# State of New Hampshire Banking Department (Case No.: 09-013) In re the Matter of: (Case No.: 09-013) (

# NOTICE OF ORDER

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

# LEGAL AUTHORITY AND JURISDICTION

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

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

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

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

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

# NOTICE OF RIGHT TO REQUEST A HEARING

The above named Respondents have the right to request a hearing on this Order to Show Cause, as well as the right to be represented by counsel at each Respondent's own expense. All hearings shall comply with RSA 541-A. Any such request for a hearing shall be in writing, and signed by the Respondent or the duly authorized agent of the above named Respondent, and shall be delivered either by hand or certified mail, return receipt requested, to the Banking Department, State of New Hampshire, 53 Regional Drive, Suite 200, Concord, NH 03301. Such hearings will be scheduled within 10 days of the Department's receipt of the request. If the Respondent 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 Respondent upon consideration of the Order to Show Cause, the allegations of which may be

deemed to be true.

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If any of the above named Respondents fails to request a hearing within 30 calendar days of receipt of such order or reach formal settlement with the Department within that time frame, then such person shall likewise be deemed in default, and the orders shall, on the thirty-first day, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the Commissioner, for good cause shown.

# STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF

The <u>Staff Petition</u> dated January 16, 2009 (a copy of which is attached hereto) is incorporated by reference hereto.

### ORDER

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

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

It is hereby ORDERED, that:

- 1. Respondent Reliable Mortgage Inc ("Respondent Reliable
   Mortgage") shall show cause why penalties in the amount of
   \$2,500.00 should not be imposed against it;
- 2. Respondent Herbert J. Devine, Jr. ("Respondent Devine") shall show cause why penalties in the amount of \$5,000.00 should not be imposed against him;
- 3. The above named Respondents shall show cause why, in addition to the penalties listed in Paragraphs 1 through 2 above, the

1	\$500.00 examination fee should not be paid to the Department;
2	4. Respondents shall be jointly and severally liable for the
3	above amounts alleged in Paragraphs 1 through 3 above;
4	5. The above named Respondents shall show cause why, in addition
5	to the penalties listed in Paragraphs 1 through 4 above,
6	Respondent Reliable Mortgage's license should not be revoked.
7	It is hereby further ORDERED that:
8	6. Along with the administrative penalties listed for the above
9	named Respondents, the outstanding sum of \$500.00 shall be
10	immediately paid; and
11	7. Failure to request a hearing within 30 days of the date of
12	receipt or valid delivery of this Order shall result in a
13	default judgment being rendered and administrative penalties
14	imposed upon the defaulting Respondent(s).
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16	SIGNED,
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18	Dated: 01/16/09
19	BANK COMMISSIONER
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# 1 State of New Hampshire Banking Department )Case No.: 09-013 In re the Matter of: 2 State of New Hampshire Banking 3 )Staff Petition Department, 4 )January 16, 2009 5 Petitioner, 6 and Reliable Mortgage Inc, and Herbert J. 7 Devine, Jr., 8 Respondents 9 10 I. STATEMENT OF ALLEGATIONS The Staff of the Banking Department, State of New Hampshire (hereinafter 11 12 "Department") alleges the following facts: 13 Facts Common on All Counts: 14 1. Respondent Reliable Mortgage Inc (hereinafter "Respondent Reliable Mortgage") was licensed as a Mortgage Broker from at 15 least January 10, 2005 (with an amended license date of May 1, 16 17 2006) until it surrendered its license on April 10, 2008. 18 2. Respondent Herbert J. Devine, Jr. (hereinafter "Respondent 19 Devine") was the 100% owner and President of Respondent Reliable 20 Mortgage, when licensed by the Department. 21 Violation of RSA 397-A:12, V Failure to Pay Examination Fee (1 Count): 22 Violation of RSA 397-A:13, VI Failure of Officer and Owner to Respond to 23 Department Inquiries (1 Count): 3. Paragraphs 1 through 2 are hereby realleged as fully set forth 24

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herein.

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- 4. The Department conducted an examination of Respondent Reliable

  Mortgage on July 9, 2008, for activities that occurred while

  Respondent Reliable Mortgage was licensed with the Department.
- 5. On August 19, 2008, the Department mailed the report of examination and invoice for \$500.00 to Respondent Reliable Mortgage, via U.S. Certified Mail Return Receipt requested, which Respondents received on September 3, 2008.
- 6. The above named Respondents failed to respond to the August 19, 2008 correspondence from the Department.
- 7. The Department, via U.S. mail, mailed a second notice on September 23, 2008.
- 8. The above named Respondents did not respond to any of the two notices for payment of the \$500.00 invoice.
- 9. To date, the above named Respondents still owe the \$500.00 examination fee for the one day examination.

### II. ISSUES OF LAW

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

- The Department realleges the above stated facts in Paragraphs 1 through 9 as fully set forth herein.
- 2. The Department has jurisdiction over the licensing and regulation of persons engaged in mortgage banker or broker activities pursuant to NH RSA 397-A:2 and RSA 397-A:3.
- 3. RSA 397-A:12,V provides that the expense of such examination shall be chargeable to and paid by the licensee. Each of the above named Respondents violated this provision on at least one

occasion as alleged above. To date, the above named Respondents have failed to pay the \$500.00 examination invoice.

- 4. RSA 397-A:13,VI provides that any officer, owner, manager or agent of any licensee shall reply promptly in writing, or other designated form, to any written inquiry from the Department.

  Respondent Devine violated this provision on at least one occasion as alleged above.
- 5. RSA 397-A:17,I provides in part that the Commissioner may by order, upon due notice and opportunity for hearing, asses penalties or deny, suspend, or revoke a license or application if it is in the public interest and the applicant, respondent, or licensee, any partner, officer, member, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant, respondent, or licensee: (a) has violated any provision of RSA Chapter 397-A or rules thereunder, or (b) has not met the standards established in RSA Chapter 397-A.
- 6. RSA 397-A:18,I provides that the Department may issue a complaint setting forth charges whenever the Department is of the opinion that the licensee or person over whom the Department has jurisdiction, has violated any provision of RSA 397-A or orders thereunder.
- 7. RSA 397-A:21,IV provides that any person who, either knowingly or negligently, violates any provision of Chapter 397-A, may upon hearing, and in addition to any other penalty provided for by

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law, be subject to an administrative fine not to exceed \$2,500.00, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may imposed in addition to any criminal penalties or civil liabilities imposed by New Hampshire Banking laws.

8. RSA 397-A:21,V provides that every person who directly or indirectly controls a person liable under this section, every partner, principal executive officer or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act constituting the violation, and every licensee or person acting as a common law agent who materially aids in the acts constituting the violation, either knowingly or negligently, may, upon notice and opportunity for hearing, and in addition to any other penalty provided for by law, be subject to suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or the imposition of an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal or civil penalties imposed.

# III. RELIEF REQUESTED

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

1. Find as fact the allegations contained in section I of this Staff

1 Petition; 2. Make conclusions of law relative to the allegations contained in 2 section II of this Staff Petition: 3 3. Pursuant to RSA 397-A:17, order each of the above named 4 5 Respondents to show cause why their license should not be revoked; 4. Assess fines and administrative penalties in accordance with RSA 6 7 397-A:21, for violations of Chapter 397-A, in the number and amount equal to the violations set forth in section II of this Staff 8 Petition; and 9 10 5. Take such other administrative and legal actions as necessary for enforcement of the New Hampshire Banking Laws, the protection of 11 New Hampshire citizens, and to provide other equitable relief. 12 IV. RIGHT TO AMEND 13 14 The Department reserves the right to amend this Staff Petition and to Commissioner take additional administrative action. 15 request that the Nothing herein shall preclude the Department from bringing additional 16 enforcement action under RSA 397-A or the regulations thereunder. 17 18 Respectfully submitted by: 19 20 01/16/09 21 Maryam Torben Desfosses Date Hearings Examiner 22 23 24

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