

1 State of New Hampshire Banking Department

2 In re the Matter of:)Case No.: 08-370
)
3 State of New Hampshire Banking)Order to Show Cause with Immediate
)Suspension
4 Department,)
)Cease and Desist Order
5 Petitioner,)
)
6 and)
)
7 Allied Capital Mortgage Company (d/b/a)
)
8 Allied Capital Mortgage Company of)
)
9 Baymeadows), Douglas E. Klezmer, Sean)
)
10 H. Belghazi, and Kristopher Michael)
)
11 Lyle,)
)
12 Respondents)
)
13

14 NOTICE OF ORDER

15 This Order commences an adjudicative proceeding under the provisions of
16 RSA 397-A, RSA 541-A, BAN 200 and JUS 800 as applicable.

17 LEGAL AUTHORITY AND JURISDICTION

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

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

1 Pursuant to RSA 397-A:17 and RSA 541-A:30 the Bank Commissioner
2 ("Commissioner) may by order summarily postpone or suspend any license or
3 application pending final determination of any order to show cause, or other
4 order, or of any other proceeding under this section, provided the Commissioner
5 finds that the public interest would be irreparably harmed by delay in issuing
6 such order.

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

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

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

18 The above named Respondents have the right to request a hearing on this
19 Order to Show Cause with Immediate Suspension and Cease and Desist Order
20 (hereinafter "Order"), as well as the right to be represented by counsel.
21 Any such request shall be in writing, and signed by the Respondents or by the
22 duly authorized agent of the above named Respondents, and shall be delivered
23 either by hand or certified mail, return receipt request, to the New
24 Hampshire Banking Department, 53 Regional Drive, Suite 200, Concord, NH
25 03301. In accordance with RSA 541-A, a hearing shall be held not more than
ten (10) days of such request. If any of the Respondents fails to appear at
the hearing after being duly notified, such person shall be deemed in
default, and the proceeding may be determined against the defaulting

1 Respondent(s) upon consideration of the Order, the allegations of which may
2 be deemed to be true.

3 If any of the Respondents fails to request a hearing within thirty (30)
4 calendar days of receipt of this Order or reach formal settlement with the
5 Department within that timeframe, then such Respondent shall likewise be
6 deemed in default, and the Order shall, on the thirty-first (31st) day become
7 permanent, and shall remain in full force and effect until and unless later
8 modified or vacated by the Commissioner, for good cause shown.

9 Pursuant to RSA 541-A, the Department shall hold a hearing within ten
10 days on the issue of the immediate suspension. That hearing is noticed under
11 separate order.

12 After said hearing and within 20 days of the date of the hearing the
13 Commissioner shall issue a further order vacating this Order or making it
14 permanent as the facts require and making such findings as are necessary. All
15 hearings shall comply with 541-A.

16 Pursuant to RSA 541-A:30, the Department shall hold a hearing within ten
17 (10) working days after the date of this Order suspending the Respondents'
18 license. A record of this proceeding shall be made by a certified shorthand
19 court reporter provided by this Department.

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

21 The Staff Petition dated August 22, 2008 (a copy of which is attached
22 hereto) is incorporated by reference hereto.

23 **ORDER**

24 WHEREAS, finding it necessary and appropriate and in the public
25 interest, and consistent with the intent and purposes of the New Hampshire
26 Banking laws, and

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

1
2 FINDING a substantial likelihood that delay will cause harm to the
3 public health, safety or welfare, requiring emergency action it is hereby
4 ORDERED:

- 5 1. **Respondent's license is immediately SUSPENDED;** and
6 2. Pursuant to RSA 541-A:30, III, an adjudicative hearing
7 regarding only the issue of the suspension shall be held
8 within ten (10) working days of the date of this Order.

9 It is hereby further ORDERED that:

- 10 3. Respondent Allied Capital Mortgage Company (d/b/a Allied
11 Capital Mortgage Company of Baymeadows ("Respondent Allied
12 Capital - Baymeadows") shall show cause why penalties in the
13 amount of \$15,000.00 should not be imposed it individually and
14 therefore, \$60,000.00 jointly and severally;
15 4. Respondent Douglas E. Klezmer ("Respondent Klezmer") shall
16 show cause why penalties in the amount of \$15,000.00 should
17 not be imposed against him personally and therefore,
18 \$60,000.00 jointly and severally;
19 5. Respondent Sean H. Belghazi ("Respondent Belghazi") shall show
20 cause why penalties in the amount of \$15,000.00 should not be
21 imposed against him personally and therefore, \$60,000.00
22 jointly and severally;
23 6. Respondent Kristopher Michael Lyle ("Respondent Lyle") shall
24 show cause why penalties in the amount of \$15,000.00 should
25 not be imposed against him personally and therefore,
\$60,000.00 jointly and severally;
7. Respondent Allied Capital - Baymeadows's license should not be
revoked; and

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-370
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 7 Allied Capital Mortgage Company (d/b/a)
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 9 Allied Capital Mortgage Company of)
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 10 Baymeadows), Douglas E. Klezmer, Sean)
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 11 H. Belghazi, and Kristopher Michael)
)
 12 Lyle,)
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 13 Respondents)
)

14
15 STATEMENT OF ALLEGATIONS

16 The Staff of the Banking Department, State of New Hampshire (hereinafter
17 referred to as the "Department") alleges the following facts:

18 Facts Common on All Counts:

- 19 1. Respondent Allied Capital Mortgage Company (d/b/a Allied Capital
 20 Mortgage Company of Baymeadows ("Respondent Allied Capital -
 21 Baymeadows") is licensed as a Mortgage Broker and at all times
 22 relevant to this action has held a Department license since at
 23 least July 31, 2007.
- 24 2. Respondent Allied Capital - Baymeadows's principal office is
 25 currently located, pursuant to Department records, at 7899
 Baymeadows Way, Suite 1, Jacksonville, Florida.

1 3. Respondent Douglas E. Klezmer ("Respondent Klezmer") is currently
2 listed with the Department as Executive Vice President and Owner of
3 Respondent Allied Capital - Baymeadows and is also listed as
4 Director with the New Hampshire Secretary of State's Corporation
5 Division.

6 4. Respondent Sean H. Belghazi ("Respondent Belghazi") is currently
7 listed with the Department as President and Owner of Respondent
8 Allied Capital - Baymeadows.

9 5. Respondent Kristopher Michael Lyle ("Respondent Lyle") is listed
10 with the New Hampshire Secretary of State's Corporation Division as
11 an Officer and Director.

12 Violation of RSA 397-A:5, III (c) Failure to Post Continuous Surety Bond (1
13 Count):

14 Violation of RSA 397-A:10, IV Failure to Update Information on File with
15 Commissioner (3 Counts):

16 Violation of RSA 397-A:10, III Failure to Inform Bank Commissioner of Office
17 Closure (1 Count):

18 Violation of RSA 397-A:10-a I (a) Failure to Properly Surrender License (1
19 Count):

20 6. Paragraphs 1 through 5 are hereby realleged as fully set forth
21 herein.

22 7. On August 8, 2008, the Department was notified by The Bond Exchange
23 of a surety bond cancellation to be effective August 18, 2008.

24 8. On August 11, 2008, the Department sent Respondent Allied Capital -
25 Baymeadows a notification via U.S. Certified Mail Return Receipt
Requested that the bond must be reinstated or replaced immediately

1 and the originally-executed bond sent to the Department.

2 9. On August 11, 2008, Department Examiner Michael Poulos notified
3 Respondent Allied Capital - Baymeadows by emailing Respondent
4 Klezmer that Respondent Allied Capital - Baymeadows needed to
5 reinstate the bond.

6 10. Bank Examiner Michael Poulos avers that the email sent to
7 Respondent Klezmer on August 11, 2008 was returned undeliverable.

8 11. On August 19, 2008, the Department made a notation that Respondent
9 Allied Capital - Baymeadows has not contacted the Licensing
10 Division to inform it of the status of the bond reinstatement and
11 that Respondent Allied Capital - Baymeadows does not have a \$20,000
12 broker bond in place.

13 12. To date, the Department has not received the required bond
14 reinstatement.

15 13. Upon information and belief Respondent Allied Capital - Baymeadows
16 is currently without bonding by any surety leaving New Hampshire
17 consumers without recourse should Respondent Allied Capital -
18 Baymeadows, Respondent Klezmer, Respondent Belghazi and Respondent
19 Lyle default in their obligations.

20 14. On August 21, 2008, the Department received back the U.S. Certified
21 Mail Return Receipt requested letter sent to Respondent Allied
22 Capital - Baymeadows via Respondent Klezmer as "Return to Sender.
23 Not Deliverable as Addressed. Unable to Forward."

24 15. Several attempts were made by Staff Attorney Maryam Torben
25 Desfosses to contact all of the above named Respondents but the
lines were either busy for hours or there would be a voicemail that

1 picks up with no name but a simple repetition of the telephone
2 number just dialed by the caller.

3 16. It appears that Respondent Allied Capital - Baymeadows is not
4 currently in operation.

5 17. The Department has not received any updates on new telephone
6 numbers nor on a new mailing address or addresses.

7 18. The Department has not received any notification of an office
8 closure nor of a surrendered license.

9 **ISSUES OF LAW**

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

- 11 1. The Department realleges the above stated facts in paragraphs 1
12 through 18 above.
- 13 2. The Department has jurisdiction over the licensing and regulation
14 of persons engaged in mortgage broker activities pursuant to RSA
15 397-A:2 and RSA 397-A:3.
- 16 3. RSA 397-A:3 requires those in the business of making or brokering
17 mortgage loans secured by real property located in this state, and
18 not exempt from licensure, to obtain a license from the Department.
- 19 4. RSA 397-A:2, II requires any mortgage loans made or brokered under
20 RSA Chapter 397-A to be further governed by any other applicable
21 laws of the state of New Hampshire.
- 22 5. RSA 397-A:5, III (c) requires licensee to post a continuous surety
23 bond in the amount of \$20,000 to the Department. Each of the above
24 named Respondents violated this statute one time by allowing the
25 surety bond to be cancelled.

1 6. RSA 397-A:10, III provides that licensees shall provide written
2 notice to the Department of any proposed closing of any licensed
3 office no later than ten (10) business days prior to the effective
4 date of such change. Each of the above named Respondents violated
5 this statute on one occasion by failing to inform the office and by
6 not having a valid address, telephone number or email address.

7 7. RSA 397-A:10, IV provides that persons licensed under RSA Chapter
8 397 are under a continuing obligation to update information on file
9 with the Commissioner. Each of the above named Respondents failed
10 to update the Commissioner on at least three occasions by failing
11 to inform the Commissioner of any plan to close the principal
12 location, failing to notify the Commissioner of changes to the
13 telephone number, mailing address and email address, and failing to
14 notify the Commissioner of bond cancellation.

15 8. RSA 397-A:10-a, I (a) provides that a licensee who ceases to engage
16 in the business of a mortgage banker or mortgage broker at any time
17 during a license year for any cause...shall surrender such license in
18 person or by registered or certified mail to the Commissioner
19 within 15 calendar days of such cessation, and shall cause to be
20 published in a newspaper of general circulation in the licensee's
21 market area a notice to such effect. Each of the above named
22 Respondents violated this statute on one occasion by failing to
23 surrender the license.

24 9. Pursuant to RSA 397-A:17, the Commissioner may issue an order
25 requiring a person to whom any license has been granted or any
 person under the Commissioner's jurisdiction to show cause why the

1 license should not be revoked, suspended, or penalties imposed, or
2 both, for violations of RSA Chapter 397-A. Pursuant to RSA 397-
3 A:17 (a) and (b), Respondent Allied Capital - Baymeadows is subject
4 to license revocation for violating provision of RSA Chapter 397-A
5 and for not meeting the standards established by RSA Chapter 397-A.

6 10. Pursuant to RSA 397-A:17, the Department may take action for
7 immediate suspension of Respondent Allied Capital - Baymeadows
8 license if the Department finds that the public interest would be
9 irreparably harmed by delay in issuing such order.

10 11. RSA 397-A:17, II allows the Department to immediately suspend a
11 license for 30 days pending the investigation of that licensee.

12 12. RSA 397-A:18 the Commissioner may issue a Cease and Desist order
13 against any licensee or person who has reasonable cause to believe
14 is in violation of the provisions of the chapter or any rule or
15 order under RSA Chapter 397-A.

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

1 14. RSA 397-A:21, IV 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 acting
7 as a common law agent who materially aids in the acts constituting
8 the violation, either knowingly or negligently, may, upon notice
9 and opportunity for hearing, and in addition to any other penalty
10 provided for by law, be subject to suspension, revocation, or
11 denial of any registration or license, including the forfeiture of
12 any application fee, or the imposition of an administrative fine
13 not to exceed \$2,500, or both. Respondents Klezmer, Belghazi and
14 Lyle are each subject to revocation and/or administrative fines for
15 the above stated violations

16 **RELIEF REQUESTED**

17 III. The staff of the Department requests the Commissioner take the following
18 Action:

- 19 1. Find as fact the allegations contained in section I of this Staff
20 Petition;
- 21 2. Make conclusions of law relative to the allegations contained in
22 section II of the this Staff Petition;
- 23 3. Order the Respondents to Show Cause why their license should not be
24 immediately suspended;
- 25 4. Order the Respondents to Show Cause why their license should not be
revoked;

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

8
9 RIGHT TO AMEND

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

14
15 Respectfully submitted by:

16
17 / s /
Maryam Torben Desfosses
18 Staff Attorney

August 22, 2008
Date