

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-035
))
3 State of New Hampshire Banking)
))
4 Department,) Order to Show Cause
))
5 Petitioner,)
))
6 and)
))
7 Franklin Mutual Mortgage Corporation)
))
8 (d/b/a FM Mortgage Funding), and)
))
9 Giancarlo Maniaci,)
))
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.

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 June 26, 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 Franklin Mutual Mortgage Corporation (d/b/a FM
19 Mortgage Funding) ("Respondent Franklin Mutual") shall show
20 cause why penalties in the amount of \$2,500.00 should not be
21 imposed against it;
- 22 2. Respondent Giancarlo Maniaci ("Respondent Maniaci") shall
23 show cause why penalties in the amount of \$5,000.00 should
24 not be imposed against him;
- 25 3. The above named Respondents shall show cause why, in addition

1 to the penalties listed in Paragraphs 1 through 2 above, the
2 \$2,860.00 examination fee should not be paid to the
3 Department;

4 4. Respondents shall be jointly and severally liable for the
5 above amounts alleged in Paragraphs 1 through 3 above;

6 5. The above named Respondents shall show cause why, in addition
7 to the penalties listed in Paragraphs 1 through 4 above,
8 Respondent Franklin Mutual's license should not be revoked.

9 It is hereby further ORDERED that:

10 6. Along with the administrative penalties listed for the above
11 named Respondents, the outstanding sum of \$2,860.00 shall be
12 immediately paid; and

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

17
18 SIGNED,

19
20 Dated: 06/26/09

21 /s/
PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-035
)
 3 State of New Hampshire Banking)
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 4 Department,) Staff Petition
)
 5 Petitioner,) June 26, 2009
)
 6 and)
)
 7 Franklin Mutual Mortgage Corporation)
)
 8 (d/b/a FM Mortgage Funding), and)
)
 9 Giancarlo Maniaci,)
)
 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 Franklin Mutual Mortgage Corporation (d/b/a FM
16 Mortgage Funding) (hereinafter "Respondent Franklin Mutual") was
17 licensed as a Mortgage Banker from at least March 12, 2007 (with
18 an amended license date of February 11, 2008) until its license
19 expired on December 31, 2008.
- 20 2. Respondent Giancarlo Maniaci (hereinafter "Respondent Maniaci")
21 was the 100% owner and Chief Executive Officer of Respondent
22 Franklin Mutual, 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 3. Paragraphs 1 through 2 are hereby realleged as fully set forth
5 herein.

6 4. The Department conducted an examination of Respondent Franklin
7 Mutual on March 10, 2008, while Respondent Franklin Mutual was
8 still licensed with the Department.

9 5. On September 8, 2008, the Department mailed the report of
10 examination and invoice for \$2,860.00 to Respondent Franklin
11 Mutual, via U.S. Certified Mail Return Receipt requested, which
12 Respondents received on September 15, 2008.

13 6. The above named Respondents failed to respond to the September 8,
14 2008 correspondence from the Department.

15 7. The Department, via U.S. mail, mailed a second notice on October
16 9, 2008 and a third notice on November 21, 2008.

17 8. The above named Respondents did not respond to any of the three
18 notices for payment of the \$2,860.00 invoice.

19 9. To date, the above named Respondents still owe the \$2,860.00
20 examination fee for the 5.72 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 9 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 \$2,860.00 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 Maniaci violated this provision on at least one
12 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
13 amount equal to the violations set forth in section II of this
14 Staff 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 _____
25 /s/ Maryam Torben Desfosses
Hearings Examiner

06/26/09
Date