

1 State of New Hampshire Banking Department

2	In re the Matter of:	)	Case No.: 09-027
		)	
3	State of New Hampshire Banking	)	
4	Department,	)	Order to Show Cause
		)	
5	Petitioner,	)	
		)	
6	and	)	
		)	
7	First Guarantee Mortgage LLC (d/b/a	)	
		)	
8	Saratoga First Guarantee Funding), and	)	
		)	
9	Christopher Carter Lang,	)	
		)	
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,IV 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.

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 541-A.  
16 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           If any of the above named Respondents fails to request a hearing within  
2 30 calendar days of receipt of such order or reach a formal written and  
3 executed settlement with the Department within that time frame, then such  
4 person shall likewise be deemed in default, and the orders shall, on the  
5 thirty-first day, become permanent, and shall remain in full force and effect  
6 until and unless later modified or vacated by the Commissioner, for good cause  
7 shown.

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

9           The Staff Petition dated July 2, 2009 (a copy of which is attached  
10 hereto) is incorporated by reference hereto.

11           **ORDER**

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

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

17           It is hereby ORDERED, that:

- 18           1. Respondent First Guarantee Mortgage LLC (d/b/a Saratoga First  
19           Guarantee Funding) ("Respondent First Guarantee Mortgage")  
20           shall show cause why penalties in the amount of \$10,000.00  
21           should not be imposed against it;
- 22           2. Respondent Christopher Carter Lang ("Respondent Lang") shall  
23           show cause why penalties in the amount of \$15,000.00 should  
24           not be imposed against him;
- 25           3. The above named Respondents shall show cause why, in addition



1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 09-027  
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 3 State of New Hampshire Banking )  
 )  
 4 Department, ) Staff Petition  
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 5 Petitioner, ) July 2, 2009  
 )  
 6 and )  
 )  
 7 First Guarantee Mortgage LLC (d/b/a )  
 )  
 8 Saratoga First Guarantee Funding), and )  
 )  
 9 Christopher Carter Lang, )  
 )  
 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 First Guarantee Mortgage LLC (d/b/a Saratoga First  
16 Guarantee Funding) (hereinafter "Respondent First Guarantee  
17 Mortgage") was licensed as a Mortgage Banker from at least May  
18 11, 2004 until it surrendered its license on October 3, 2008.
- 19 2. Respondent Christopher Carter Lang (hereinafter "Respondent  
20 Lang") was the Sr. Member of Respondent First Guarantee  
21 Mortgage, when licensed by the Department.

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

23 Violation of RSA 397-A:12,III Examinations: Failure to Provide Requested

24 Files (1 Count):

25 Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested

1 **Files (1 Count):**

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

3 **Department Inquiries (1 Count):**

4 3. Paragraphs 1 through 2 are hereby realleged as fully set forth  
5 herein.

6 4. The Department attempted to conduct an examination of Respondent  
7 First Guarantee Mortgage on August 11, 2008, while Respondent  
8 First Guarantee Mortgage was still licensed with the Department.

9 5. On July 17, 2008, the Department sent the notice of examination to  
10 First Guarantee Mortgage via U.S. Certified Mail Return Receipt  
11 requested, which Respondents received on July 21, 2008.

12 6. The materials requested in the notice of examination were due on  
13 August 11, 2008, which is 21 days after the July 21, 2008  
14 delivery of the notice of examination.

15 7. The above named Respondents responded to the Department on July  
16 29, 2008 in writing, stating that Respondent First Guarantee  
17 Mortgage was no longer active and would not provide the requested  
18 documentation.

19 8. The Department then submitted a second notice via U.S. mail on  
20 July 30, 2008, acknowledging the July 29, 2008 correspondence and  
21 informed Respondents that they were currently licensed and needed  
22 to immediately provide the requested documentation.

23 9. The Department submitted a third notice via U.S. Certified Mail  
24 Return Receipt requested on September 17, 2008, which Respondents  
25 received on September 22, 2008.

1 10. To date, the Department has not received the examination  
2 materials.

3 11. To date, fines have accrued for failing to provide the requested  
4 files. The current fine to date is \$16,200.00 (\$50.00 a day x  
5 324 days) and still accruing.

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

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

8 **Department Inquiries (1 Count):**

9 12. Paragraphs 1 through 11 are hereby realleged as fully set forth  
10 herein.

11 13. The Department conducted an examination of Respondent First  
12 Guarantee Mortgage on August 11, 2008, while Respondent First  
13 Guarantee Mortgage was still licensed with the Department.

14 14. On December 1, 2008, the Department mailed the invoice for \$500.00  
15 to Respondent First Guarantee Mortgage, via U.S. Certified Mail  
16 Return Receipt requested, which Respondents received on December  
17 4, 2008.

18 15. The above named Respondents failed to respond to the December 1,  
19 2008 correspondence from the Department.

20 16. The Department, via U.S. mail, mailed a second notice on January  
21 20, 2009 and a third notice on February 20, 2009.

22 17. The above named Respondents did not respond to any of the three  
23 notices for payment of the \$500.00 invoice.

24 18. To date, the above named Respondents still owe the \$500.00  
25 examination fee for the one day examination.

1 II. ISSUES OF LAW

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

- 3 1. The Department realleges the above stated facts in Paragraphs 1  
4 through 18 as fully set forth herein.
- 5 2. The Department has jurisdiction over the licensing and regulation  
6 of persons engaged in mortgage banker or broker activities  
7 pursuant to NH RSA 397-A:2 and RSA 397-A:3.
- 8 3. RSA 397-A:11,II provides that requested files and business records  
9 must be received by the Department within 21 calendar days of  
10 request. The licensee will be subject to a \$50.00 a day fine  
11 every day after the 21-day period the records are not produced.  
12 Respondents currently owe \$16,200.00. Each of the above named  
13 Respondents violated this statute on at least one occasion as  
14 alleged above.
- 15 4. RSA 397-A:12,III requires licensees to comply with examination  
16 requests with or without prior notice. All books, papers, files,  
17 related material, and records of assets shall be subject to the  
18 Department's examination. Each of the above named Respondents  
19 violated this statute on at least one occasion as alleged above.
- 20 5. RSA 397-A:12,V provides that the expense of such examination shall  
21 be chargeable to and paid by the licensee. Each of the above  
22 named Respondents violated this provision on at least one occasion  
23 as alleged above. To date, the above named Respondents have  
24 failed to pay the \$500.00 examination invoice.
- 25 6. RSA 397-A:12,VII provides that every person being examined, and



1 all of the officers, directors, employees, agents, and  
2 representatives of such person shall make freely available to the  
3 Commissioner or his or her examiners, the accounts, records,  
4 documents, files, information, assets, and matters in their  
5 possession or control relating to the subject of the examination  
6 and shall facilitate the examination. Each of the above named  
7 Respondents violated this statute on at least one occasion as  
8 alleged above.

9 7. RSA 397-A:13,VI provides that any officer, owner, manager or agent  
10 of any licensee shall reply promptly in writing, or other  
11 designated form, to any written inquiry from the Department.  
12 Respondent Lang violated this provision on at least two occasions  
13 as alleged above.

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

24 9. RSA 397-A:18,I provides that the Department may issue a complaint  
25 setting forth charges whenever the Department is of the opinion

1 that the licensee or person over whom the Department has  
2 jurisdiction, has violated any provision of RSA 397-A or orders  
3 thereunder.

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

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

1 fine may be imposed in addition to any criminal or civil penalties  
2 imposed.

3 **III. RELIEF REQUESTED**

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

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

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