

1 State of New Hampshire Banking Department

2	In re the Matter of:)	Case No.: 08-339
)	
3	State of New Hampshire Banking)	
4	Department,)	Order to Show Cause
)	
5	Petitioner,)	
)	
6	and)	
)	
7	Arrowhead Mortgage, LLC, and David L.)	
)	
8	Church,)	
)	
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. The
11 Commissioner may utilize all remedies available under the Consumer
12 Protection Act.

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

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

1 deemed to be true.

2 If any of the above named Respondents fails to request a hearing within
3 30 calendar days of receipt of such order or reach formal settlement with the
4 Department within that time frame, then such person shall likewise be deemed
5 in default, and the orders shall, on the thirty-first day, become permanent,
6 and shall remain in full force and effect until and unless later modified or
7 vacated by the Commissioner, for good cause shown.

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

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

11 **ORDER**

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

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

17 It is hereby ORDERED, that:

- 18 1. Respondent Arrowhead Mortgage, LLC ("Respondent Arrowhead
19 Mortgage") shall show cause why penalties in the amount of
20 \$5,000.00 should not be imposed against it;
- 21 2. Respondent David L. Church ("Respondent Church") shall show
22 cause why penalties in the amount of \$10,000.00 should not be
23 imposed against him;
- 24 3. The above named Respondents shall show cause why, in addition
25 to the penalties listed in Paragraphs 1 through 2 above, the

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\$1,000.00 total examination fee (two \$500.00 invoices) should not be paid to the Department;

4. Respondents shall be jointly and severally liable for the above amounts alleged in Paragraphs 1 through 3 above;

5. The above named Respondents shall show cause why, in addition to the penalties listed in Paragraphs 1 through 4 above, Respondent Arrowhead Mortgage's license should not be revoked.

It is hereby further ORDERED that:

6. Along with the administrative penalties listed for the above named Respondents, the outstanding sum of \$1,000.00 shall be immediately paid; and

7. 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,

/s/
PETER C. HILDRETH
BANK COMMISSIONER

Dated: 01/13/09

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-339
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) January 13, 2009
)
 6 and)
)
 7 Arrowhead Mortgage, LLC, and David L.)
)
 8 Church,)
)
 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 Arrowhead Mortgage, LLC (hereinafter "Arrowhead
15 Mortgage") was licensed as a Mortgage Broker from at least 1998
16 (with an amended license date of May 18, 2006) until it
17 surrendered its license on October 18, 2007.
- 18 2. Respondent David L. Church (hereinafter "Respondent Church") was
19 the 100% owner and President of Respondent Arrowhead Mortgage,
20 when licensed by the Department.

21 Violation of RSA 397-A:12,V Failure to Pay Examination Fee (2 Counts):

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

23 Department Inquiries (2 Counts):

- 24 3. Paragraphs 1 through 2 are hereby realleged as fully set forth
25 herein.

- 1 4. The Department conducted an examination of Respondent Arrowhead
2 Mortgage on June 25, 2007 (by two Department examiners), while
3 Respondent Arrowhead Mortgage was still licensed with the
4 Department.
- 5 5. On October 22, 2007, the Department mailed the report of
6 examination and invoice for \$500.00 from one Department examiner
7 to Respondent Arrowhead Mortgage, via U.S. Certified Mail Return
8 Receipt requested, which Respondents received on October 25,
9 2007.
- 10 6. The above named Respondents failed to respond to the October 22,
11 2007 correspondence from the Department.
- 12 7. The Department mailed, via U.S. mail, a second notice on December
13 7, 2007 and a third notice on January 17, 2008.
- 14 8. The above named Respondents did not respond to any of the three
15 notices for payment of the \$500.00 invoice.
- 16 9. To date, the above named Respondents still owe the \$500.00
17 examination fee for the one day examination.
- 18 10. On August 19, 2008, the Department mailed the second invoice for
19 \$500.00 from the second Department examiner to Respondent
20 Arrowhead Mortgage, via U.S. Certified Mail Return Receipt
21 requested, which Respondents received on September 3, 2008.
- 22 11. The above named Respondents failed to respond to the August 19,
23 2008 correspondence from the Department.
- 24 12. The Department mailed, via U.S. Mail, a second notice on September
25 23, 2008 and a third notice on November 21, 2008.

1 13. The above named Respondents did not respond to any of the three
2 notices for payment of the second \$500.00 invoice.

3 14. To date, the above named Respondents still owe the second \$500.00
4 examination fee for the one day examination.

5 **II. ISSUES OF LAW**

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

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

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

12 3. RSA 397-A:12,V provides that the expense of such examination shall
13 be chargeable to and paid by the licensee. Each of the above
14 named Respondents violated this provision on at least one
15 occasion as alleged above. To date, the above named Respondents
16 have failed to pay the \$1,000.00 total examination invoice.

17 4. RSA 397-A:13,VI provides that any officer, owner, manager or agent
18 of any licensee shall reply promptly in writing, or other
19 designated form, to any written inquiry from the Department.
20 Respondent Church violated this provision on at least two
21 occasions as alleged above.

22 5. RSA 397-A:18,I provides that the Department may issue a complaint
23 setting forth charges whenever the Department is of the opinion
24 that the licensee or person over whom the Department has
25

1 jurisdiction, has violated any provision of RSA 397-A or orders
2 thereunder.

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

11 7. 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. Each of the acts specified shall
24 constitute a separate violation, and such administrative action or
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1 fine may be imposed in addition to any criminal or civil penalties
2 imposed.

3 **III. RELIEF REQUESTED**

4 The staff of the Department requests the Commissioner take the following
5 action:

- 6 1. Find as fact the allegations contained in section I of this Staff
7 Petition;
- 8 2. Make conclusions of law relative to the allegations contained in
9 section II of this Staff Petition;
- 10 3. Pursuant to RSA 397-A:17, order each of the above named
11 Respondents to show cause why their license should not be revoked;
- 12 4. 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 5. 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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IV. RIGHT TO AMEND

The Department reserves the right to amend this Staff Petition and to request that the Commissioner take additional administrative action. Nothing herein shall preclude the Department from bringing additional enforcement action under RSA 397-A or the regulations thereunder.

Respectfully submitted by:

 /s/
Maryam Torben Desfosses
Hearings Examiner

 01/13/09
Date