

1 State of New Hampshire Banking Department

2	In re the Matter of:	)	Case No.: 08-395
		)	
3	State of New Hampshire Banking	)	
		)	Order to Show Cause
4	Department,	)	
		)	
5	Petitioner,	)	
		)	
6	and	)	
		)	
7	Presidential Mortgage Corp, Jarod D.	)	
		)	
8	DiSanto, and Kenneth S. Marsella	)	
		)	
9	Irrevocable Trust,	)	
		)	
10	Respondents	)	

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 January 13, 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 Presidential Mortgage Corp ("Respondent  
20 Presidential Mortgage") shall show cause why penalties in the  
21 amount of \$2,500.00 should not be imposed against it;
- 22 2. Respondent Jarod D. DiSanto ("Respondent DiSanto") shall show  
23 cause why penalties in the amount of \$5,000.00 should not be  
24 imposed against him;
- 25 3. Respondent Kenneth S. Marsella Irrevocable Trust ("Respondent



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3 State of New Hampshire Banking )  
4 Department, ) Staff Petition  
5 Petitioner, ) January 13, 2009  
6 and )  
7 Presidential Mortgage Corp, Jarod D. )  
8 DiSanto, and Kenneth S. Marsella )  
9 Irrevocable Trust, )  
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 Presidential Mortgage Corp (hereinafter "Presidential  
16 Mortgage") was licensed as a Mortgage Broker from at least May  
17 12, 2003 (with an amended license date of February 11, 2005)  
18 until it surrendered its license on May 27, 2008.
- 19 2. Respondent Jarod D. DiSanto (hereinafter "Respondent DiSanto")  
20 was the 50% owner and President of Respondent Presidential  
21 Mortgage, when licensed by the Department.
- 22 3. Respondent Kenneth S. Marsella Irrevocable Trust (hereinafter  
23 "Respondent Marsella Trust") was the 50% owner of Respondent  
24 Presidential 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 Presidential  
7 Mortgage on April 30, 2008, while Respondent Presidential  
8 Mortgage was still licensed with the Department.

9 6. On April 30, 2008, the Department mailed the report of examination  
10 and invoice for \$3,035.00 to Respondent Presidential Mortgage,  
11 via U.S. Certified Mail Return Receipt requested, which  
12 Respondents received on May 6, 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 \$3,035.00 invoice.

19 10. To date, the above named Respondents still owe the \$3,035.00  
20 examination fee for the 6.07 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 DiSanto violated this provision on at least one  
12 occasion as alleged above.

13 5. RSA 397-A:18,I provides that the Department may issue a complaint  
14 setting forth charges whenever the Department is of the opinion  
15 that the licensee or person over whom the Department has  
16 jurisdiction, has violated any provision of RSA 397-A or orders  
17 thereunder.

18 6. RSA 397-A:21,IV provides that any person who, either knowingly or  
19 negligently, violates any provision of Chapter 397-A, may upon  
20 hearing, and in addition to any other penalty provided for by  
21 law, be subject to an administrative fine not to exceed  
22 \$2,500.00, or both. Each of the acts specified shall constitute  
23 a separate violation, and such administrative action or fine may  
24 be imposed in addition to any criminal penalties or civil  
25 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 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. Each of the acts specified shall  
14 constitute a separate violation, and such administrative action or  
15 fine may be imposed in addition to any criminal or civil penalties  
16 imposed.

17 **III. 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 this Staff Petition;
- 24 3. Pursuant to RSA 397-A:17, order each of the above named  
25 Respondents to show cause why their license should not be revoked;

