

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 08-394  
 )  
 3 State of New Hampshire Banking )  
 )  
 4 Department, ) Order to Show Cause  
 )  
 5 Petitioner, )  
 )  
 6 and )  
 )  
 7 Secure Mortgage Corporation (d/b/a SMC )  
 )  
 8 Lending), Gary Yi, and Frederick S. )  
 )  
 9 Thielker, )  
 )  
 10 Respondents )

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11 NOTICE OF ORDER

12 This Order commences an adjudicative proceeding under the provisions  
13 of RSA 397-A and RSA 541-A.

14 LEGAL AUTHORITY AND JURISDICTION

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

19 Pursuant to RSA 397-A:18, the Department has the authority to issue a  
20 complaint setting forth charges whenever the Department is of the opinion  
21 that the licensee or person over whom the Department has jurisdiction is  
22 violating or has violated any provision of RSA Chapter 397-A, or any rule or  
23 order thereunder.

24 Pursuant to RSA 397-A:20, the Commissioner may issue, amend, or  
25 rescind such orders as are reasonably necessary to comply with the

1 provisions of the Chapter.

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

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

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

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

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

10 The Staff Petition dated February 5, 2009 (a copy of which is attached  
11 hereto) is incorporated by reference hereto.

12 **ORDER**

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

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

18 It is hereby ORDERED, that:

- 19 1. Respondent Secure Mortgage Corporation (d/b/a SMC Lending)  
20 ("Respondent Secure Mortgage") shall show cause why penalties  
21 in the amount of \$2,500.00 should not be imposed against it;
- 22 2. Respondent Gary Yi ("Respondent Yi") shall show cause why  
23 penalties in the amount of \$5,000.00 should not be imposed  
24 against him;
- 25 3. Respondent Frederick S. Thielker ("Respondent Thielker")

1 shall show cause why penalties in the amount of \$5,000.00  
2 should not be imposed against him;

3 4. The above named Respondents shall show cause why, in addition  
4 to the penalties listed in Paragraphs 1 through 3 above, the  
5 \$4,310.00 examination fee should not be paid to the  
6 Department;

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

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

12 It is hereby further ORDERED that:

13 7. Along with the administrative penalties listed for the above  
14 named Respondents, the outstanding sum of \$4,310.00 shall be  
15 immediately paid; and

16 8. Failure to request a hearing within 30 days of the date of  
17 receipt or valid delivery of this Order shall result in a  
18 default judgment being rendered and administrative penalties  
19 imposed upon the defaulting Respondent(s).  
20

21 SIGNED,

22  
23 Dated: 02/05/09

\_\_\_\_\_/s/  
PETER C. HILDRETH  
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 08-394  
3 State of New Hampshire Banking )  
4 Department, ) Staff Petition  
5 Petitioner, ) February 5, 2009  
6 and )  
7 Secure Mortgage Corporation (d/b/a SMC )  
8 Lending), Gary Yi, and Frederick S. )  
9 Thielker, )  
10 Respondents )

11 I. STATEMENT OF ALLEGATIONS

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

14 Facts Common on All Counts:

- 15 1. Respondent Secure Mortgage Corporation (d/b/a SMC Lending)  
16 (hereinafter "Respondent Secure Mortgage") was licensed as a  
17 Mortgage Broker from at least April 22, 2005 until its license  
18 expired on December 31, 2007.
- 19 2. Respondent Gary Yi (hereinafter "Respondent Yi") was the 50%  
20 owner and President of Respondent Secure Mortgage, when licensed  
21 by the Department.
- 22 3. Respondent Frederick S. Thielker (hereinafter "Respondent  
23 Thielker") was the 50% owner and Vice-President of Respondent  
24 Secure Mortgage, when licensed by the Department.

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

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

3 Department Inquiries (1 Count):

4 4. Paragraphs 1 through 3 are hereby realleged as fully set forth  
5 herein.

6 5. The Department conducted an examination of Respondent Secure  
7 Mortgage on September 10, 2007, while Respondent Secure Mortgage  
8 was still licensed with the Department.

9 6. On April 30, 2008, the Department mailed the report of examination  
10 and invoice for \$4,310.00 to Respondent Secure Mortgage, via U.S.  
11 Certified Mail Return Receipt requested, which Respondents  
12 received on May 5, 2008.

13 7. The above named Respondents failed to respond to the April 30,  
14 2008 correspondence from the Department.

15 8. The Department mailed a second notice on June 24, 2008 and a third  
16 notice on August 1, 2008.

17 9. The above named Respondents did not respond to any of the three  
18 notices for payment of the \$4,310.00 invoice.

19 10. To date, the above named Respondents still owe the \$4,310.00  
20 examination fee for the 8.62 day examination.

21 **II. ISSUES OF LAW**

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

23 1. The Department realleges the above stated facts in Paragraphs 1  
24 through 10 as fully set forth herein.

25 2. The Department has jurisdiction over the licensing and regulation

1 of persons engaged in mortgage banker or broker activities  
2 pursuant to NH RSA 397-A:2 and RSA 397-A:3.

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

8 4. RSA 397-A:13,VI provides that any officer, owner, manager or agent  
9 of any licensee shall reply promptly in writing, or other  
10 designated form, to any written inquiry from the Department.  
11 Respondent Yi and Respondent Thielker each violated this  
12 provision on at least one occasion as alleged above.

13 5. RSA 397-A:17,I provides in part that the Commissioner may by  
14 order, upon due notice and opportunity for hearing, assess  
15 penalties or deny, suspend, or revoke a license or application if  
16 it is in the public interest and the applicant, respondent, or  
17 licensee, any partner, officer, member, or director, any person  
18 occupying a similar status or performing similar functions, or  
19 any person directly or indirectly controlling the applicant,  
20 respondent, or licensee: (a) has violated any provision of RSA  
21 Chapter 397-A or rules thereunder, or (b) has not met the  
22 standards established in RSA Chapter 397-A.

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

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

3 7. 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 8. 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  
25 fine may be imposed in addition to any criminal or civil penalties



1 imposed.

2 **III. RELIEF REQUESTED**

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

- 5 1. Find as fact the allegations contained in section I of this Staff  
6 Petition;
- 7 2. Make conclusions of law relative to the allegations contained in  
8 section II of this Staff Petition;
- 9 3. Pursuant to RSA 397-A:17, order each of the above named  
10 Respondents to show cause why their license should not be revoked;
- 11 4. Assess fines and administrative penalties in accordance with RSA  
12 397-A:21, for violations of Chapter 397-A, in the number and amount  
13 equal to the violations set forth in section II of this Staff  
14 Petition; and
- 15 5. Take such other administrative and legal actions as necessary for  
16 enforcement of the New Hampshire Banking Laws, the protection of  
17 New Hampshire citizens, and to provide other equitable relief.

18 **IV. RIGHT TO AMEND**

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

23 Respectfully submitted by:

24                   /s/                    
25 Maryam Torben Desfosses  
Hearings Examiner

                  02/05/09                    
Date