 \$4,290.00 as disclosed on the 2006 W-2 found in the 2007
10 refinance file.

11 27. However, the final application dated April 12, 2006 and closing
12 documents from the lender, reflected a monthly income of
13 \$6,875.00, much higher than stated on the W-2 or the Verification
14 of Employment.

15 28. Based on the Department's Examiner's observation, Respondent
16 Arista Lending received a fee of \$8,727.00 for the Consumer C
17 loan transaction. This amount should be refunded to Consumer C.

18 **II. ISSUES OF LAW**

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

20 1. The Department realleges the above stated facts in Paragraphs 1
21 through 28 as fully set forth herein.

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

25 3. RSA 397-A:2,VI(a) provides that it is unlawful for any person, in

1 connection with the solicitation, offer, closing, or servicing of
2 a mortgage loan, directly or indirectly, to employ any device,
3 scheme, or artifice to defraud. Each of the above named
4 Respondents violated this provision on at least two occasions as
5 alleged above.

6 4. RSA 397-A:2,VI(b) provides that it is unlawful for any person, in
7 connection with the solicitation, offer, closing, or servicing of
8 a mortgage loan, directly or indirectly, to make any untrue
9 statement of a material fact or to omit to state a material fact
10 necessary in order to make the statements made, in light of the
11 circumstances under which they are made, not misleading. Each of
12 the above named Respondents violated this provision on at least
13 two occasions as alleged above.

14 5. RSA 397-A:2,VI(c) provides that it is unlawful for any person, in
15 connection with the solicitation, offer, closing, or servicing of
16 a mortgage loan, directly or indirectly, to engage in any act,
17 practice, or course of business which operates or would operate as
18 a fraud or deceit upon any person. Each of the above named
19 Respondents violated this provision on at least to two occasions
20 as alleged above.

21 6. RSA 397-A:6,I mandates that licensees supervise their employees,
22 agents, loan originators, and branch offices. Each of the above
23 named Respondents failed to adequately supervise and therefore
24 violated this statute on at least 4 occasions as alleged above.

25 7. RSA 397-A:12,V provides that the expense of such examination shall

1 be chargeable to and paid by the licensee. Each of the above
2 named Respondents violated this provision on at least one
3 occasion as alleged above. To date, the above named Respondents
4 have failed to pay the \$3,920.00 examination invoice.

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

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

20 10. RSA 397-A:17,I(g) provides that licensees engaging in business in
21 New Hampshire must supervise their agents, originators, managers
22 or employees. Each of the above named Respondents violated this
23 statute on at least four occasions as alleged above.

24 11. Pursuant to RSA 397-A:17,I(k), licensees engaging in business in
25 New Hampshire are prohibited from engaging in unethical business

1 practices. Each of the above named Respondents violated this
2 statute on at least four occasions as alleged above.

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

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

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

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

7 **III. RELIEF REQUESTED**

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

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

