

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-011
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Advantage Mortgage Corporation (d/b/a)
)
 8 Advantage America), Eric J. Risley, and)
)
 9 Rhonda M. Risley,)
)
 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 June 1, 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 Advantage Mortgage Corporation (d/b/a Advantage
20 America) ("Respondent Advantage Mortgage") shall show cause
21 why penalties in the amount of \$12,500.00 should not be
22 imposed against it;
- 23 2. Respondent Eric J. Risley ("Respondent Mr. Risley") shall
24 show cause why penalties in the amount of \$20,000.00 should
25 not be imposed against him;

1 3. Respondent Rhonda M. Risley ("Respondent Ms. Risley") shall
2 show cause why penalties in the amount of \$20,000.00 should
3 not be imposed against her;

4 4. The above named Respondents shall show cause why, in addition
5 to the penalties listed in Paragraphs 1 through 3 above, the
6 \$830.00 examination fee should not be paid to the Department;

7 5. The above named Respondents shall show cause why, in addition
8 to the penalties listed in Paragraphs 1 through 4 above, the
9 accrued fine of \$1,850.00 for the late filing of examination
10 materials should not be paid to the Department;

11 6. The above named Respondents shall show cause why, in addition
12 to the penalties listed in Paragraphs 1 through 5 above, the
13 accrued fine of \$7,700.00 for failing to provide examination
14 materials should not be paid to the Department;

15 7. The above named Respondents shall be jointly and severally
16 liable for the above amounts alleged in Paragraphs 1 through
17 6 above;

18 8. The above named Respondents shall show cause why, in addition
19 to the penalties listed in Paragraphs 1 through 7 above,
20 Respondent Advantage Mortgage's license should not be
21 revoked.

22 It is hereby further ORDERED that:

23 9. Along with the administrative penalties listed for the above
24 named Respondents, the outstanding sum of \$9,330.00 shall be
25 immediately paid; and

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-011
3 State of New Hampshire Banking)
4 Department,) Staff Petition
5 Petitioner,) June 1, 2009
6 and)
7 Advantage Mortgage Corporation (d/b/a)
8 Advantage America), Eric J. Risley, and)
9 Rhonda M. Risley,)
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 Advantage Mortgage Corporation (d/b/a Advantage
16 America) (hereinafter "Respondent Advantage Mortgage") was
17 licensed as a Mortgage Banker from at least 1997 until its
18 license expired on December 31, 2008.
- 19 2. Respondent Eric J. Risley (hereinafter "Respondent Mr. Risley")
20 was the 100% owner and President of Respondent Advantage
21 Mortgage, when licensed by the Department.
- 22 3. Respondent Rhonda M. Risley (hereinafter "Respondent Ms. Risley")
23 was a control person and Vice President of Respondent Advantage
24 Mortgage, when licensed by the Department.

1 Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested
2 Files in a Timely Manner (1 Count):

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

4 Violation of RSA 397-A:13,VI Failure of Officer and Owner to Respond to
5 Department Inquiries (1 Count):

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

8 5. The Department conducted an examination of Respondent Advantage
9 Mortgage on July 23, 2007, while Respondent Advantage Mortgage
10 was still licensed with the Department.

11 6. On June 21, 2007, the Department mailed a notice of examination to
12 Respondent Advantage Mortgage, via U.S. Certified Mail Return
13 Receipt requested, which Respondents received on June 27, 2007.

14 7. The initial Phase 1 documents were due within 7 days of the June
15 27, 2007 receipt of the notice of examination, which would have
16 been July 4, 2007. Instead, the Department received the loan
17 list on July 5, 2007, which was eight days later. The remaining
18 portion of Phase 1 of the examination arrived at the Department
19 on July 20, 2007, which was a total of twenty-three days from the
20 June 27, 2007 receipt of the notice of examination. This would
21 make Phase 1 a total of two days late (23 days to arrive minus 21
22 days allowed to arrive); however, the Department did not charge
23 Respondents for these two days.

24 8. The Department then sent out the Phase 2 notice of examination
25 letter on September 12, 2007 via U.S. Certified Mail Return

1 Receipt requested, which Respondents received on September 19,
2 2007.

3 9. The Phase 2 examination materials were due on October 10, 2007,
4 which is 21 days after the September 19, 2007 receipt of the
5 September 12, 2007 Phase 2 notice of examination.

6 10. The Department received the examination materials on November 16,
7 2007, which was 37 days late.

8 11. Respondent Advantage Mortgage's late submittal of examination
9 materials generated a fine of \$1,850.00 (\$50.00 per day x 37
10 days).

11 12. On November 20, 2007, January 3, 2008 and February 4, 2008, the
12 Department sent Respondent Advantage Mortgage the invoice for the
13 late filing of examination materials, to which the above named
14 Respondents failed to respond.

15 13. To date, the above named Respondents have failed to pay the
16 \$1,850.00 invoice.

17 14. On August 19, 2008, the Department mailed the report of
18 examination and invoice for \$830.00 to Respondent Advantage
19 Mortgage, via U.S. Certified Mail Return Receipt requested, which
20 Respondents received on August 26, 2008.

21 15. The above named Respondents failed to respond to the August 19,
22 2008 correspondence from the Department.

23 16. The Department, via U.S. mail, mailed a second notice on September
24 23, 2008 and a third notice on November 21, 2008.

25 17. The above named Respondents did not respond to any of the three

1 notices for payment of the \$830.00 invoice.

2 18. To date, the above named Respondents still owe the \$830.00
3 examination fee for the 1.66 day examination.

4 Violation of RSA 397-A:12,VII Failure to Facilitate Exam (1 Count):

5 Violation of RSA 397-A:12,III Examinations: Failure to Provide Requested
6 Files (1 Count):

7 Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested
8 Files (1 Count):

9 Violation of RSA 397-A:13,VI Failure of Officer and Owner to Respond to
10 Department Inquiries (2 Counts):

11 19. Paragraphs 1 through 18 are hereby realleged as fully set forth
12 herein.

13 20. The Department attempted to conduct an examination of Respondent
14 Advantage Mortgage on December 5, 2008, while Respondent
15 Advantage Mortgage was still licensed with the Department.

16 21. On December 5, 2008, the Department sent the notice of examination
17 to Respondent Advantage Mortgage via U.S. Certified Mail Return
18 Receipt requested, which Respondents received on December 8,
19 2008.

20 22. The materials requested in the notice of examination were due on
21 December 29, 2008, which is 21 days after the December 8, 2008
22 delivery of the notice of examination.

23 23. On February 10, 2009, the Department sent the notice of
24 examination again to Respondent Advantage Mortgage via U.S.
25 Certified Mail Return Receipt requested, which Respondents

1 received on February 19, 2009.

2 24. On December 10, 2009, the Department sent the notice of
3 examination to Respondent Advantage Mortgage via facsimile, but
4 it came back as "busy".

5 25. To date, the Department has not received the examination
6 materials.

7 26. To date, fines have accrued for failing to provide the requested
8 files. The current fine to date is \$7,700.00 (\$50.00 a day x 154
9 days) and still accruing.

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 26 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:11,II provides that requested files and business records
18 must be received by the Department within 21 calendar days of
19 request. The licensee will be subject to a \$50.00 a day fine
20 every day after the 21-day period the records are not produced.
21 Respondents currently owe \$1,850.00 for late filing in one exam
22 and \$7,700.00 for failing to file any examination materials in
23 the second examination. Each of the above named Respondents
24 violated this statute on at least two occasions as alleged above.

1 4. RSA 397-A:12,III requires licensees to comply with examination
2 requests with or without prior notice. All books, papers, files,
3 related material, and records of assets shall be subject to the
4 Department's examination. Each of the above named Respondents
5 violated this statute on at least one occasion as alleged above.

6 5. RSA 397-A:12,V provides that the expense of such examination shall
7 be chargeable to and paid by the licensee. Each of the above
8 named Respondents violated this provision on at least one
9 occasion as alleged above. To date, the above named Respondents
10 have failed to pay the \$830.00 examination invoice.

11 6. RSA 397-A:12,VII provides that every person being examined, and
12 all of the officers, directors, employees, agents, and
13 representatives of such person shall make freely available to the
14 Commissioner or his or her examiners, the accounts, records,
15 documents, files, information, assets, and matters in their
16 possession or control relating to the subject of the examination
17 and shall facilitate the examination. Each of the above named
18 Respondents violated this statute on at least one occasion as
19 alleged above.

20 7. RSA 397-A:13,VI provides that any officer, owner, manager or agent
21 of any licensee shall reply promptly in writing, or other
22 designated form, to any written inquiry from the Department.
23 Respondent Mr. Risley and Respondent Ms. Risley each violated
24 this provision on at least three occasions as alleged above.

25 8. RSA 397-A:17,I provides in part that the Commissioner may by

1 order, upon due notice and opportunity for hearing, assess
2 penalties or deny, suspend, or revoke a license or application if
3 it is in the public interest and the applicant, respondent, or
4 licensee, any partner, officer, member, or director, any person
5 occupying a similar status or performing similar functions, or
6 any person directly or indirectly controlling the applicant,
7 respondent, or licensee: (a) has violated any provision of RSA
8 Chapter 397-A or rules thereunder, or (b) has not met the
9 standards established in RSA Chapter 397-A.

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

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

23 11. RSA 397-A:21,V provides that every person who directly or
24 indirectly controls a person liable under this section, every
25 partner, principal executive officer or director of such person,

1 every person occupying a similar status or performing a similar
2 function, every employee of such person who materially aids in the
3 act constituting the violation, and every licensee or person acting
4 as a common law agent who materially aids in the acts constituting
5 the violation, either knowingly or negligently, may, upon notice
6 and opportunity for hearing, and in addition to any other penalty
7 provided for by law, be subject to suspension, revocation, or
8 denial of any registration or license, including the forfeiture of
9 any application fee, or the imposition of an administrative fine
10 not to exceed \$2,500, or both. Each of the acts specified shall
11 constitute a separate violation, and such administrative action or
12 fine may be imposed in addition to any criminal or civil penalties
13 imposed.

14 **III. RELIEF REQUESTED**

15 The staff of the Department requests the Commissioner take the following
16 action:

- 17 1. Find as fact the allegations contained in section I of this Staff
18 Petition;
- 19 2. Make conclusions of law relative to the allegations contained in
20 section II of this Staff Petition;
- 21 3. Pursuant to RSA 397-A:17, order each of the above named
22 Respondents to show cause why their license should not be revoked;
- 23 4. Assess fines and administrative penalties in accordance with RSA
24 397-A:21, for violations of Chapter 397-A, in the number and
25 amount equal to the violations set forth in section II of this

