

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-387
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Americor Lending Group Inc, (d/b/a ALG)
)
 8 Mortgage) and Jeremy Foti,)
)
 9 Respondents)

10 NOTICE OF ORDER

11 This Order commences an adjudicative proceeding under the provisions
12 of RSA Chapter 397-A and RSA Chapter 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,IV, 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 Chapter
7 358-A and exempt under RSA 358-A:3,I or that may violate any of the
8 provisions of Titles XXXV and XXXVI and administrative rules adopted
9 thereunder. The Commissioner may hold hearings relative to such conduct and
10 may order restitution for a person or persons adversely affected by such
11 conduct.

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

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

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-387
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) August 6, 2009
)
 6 and)
)
 7 Americor Lending Group Inc, (d/b/a ALG)
)
 8 Mortgage) and Jeremy Foti,)
)
 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 Americor Lending Group Inc (d/b/a ALG Mortgage)
 15 (hereinafter "ALG Mortgage") was licensed as a Mortgage Banker
 16 from at least March 26, 2003 (with an amended license date of
 17 August 12, 2005) until its license expired on December 31, 2007.
- 18 2. Respondent Jeremy Foti (hereinafter "Respondent Foti") was the
 19 President of Respondent ALG Mortgage, when licensed by the
 20 Department.

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

- 22 3. Paragraphs 1 through 2 are hereby realleged as fully set forth
 23 herein.
- 24 4. The Department conducted an examination of Respondent ALG Mortgage
 25 on June 18, 2007, while Respondent ALG Mortgage was licensed with

1 the Department.

2 5. On July 17, 2008, the Department mailed the cost of examination
3 letter and invoice for \$500.00 to Respondent ALG Mortgage, via
4 U.S. Certified Mail Return Receipt requested, which the post
5 office returned to the Department on July 28, 2008 as "return to
6 sender".

7 6. The Department then submitted the cost of examination letter and
8 invoice for \$500.00 via UPS on August 4, 2008, which were
9 returned to the Department on August 13, 2008.

10 7. The Department mailed a second notice via U.S. mail on August 20,
11 2008 and a third notice on September 23, 2008.

12 8. The above named Respondents did not respond to any of the notices
13 for payment of the \$500.00 invoice.

14 9. To date, the above named Respondents still owe the \$500.00
15 examination fee for the one day examination.

16 **Violation of RSA 397-A:13,IV Failure to Pay Late Penalty Owed for Late**

17 **Filing of Financial Statement(1 Count):**

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

20 11. The Department received Respondent ALG Mortgage's financial
21 statement on June 28, 2007, which was 87 days after the March
22 2006 due date, which generated a fine of \$2,175.00 (\$25.00 a day
23 x 87 days).

24 12. Respondent ALG Mortgage was still licensed at the time its
25 financial statement filing was due to the Department.

1 13. Respondent ALG Mortgage entered into an agreement with the
2 Department on June 28, 2007, wherein Respondent ALG Mortgage was
3 ordered to pay an administrative fine of \$1,000.00, file the
4 financial statement immediately and pay the statutory fine for
5 late submission within 30 days of invoice.

6 14. Respondent ALG Mortgage was billed July 17, 2007, August 2007 and
7 again on September 24, 2007.

8 15. To date, the outstanding fine of \$2,175.00 plus the \$1,000.00
9 administrative fine are still unpaid.

10 **II. ISSUES OF LAW**

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

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

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

17 3. RSA 397-A:12,V provides that the expense of such examination shall
18 be chargeable to and paid by the licensee. Each of the above
19 named Respondents violated this provision on at least one occasion
20 as alleged above. To date, the above named Respondents have
21 failed to pay the \$500.00 examination invoice.

22 4. RSA 397-A:13,IV provides that any mortgage banker or broker
23 failing to file the annual report or financial statement within
24 the time prescribed may be required to pay to the Department a
25 penalty of \$25.00 per calendar day for each day the financial

1 statement is overdue, for a maximum of \$2,500.00. Each of the
2 above named Respondents violated this provision on at least one
3 occasion as alleged above. To date, the above named Respondents
4 have failed to pay the \$2,175.00 late fee plus the \$1,000.00
5 administrative fine.

6 5. 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 6. RSA 397-A:21,IV provides that any person who, either knowingly or
12 negligently, violates any provision of 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 7. 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 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.

