

1 State of New Hampshire Banking Department

)Case No.: 08-328

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 eHomeCredit Corp (d/b/a FHB Funding and)

)

8 d/b/a Fundamental Home Borrowing),

)

)

9 Michael J. Bode, and Philip E.

)

)

10 Zegarelli,

)

)

11 Respondents

)

12 NOTICE OF ORDER

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

15 LEGAL AUTHORITY AND JURISDICTION

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

20 Pursuant to RSA 397-A:18, 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, or any rule or
24 order thereunder.

25 Pursuant to RSA 397-A:20, the Commissioner may issue, amend, or

1 rescind such orders as are reasonably necessary to comply with the
2 provisions of the Chapter.

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

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

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

16 The above named Respondents have the right to request a hearing on
17 this Order to Show Cause, as well as the right to be represented by counsel
18 at each Respondent's own expense. All hearings shall comply with RSA 541-A.
19 Any such request for a hearing shall be in writing, and signed by the
20 Respondent or the duly authorized agent of the above named Respondent, and
21 shall be delivered either by hand or certified mail, return receipt
22 requested, to the Banking Department, State of New Hampshire, 53 Regional
23 Drive, Suite 200, Concord, NH 03301. Such hearings will be scheduled within
24 10 days of the Department's receipt of the request. If the Respondent fails
25 to appear at the hearing after being duly notified, such person shall be

1 deemed in default, and the proceeding may be determined against the Respondent
2 upon consideration of the Order to Show Cause, the allegations of which may be
3 deemed to be true.

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

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

11 The Staff Petition dated January 13, 2009 (a copy of which is attached
12 hereto) is incorporated by reference hereto.

13 **ORDER**

14 WHEREAS, finding it necessary and appropriate and in the public
15 interest, and consistent with the intent and purposes of the New Hampshire
16 banking laws, and

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

19 It is hereby ORDERED, that:

- 20 1. Respondent eHomeCredit Corp (d/b/a FHB Funding and d/b/a
21 Fundamental Home Borrowing) ("Respondent eHomeCredit") shall
22 show cause why penalties in the amount of \$5,000.00 should
23 not be imposed against it;
- 24 2. Respondent Michael J. Bode ("Respondent Bode") shall show
25 cause why penalties in the amount of \$5,000.00 should not be

1 imposed against him;

2 3. Respondent Philip E. Zegarelli ("Respondent Zegarelli") shall
3 show cause why penalties in the amount of \$5,000.00 should
4 not be imposed against him;

5 4. The above named Respondents shall show cause why, in addition
6 to the penalties listed in Paragraphs 1 through 3 above, the
7 \$1,335.00 examination fee should not be paid to the
8 Department;

9 5. The above named Respondents shall show cause why, in addition
10 to the penalties listed in Paragraphs 1 through 4 above, the
11 accrued fine of \$1,100.00 for the late filing of examination
12 materials should not be paid to the Department;

13 6. The above named Respondents shall be jointly and severally
14 liable for the above amounts alleged in Paragraphs 1 through
15 5 above;

16 7. The above named Respondents shall show cause why, in addition
17 to the penalties listed in Paragraphs 1 through 6 above,
18 Respondent eHomeCredit's license should not be revoked.

19 It is hereby further ORDERED that:

20 8. Along with the administrative penalties listed for the above
21 named Respondents, the outstanding sum of \$2,435.00 shall be
22 immediately paid; and

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-328
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3 State of New Hampshire Banking)
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4 Department,) Staff Petition
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5 Petitioner,) January 13, 2009
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6 and)
))
7 eHomeCredit Corp (d/b/a FHB Funding and)
))
8 d/b/a Fundamental Home Borrowing),)
))
9 Michael J. Bode, and Philip E.)
))
10 Zegarelli,)
))
11 Respondents)

12 I. STATEMENT OF ALLEGATIONS

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

15 Facts Common on All Counts:

- 16 1. Respondent eHomeCredit Corp (d/b/a FHB Funding and d/b/a
17 Fundamental Home Borrowing) (hereinafter "Respondent
18 eHomeCredit") was licensed as a Mortgage Banker from at least
19 1997 until its license expired on December 31, 2007.
- 20 2. Respondent Michael J. Bode (hereinafter "Respondent Bode") was
21 the 83.35% owner of Respondent eHomeCredit, when licensed by the
22 Department.
- 23 3. Respondent Philip E. Zegarelli (hereinafter "Respondent
24 Zegarelli") was the President and CEO of Respondent eHomeCredit,
25 when licensed by the Department.

1 Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested
2 Files in a Timely Manner (1 Count):

3 Violation of RSA 397-A:12,V Failure to Pay Examination Fee (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 eHomeCredit
7 on August 27, 2007, while Respondent eHomeCredit was still
8 licensed with the Department.

9 6. The examination materials were due from Respondent eHomeCredit on
10 October 18, 2007.

11 7. The Department received the examination materials on November 9,
12 2007, which was 22 days late.

13 8. Respondent eHomeCredit's late submittal of examination materials
14 generated a fine of \$1,100.00 (\$50.00 per day x 22 days).

15 9. On November 16, 2007, the Department sent Respondent eHomeCredit
16 the invoice for the late filing of examination materials, to
17 which the above named Respondents failed to respond.

18 10. On December 19, 2007, the Department sent Respondent eHomeCredit a
19 second notice of the invoice for the late filing of examination
20 materials, to which the above named Respondents failed to
21 respond.

22 11. On February 4, 2008, the Department sent Respondent eHomeCredit a
23 third notice of the invoice for the late filing of examination
24 materials, to which the above named Respondents failed to
25 respond.

1 12. To date, the above named Respondents have failed to pay the
2 \$1,100.00 invoice.

3 13. On March 18, 2008, the Department mailed the report of examination
4 and invoice for \$1,335.00 to Respondent eHomeCredit, via U.S.
5 Certified Mail Return Receipt requested, which Respondents
6 received on April 10, 2008.

7 14. The above named Respondents failed to respond to the March 18,
8 2008 correspondence from the Department.

9 15. The Department, via U.S. mail, mailed a second notice on April 29,
10 2008 and a third notice on June 24, 2008.

11 16. The above named Respondents did not respond to any of the three
12 notices for payment of the \$500.00 invoice.

13 17. To date, the above named Respondents still owe the \$1,335.00
14 examination fee for the 2.67 day examination.

15 **II. ISSUES OF LAW**

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

17 1. The Department realleges the above stated facts in Paragraphs 1
18 through 17 as fully set forth herein.

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

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

1 Respondents currently owe \$1,100.00. Each of the above named
2 Respondents violated this statute on at least one occasion as
3 alleged above.

4 4. RSA 397-A:12,V provides that the expense of such examination shall
5 be chargeable to and paid by the licensee. Each of the above
6 named Respondents violated this provision on at least one
7 occasion as alleged above. To date, the above named Respondents
8 have failed to pay the \$1,335.00 examination invoice.

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

14 6. RSA 397-A:21,IV provides that any person who, either knowingly or
15 negligently, violates any provision of Chapter 397-A, may upon
16 hearing, and in addition to any other penalty provided for by
17 law, be subject to an administrative fine not to exceed
18 \$2,500.00, or both. Each of the acts specified shall constitute
19 a separate violation, and such administrative action or fine may
20 be imposed in addition to any criminal penalties or civil
21 liabilities imposed by New Hampshire Banking laws.

22 7. RSA 397-A:21,V provides that every person who directly or
23 indirectly controls a person liable under this section, every
24 partner, principal executive officer or director of such person,
25 every person occupying a similar status or performing a similar

1 function, every employee of such person who materially aids in the
2 act constituting the violation, and every licensee or person acting
3 as a common law agent who materially aids in the acts constituting
4 the violation, either knowingly or negligently, may, upon notice
5 and opportunity for hearing, and in addition to any other penalty
6 provided for by law, be subject to suspension, revocation, or
7 denial of any registration or license, including the forfeiture of
8 any application fee, or the imposition of an administrative fine
9 not to exceed \$2,500, or both. Each of the acts specified shall
10 constitute a separate violation, and such administrative action or
11 fine may be imposed in addition to any criminal or civil penalties
12 imposed.

13 **III. RELIEF REQUESTED**

14 The staff of the Department requests the Commissioner take the following
15 action:

- 16 1. Find as fact the allegations contained in section I of this Staff
17 Petition;
- 18 2. Make conclusions of law relative to the allegations contained in
19 section II of this Staff Petition;
- 20 3. Pursuant to RSA 397-A:17, order each of the above named
21 Respondents to show cause why their license should not be revoked;
- 22 4. Assess fines and administrative penalties in accordance with RSA
23 397-A:21, for violations of Chapter 397-A, in the number and amount
24 equal to the violations set forth in section II of this Staff
25 Petition; and

