

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-336
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 American Mortgage Express Corp (d/b/a)
)
 8 American Residential Mortgage), Donald)
)
 9 Haberle, Jack G. Mondel, and William JS)
)
 10 Kelley,)
)
 11 Respondents)

12 NOTICE OF ORDER

13 This Order to Show Cause commences an adjudicative proceeding under
14 the provisions of RSA Chapter 397-A and RSA Chapter 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,IV 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 Chapter
9 358-A and exempt under RSA 358-A:3,I or that may violate any of the
10 provisions of Titles XXXV and XXXVI and administrative rules adopted
11 thereunder. The Commissioner may hold hearings relative to such conduct and
12 may order restitution for a person or persons adversely affected by such
13 conduct.

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 Chapter
18 541-A. 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 a Respondent fails to
24 appear at the hearing after being duly notified, such person shall be deemed
25 in default, and the proceeding may be determined against the Respondent upon

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

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

11 The Staff Petition dated January 22, 2010 (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 American Mortgage Express Corp (d/b/a American
21 Residential Mortgage) ("Respondent American Mortgage
22 Express") shall show cause why penalties in the amount of
23 \$7,500.00 should not be imposed against it;
- 24 2. Respondent Donald Haberle ("Respondent Haberle") shall show
25 cause why penalties in the amount of \$7,500.00 should not be

1 imposed against him;

2 3. Respondent Jack G. Mondel ("Respondent Mondel") shall show
3 cause why penalties in the amount of \$7,500.00 should not be
4 imposed against him;

5 4. Respondent William JS Kelley ("Respondent Kelley") shall show
6 cause why penalties in the amount of \$7,500.00 should not be
7 imposed against him;

8 5. The above named Respondents shall show cause why, in addition
9 to the penalties listed in Paragraphs 1 through 4 above, a
10 statutory penalty of \$2,500.00 should not be imposed for
11 failing to file the 2007 annual report;

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

14 7. The above named Respondents shall show cause why, in addition
15 to the penalties listed in Paragraphs 1 through 6 above,
16 Respondent American Mortgage Express' license should not be
17 revoked.

18 It is hereby further ORDERED that:

19 8. Along with the administrative penalties listed for the above
20 named Respondents, the outstanding sum of \$2,500.00 shall be
21 immediately paid; and

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: 01/28/10

9 /s/
PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-336
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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 22, 2010
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6 and)
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7 American Mortgage Express Corp (d/b/a)
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8 American Residential Mortgage), Donald)
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9 Haberle, Jack G. Mondel, and William JS)
))
10 Kelley,)
))
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 American Mortgage Express Corp (d/b/a American
17 Residential Mortgage) (hereinafter "Respondent American Mortgage
18 Express") was licensed as a Mortgage Banker from at least March
19 9, 2004 (with an amended license date of February 14, 2007) until
20 its license expired on February 14, 2007.
- 21 2. Respondent Donald Haberle (hereinafter "Respondent Haberle") was
22 the Chief Financial Officer of Respondent American Mortgage
23 Express, when licensed by the Department.
- 24 3. Respondent Jack G. Mondel (hereinafter "Respondent Mondel") was
25 the Co-Chairman of the Board, control person and 50% owner of

1 Respondent American Mortgage Express, when licensed by the
2 Department.

3 4. Respondent William JS Kelley (hereinafter "Respondent Kelley")
4 was the Co-Chairman of the Board, Chief Executive Officer,
5 President, control person and 50% owner of Respondent American
6 Mortgage Express, when licensed by the Department.

7 Violation of RSA 397-A:10-a,I(a) Failure to Properly Surrender License (1
8 Count):

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

10 Violation of RSA 397-A:10,IV Failure to Update Information on File with
11 Commissioner (1 Count):

12 Violation of RSA 397-A:13,VI Failure of Officer and Owner to Respond to
13 Department Inquiries (3 Counts) (only as to Respondents Mondel and Kelley):

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

16 6. The 2007 Annual Report was due on or before February 1, 2008.

17 7. On January 4, 2008, the Department sent correspondence, via U.S.
18 Certified Mail Return Receipt requested, advising the above named
19 Respondents to submit the annual report and fill out
20 surrender/expiration forms to submit to the Department.
21 Respondents received this correspondence on January 11, 2008.

22 8. On February 5, 2008, the Department mailed a letter, via U.S.
23 Certified Mail Return Receipt requested, regarding the annual
24 report being due on February 1, 2008. Respondents received this
25 correspondence on February 8, 2009.

1 9. On February 19, 2008, the Department mailed a reminder letter (via
2 U.S. Certified Mail Return Receipt requested) that Respondents'
3 license had expired on December 31, 2007 and directed the
4 Respondents to the Department's website to obtain
5 surrender/expiration forms and the procedure to follow for an
6 expired license. Respondents received this correspondence on
7 February 26, 2008.

8 10. To date, the above named Respondents have failed to respond to the
9 Department's correspondence and have failed to properly file
10 surrender documents.

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

13 **II. ISSUES OF LAW**

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

- 15 1. The Department realleges the above stated facts in Paragraphs 1
16 through 11 as fully set forth herein.
- 17 2. The Department has jurisdiction over the licensing and regulation
18 of persons engaged in mortgage banker or broker activities
19 pursuant to NH RSA 397-A:2 and RSA 397-A:3.
- 20 3. RSA 397-A:10,IV provides that persons licensed under RSA Chapter
21 397-A are under a continuing obligation to update information on
22 file with the Commissioner. Each of the above named Respondents
23 failed to update the Commissioner on at least one occasion as
24 alleged above.
- 25 4. RSA 397-A:10-a,I(a) provides that a licensee who ceases to engage

1 in the business of a mortgage banker or mortgage broker at any
2 time during a license year for any cause shall surrender such
3 license in person or by registered or certified mail to the
4 Commissioner within 15 calendar days of such cessation, and shall
5 cause to be published in a newspaper of general circulation in the
6 licensee's market area a notice to such effect. Each of the above
7 named Respondents violated this statute on at least one occasion
8 as alleged above.

9 5. RSA 397-A:13,I provides that a licensee shall file its annual
10 report on or before February 1 each year concerning operations for
11 the preceding year or license period ending December 31. Each of
12 the above named Respondents violated this provision on at least
13 one occasion as alleged above. The maximum fine for this specific
14 violation has reached \$2,500.00 (\$25.00 per day; maximum
15 \$2,500.00) since no annual report was filed for 2007.

16 6. RSA 397-A:13,VI provides that any officer, owner, manager or agent
17 of any licensee shall reply promptly in writing, or other
18 designated form, to any written inquiry from the Department.
19 Respondents Mondel and Kelley each have violated this provision on
20 at least three (3) occasions as alleged above.

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

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

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

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

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

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

10 **III. RELIEF REQUESTED**

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

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

