

1 State of New Hampshire Banking Department

2	In re the Matter of:) Case No.: 08-331
)
3	State of New Hampshire Banking)
4	Department,) Order to Show Cause
)
5	Petitioner,)
)
6	and)
)
7	FNT Corp. (d/b/a EPS Funding), and)
)
8	William P. Shaughnessy,)
)
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 Respondent has the right to request a hearing on this
13 Order to Show Cause, as well as the right to be represented by counsel at
14 each Respondent's own expense. All hearings shall comply with RSA 541-A. Any
15 such request for a hearing shall be in writing, and signed by the Respondent
16 or the duly authorized agent of the above named Respondent, and shall be
17 delivered either by hand or certified mail, return receipt requested, to the
18 Banking Department, State of New Hampshire, 53 Regional Drive, Suite 200,
19 Concord, NH 03301. Such hearings will be scheduled within 10 days of the
20 Department's receipt of the request. If the Respondent fails to appear at the
21 hearing after being duly notified, such person shall be deemed in default, and
22 the proceeding may be determined against the Respondent upon consideration of
23 the Order to Show Cause, the allegations of which may be deemed to be true.

24 If any of the above named Respondents fails to request a hearing within
25 30 calendar days of receipt of such order or reach a formal written and

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

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

7 The Staff Petition dated June 11, 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 FNT Corp. (d/b/a EPS Funding) ("Respondent FNT")
17 shall show cause why penalties in the amount of \$12,500.00
18 should not be imposed against it;
- 19 2. Respondent William P. Shaughnessy ("Respondent Shaughnessy")
20 shall show cause why penalties in the amount of \$12,500.00
21 should not be imposed against him;
- 22 3. The above named Respondent shall show cause why, in addition
23 to the penalties listed in Paragraphs 1 through 2 above, the
24 \$2,765.00 examination fee for the 2006 examination should not
25 be paid to the Department;

1 4. The above named Respondent shall show cause why, in addition
2 to the penalties listed in Paragraphs 1 through 3 above, the
3 \$500.00 examination fee for the 2008 examination should not
4 be paid to the Department;

5 5. The above named Respondent shall show cause why, in addition
6 to the penalties listed in Paragraphs 1 through 4 above, the
7 accrued fine of \$19,000.00 for the failure to file
8 examination materials should not be paid to the Department;

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

11 7. The above named Respondents shall show cause why, in addition
12 to the penalties listed in Paragraphs 1 through 6 above,
13 Respondent FNT's license should not be revoked.

14 It is hereby further ORDERED that:

15 8. Along with the administrative penalties listed for the above
16 named Respondent, the outstanding sum of \$22,265.00 shall be
17 immediately paid; and

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20
21 [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
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1 9. Failure to request a hearing within 30 days of the date of
2 receipt or valid delivery of this Order shall result in a
3 default judgment being rendered and administrative penalties
4 imposed upon the defaulting Respondent(s).

5
6 SIGNED,

7
8 Dated: 06/11/09

9 /s/
PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-331
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) June 11, 2009
)
 6 and)
)
 7 FNT Corp. (d/b/a EPS Funding), and)
)
 8 William P. Shaughnessy,)
)
 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 FNT Corp. (d/b/a EPS Funding) (hereinafter
15 "Respondent FNT") was licensed as a Mortgage Broker from at
16 least May 25, 2005 (with an amended license date of April 25,
17 2008) until it surrendered its license on August 1, 2008.
- 18 2. Respondent William P. Shaughnessy (hereinafter "Respondent
19 Shaughnessy") was the 100% owner and President of Respondent
20 FNT, when licensed with the Department.

21 2006 Examination

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

- 23 3. Paragraphs 1 through 2 are hereby realleged as fully set forth
24 herein.
- 25 4. The Department conducted an examination of Respondent FNT on July

1 31, 2006, while Respondent FNT was still licensed with the
2 Department.

3 5. On May 14, 2007, the Department mailed the report of examination
4 and invoice for \$2,765.00 to Respondent FNT, via U.S. Certified
5 Mail Return Receipt requested, which Respondent FNT received on
6 May 16, 2007.

7 6. Respondent FNT failed to respond to the May 14, 2007
8 correspondence from the Department.

9 7. The Department, via U.S. mail, mailed a second notice on June 28,
10 2007 and a third notice on August 22, 2007.

11 8. Respondent FNT did not respond to any of the three notices for
12 payment of the \$2,765.00 invoice.

13 9. To date, Respondent FNT still owes the \$2,765.00 examination fee
14 for the 5.53 day examination.

15 **2008 Examination**

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

17 10. Paragraphs 1 through 9 are hereby realleged as fully set forth
18 herein.

19 11. The Department conducted an examination of Respondent FNT on
20 January 14, 2008, while Respondent FNT was still licensed with
21 the Department.

22 12. On September 15, 2008, the Department mailed the invoice for
23 \$500.00 to Respondent FNT, via U.S. Certified Mail Return Receipt
24 requested, which Respondent FNT received on October 23, 2008.

25 13. Respondent FNT failed to respond to the September 15, 2008

1 correspondence from the Department.

2 14. The Department, via U.S. mail, mailed a second notice on November
3 23, 2008 and a third notice on December 5, 2008.

4 15. Respondent FNT did not respond to any of the three notices for
5 payment of the \$500.00 invoice.

6 16. To date, Respondent FNT still owes the \$500.00 examination fee for
7 the one day examination.

8 **Violation of RSA 397-A:12,VII Failure to Facilitate Exam (1 Count):**

9 **Violation of RSA 397-A:12,III Examinations: Failure to Provide Requested**

10 **Files (1 Count):**

11 **Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested**

12 **Files (1 Count):**

13 17. Paragraphs 1 through 16 are hereby realleged as fully set forth
14 herein.

15 18. The Department was scheduled to conduct an examination of
16 Respondent FNT on May 19, 2008, while Respondent FNT was still
17 licensed with the Department.

18 19. On April 30, 2008, the Department sent the notice of examination
19 to Respondent FNT via U.S. Certified Mail Return Receipt
20 requested, which Respondent FNT received on May 6, 2008.

21 20. On May 7, 2008, Respondent FNT contacted the Department to request
22 that the on-site examination be rescheduled and the Department
23 thus re-scheduled the examination to June 16, 2008.

24 21. The examination materials were due 21 days after Respondents'
25 receipt of the notice of examination, which would have been May

1 21, 2008.

2 22. On June 12, 2008, Respondent FNT's owner contacted the Department
3 by email to indicate he had filed personal bankruptcy and would
4 be "turning in" his license. The Department promptly informed
5 him he was still required to submit examination materials to the
6 Department for review.

7 23. The Department still has not received Respondent FNT's examination
8 materials.

9 24. To date, fines have accrued for failing to provide the requested
10 files. The current fine to date is \$19,000.00 (\$50.00 a day x
11 380 days) and is still accruing.

12 **II. ISSUES OF LAW**

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

14 1. The Department realleges the above stated facts in Paragraphs 1
15 through 24 as fully set forth herein.

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

19 3. RSA 397-A:11,II provides that requested files and business records
20 must be received by the Department within 21 calendar days of
21 request. The licensee will be subject to a \$50.00 a day fine
22 every day after the 21-day period the records are not produced.
23 Each of the above named Respondents violated this provision on at
24 least one occasion as alleged above. Respondents currently owe
25 \$19,000.00 to date and the fine is still accruing.

1 4. RSA 397-A:12,III requires licensees to comply with examination
2 requests with or without prior notice. All books, papers, files,
3 related material, and records of assets shall be subject to the
4 Department's examination. Each of the above named Respondents
5 violated this statute on at least one occasion as alleged above.

6 5. RSA 397-A:12,V provides that the expense of such examination shall
7 be chargeable to and paid by the licensee. Each of the above
8 named Respondents violated this provision on at least one
9 occasion as alleged above. To date, the above named Respondents
10 have failed to pay the \$2,765.00 examination invoice for the 2006
11 examination and the \$500.00 examination invoice for the 2008
12 examination.

13 6. RSA 397-A:12,VII provides that every person being examined, and
14 all of the officers, directors, employees, agents, and
15 representatives of such person shall make freely available to the
16 Commissioner or his or her examiners, the accounts, records,
17 documents, files, information, assets, and matters in their
18 possession or control relating to the subject of the examination
19 and shall facilitate the examination. Each of the above named
20 Respondents violated this statute on at least one occasion as
21 alleged above.

22 7. RSA 397-A:17,I provides in part that the Commissioner may by
23 order, upon due notice and opportunity for hearing, assess
24 penalties or deny, suspend, or revoke a license or application if
25 it is in the public interest and the applicant, respondent, or

1 licensee, any partner, officer, member, or director, any person
2 occupying a similar status or performing similar functions, or
3 any person directly or indirectly controlling the applicant,
4 respondent, or licensee: (a) has violated any provision of RSA
5 Chapter 397-A or rules thereunder, or (b) has not met the
6 standards established in RSA Chapter 397-A.

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

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

20 10. RSA 397-A:21,V provides that every person who directly or
21 indirectly controls a person liable under this section, every
22 partner, principal executive officer or director of such person,
23 every person occupying a similar status or performing a similar
24 function, every employee of such person who materially aids in the
25 act constituting the violation, and every licensee or person acting

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

11 **III. RELIEF REQUESTED**

12 The staff of the Department requests the Commissioner take the following
13 action:

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

