

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-364
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,) and
)
 6 and) Cease and Desist Order
)
 7 Lightning Financial, LLC (d/b/a)
)
 8 Lightning Financial), Stephen K.)
)
 9 Brunelle, and Ellen Brunelle,
 10 Respondents

11
12 NOTICE OF ORDER

13 This Order commences an adjudicative proceeding under the provisions of
14 RSA 397-A:18, RSA 541-A, BAN 200 and JUS 800.

15 LEGAL AUTHORITY AND JURISDICTION

16 Pursuant to RSA 397-A:18, the Banking Department of the State of New
17 Hampshire (hereinafter the "Department") has the authority to issue a
18 complaint setting forth charges whenever the Department is of the opinion
19 that the licensee or person over whom the Department has jurisdiction is
20 violating or has violated any provision of RSA Chapter 397-A, rule or order
thereunder.

21 Pursuant to RSA 397-A:18 II, the Banking Department of the State of New
22 Hampshire (hereinafter the "Department") has the authority to issue and cause
23 to be served an order requiring any person engaged in any act or practice
24 constituting a violation of RSA 397-A or any rule or order thereunder, to
25 cease and desist from violations of RSA 397-A.

1 Pursuant to RSA 397-A:20, the Commissioner may issue, amend, or rescind
2 such orders as are reasonably necessary to comply with the provisions of the
3 Chapter.

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

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

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

21 If any of the above named Respondents fails to request a hearing within
22 30 calendar days of receipt of such order or reach formal settlement with the
23 Department within that time frame, then such person shall likewise be deemed in
24 default, and the orders shall, on the thirty-first day, become permanent, and
25 shall remain in full force and effect until and unless later modified or
vacated by the commissioner, for good cause shown.

STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF

The Staff Petition dated August 28, 2008 (a copy of which is attached
hereto) is incorporated by reference hereto.

ORDER

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

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

It is hereby ORDERED, that each Respondent shall show cause why:

1. Administrative penalties of \$5,000.00 should not be imposed against each of the above named Respondents (jointly and severally); and
2. Statutory penalties of \$600.00 should not be imposed for late filing of the annual report.

It is hereby ORDERED that:

3. Along with the \$5,000 administrative penalty for each Respondent (via joint and several liability), the outstanding invoice in the amount of \$600.00 shall be immediately paid;
4. Failure to request a hearing within 30 days of the date of receipt of this Order shall result in a default judgment being rendered and administrative penalties imposed upon the defaulting Respondents.

SIGNED,

Dated: 08/28/08

/ s /
PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-364
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 3 State of New Hampshire Banking) Staff Petition
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 4 Department,)
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 5 Petitioner,) August 28, 2008
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 6 and)
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 7 Lightning Financial, LLC (d/b/a)
)
 8 Lightning Financial), Stephen K.)
)
 9 Brunelle, and Ellen Brunelle,
 10 Respondents

11
12 I. STATEMENT OF ALLEGATIONS

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

- 15 1. On or about March 30, 2007, Respondent Lightning Financial, LLC
16 (d/b/a Lightning Financial) (hereinafter "Lightning Financial")
17 surrendered its license.
- 18 2. Respondent Lightning Financial's annual report was due at the New
19 Hampshire Banking Department (hereinafter "Department") on or
20 before February 1, 2008.
- 21 3. The Department received the annual report on February 25, 2008,
22 generating a fine of \$25 a day, for a total of \$600.00.
- 23 4. The Department sent three invoices: March 2008, May 2008 and June
24 24, 2008 and received no payment.
- 25 5. On July 8, 2008, an additional letter from the Department's
Licensing Supervisor was sent regarding this penalty, with no

1 response from any of the above named Respondents.

2 6. Respondent Stephen K. Brunelle (hereinafter "Respondent S.
3 Brunelle") is, or was at all relevant times, owner of Respondent
4 Lightning Financial.

5 7. Respondent Ellen Brunelle (hereinafter "Respondent E. Brunelle")
6 is, or was at all relevant time, the Branch Operations Manager of
7 Respondent Lightning Financial.

8 8. Respondent Lightning Financial was licensed as a Mortgage Broker
9 prior to the surrender of its license in 2007.

10 9. To date the invoice for \$600.00 remains unpaid.

11 10. Respondent Lightning Financial was subject to a "Consent Order",
12 Docket #07-166, executed on October 12, 2007 regarding a previous
13 failure to submit an annual report and pay Respondent Lightning
14 Financial's examination bill.

15 11. Respondent Lightning Financial, in the October 12, 2007 Consent
16 Order, agreed to "faithfully complete the surrender process",
17 otherwise the suspended portion of the fine would be imposed
18 without notice or hearing and be subject to further
19 administrative fines.

20 12. Therefore, Respondent Lightning Financial should be held
21 accountable for a violation of the October 12, 2007 Consent Order
22 for improperly completing the license surrender process.

23 **II. ISSUES OF LAW**

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

25 1. The Department realleges the above stated facts in paragraphs 1
through 12.

- 1 2. The Department has jurisdiction over the licensing and regulation
2 of persons engaged in mortgage banker or broker activities
3 pursuant to NH RSA 397-A:2 and RSA 397-A:3.
- 4 3. RSA 397-A:13, I-a provides that a person who surrenders,
5 withdraws, or does not renew a license shall file the annual
6 report as required in paragraph 1 of RSA 397-A:13,
7 notwithstanding the fact that he or she is not licensed on the
8 date that the report is due.
- 9 4. RSA 397-A:13, IV provides that any mortgage banker or broker
10 failing to file the annual report within the time prescribed may
11 be required to pay to the Department a penalty of \$25.00 per
12 calendar day for each day the annual report is overdue, for a
13 maximum of \$2,500.00.
- 14 5. RSA 397-A:18, I provides that the Department may issue a complaint
15 setting forth charges whenever the Department is of the opinion
16 that the licensee or person over whom the Department has
17 jurisdiction, has violated any provision of RSA 397-A or orders
18 thereunder.
- 19 6. RSA 397-A:21 IV provides that any person who, either knowingly or
20 negligently, violates any provision of Chapter 397-A, may upon
21 hearing, and in addition to any other penalty provided for by
22 law, be subject to an administrative fine not to exceed \$2,500,
23 or both. Each of the acts specified shall constitute a separate
24 violation, and such administrative action or fine may be imposed
25 in addition to any criminal penalties or civil liabilities
 imposed by New Hampshire Banking laws.

1 7. RSA 397-A:21 V provides that every person who directly or
2 indirectly controls a person liable under this section, every
3 partner, principal executive officer or director of such person,
4 every person occupying a similar status or performing a similar
5 function, every employee of such person who materially aids in the
6 act constituting the violation, and every licensee or person
7 acting as a common law agent who materially aids in the acts
8 constituting the violation, either knowingly or negligently, may,
9 upon notice and opportunity for hearing, and in addition to any
10 other penalty provided for by law, be subject to suspension,
11 revocation, or denial of any registration or license, including
12 the forfeiture of any application fee, or the imposition of an
13 administrative fine not to exceed \$2,500, or both. Each of the
14 acts specified shall constitute a separate violation, and such
15 administrative action or fine may be imposed in addition to any
16 criminal or civil penalties imposed.

17 **RELIEF REQUESTED**

18 The staff of the Department requests the Commissioner take the following
19 Action:

- 20 1. Find as fact the allegations contained in section I of this Staff
21 Petition;
- 22 2. Make conclusions of law relative to the allegations contained in
23 section II of the this Staff Petition;
- 24 3. Pursuant to RSA 397-A:18, order Respondents to immediately Cease and
25 Desist from violations of this chapter;
4. Assess fines and administrative penalties in accordance with RSA 397-

1 A:21, for violations of Chapter 397-A, in the number and amount equal
2 to the violations set forth in section II of this Staff Petition; and
3 5. Take such other administrative and legal actions as necessary for
4 enforcement of the New Hampshire Banking Laws, the protection of New
5 Hampshire citizens, and to provide other equitable relief.

6 **RIGHT TO AMEND**

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

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12
13 Respectfully submitted by:

14
15 / S /
16 Maryam Torben Desfosses
17 Staff Attorney

08/22/08
Date