

1 State of New Hampshire Banking Department

2	In re the Matter of:)	Case No.: 09-042
)	
3	State of New Hampshire Banking)	
4	Department,)	Order to Show Cause
)	
5	Petitioner,)	
)	
6	and)	
)	
7	Viking Mortgage Company LLC, and Eric)	
)	
8	S. Erickson,)	
)	
9	Respondents)	

10 NOTICE OF ORDER

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

13 LEGAL AUTHORITY AND JURISDICTION

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

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

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

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

5 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct
6 that is or may be an unfair or deceptive act or practice under RSA Chapter
7 358-A and exempt under RSA 358-A:3,I or that may violate any of the
8 provisions of Titles XXXV and XXXVI and administrative rules adopted
9 thereunder. The Commissioner may hold hearings relative to such conduct and
10 may order restitution for a person or persons adversely affected by such
11 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 Chapter
16 541-A. 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 20, 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 Viking Mortgage Company LLC ("Respondent Viking
19 Mortgage") shall show cause why penalties in the amount of
20 \$5,000.00 should not be imposed against it;
- 21 2. Respondent Eric S. Erickson ("Respondent Erickson") shall
22 show cause why penalties in the amount of \$7,500.00 should
23 not be imposed against him;
- 24 3. The above named Respondents shall show cause why, in addition
25 to the penalties listed in Paragraphs 1 through 2 above, the

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\$1,665.00 examination fee should not be paid to the Department;

4. The above named Respondents shall show cause why, in addition the penalties listed in Paragraphs 1 through 3 above, the unpaid fee of \$900.00 for the late filing of the financial statement should not be paid to the Department;

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

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

It is hereby further ORDERED that:

7. Along with the administrative penalties listed for the above named Respondents, the outstanding sum of \$2,565.00 shall be immediately paid; and

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

SIGNED,

_____/s/_____
PETER C. HILDRETH
BANK COMMISSIONER

Dated: 09/09/09

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-042
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) July 20, 2009
)
 6 and)
)
 7 Viking Mortgage Company LLC, and Eric)
)
 8 S. Erickson,)
)
 9 Respondents)

10 I. STATEMENT OF ALLEGATIONS

11 The Staff of the Banking Department, State of New Hampshire (hereinafter
12 "Department") alleges the following facts:

13 Facts Common on All Counts:

14 1. Respondent Viking Mortgage Company LLC (hereinafter "Respondent
15 Viking Mortgage") was licensed as a Mortgage Broker from at least
16 March 20, 2006 (with an amended license date of April 21, 2008)
17 until it surrendered its license on June 9, 2008.

18 2. Respondent Eric S. Erickson (hereinafter "Respondent Erickson")
19 was the 99% owner, Manager and Member of Respondent Viking
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):

24 3. Paragraphs 1 through 2 are hereby realleged as fully set forth
25 herein.

1 4. The Department conducted an examination of Respondent Viking
2 Mortgage on March 17, 2008, while Respondent Viking Mortgage was
3 still licensed with the Department.

4 5. On August 5, 2008, the Department mailed the report of examination
5 and invoice for \$1,665.00 to Respondent Viking Mortgage, via U.S.
6 Certified Mail Return Receipt requested, which Respondents
7 received on August 8, 2008.

8 6. The Respondents failed to respond to the August 5, 2008 Department
9 correspondence.

10 7. The Department, via U.S. mail, mailed a second notice on September
11 8, 2008 and a third notice on October 9, 2008.

12 8. The above named Respondents did not respond to any of the notices
13 for payment of the \$1,665.00 invoice.

14 9. To date, the above named Respondents still owe the \$1,665.00
15 examination fee for the 3.33 day examination.

16 **Violation of RSA 397-A:13,IV Failure to Pay Late Penalty Owed for Late**

17 **Filing of Financial Statement(1 Count):**

18 10. Paragraphs 1 through 9 are hereby realleged as fully set forth
19 herein.

20 11. Respondent Viking Mortgage's financial statement was due on or
21 before March 31, 2008.

22 12. Respondent Viking Mortgage was still licensed at the time its
23 financial statement filing was due to the Department.

24 13. The Department received Respondent Viking Mortgage's financial
25 statement on May 6, 2008 (36 days late), which generated a fine

1 of \$900.00 (\$25.00 a day x 36 days).

2 14. To date, no payments have been made to pay the late filed
3 financial statement fee of \$900.00.

4 **II. ISSUES OF LAW**

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

6 1. The Department realleges the above stated facts in Paragraphs 1
7 through 14 as fully set forth herein.

8 2. The Department has jurisdiction over the licensing and regulation
9 of persons engaged in mortgage banker or broker activities
10 pursuant to NH RSA 397-A:2 and RSA 397-A:3.

11 3. RSA 397-A:12,V provides that the expense of such examination shall
12 be chargeable to and paid by the licensee. Each of the above
13 named Respondents violated this provision on at least one
14 occasion as alleged above. To date, the above named Respondents
15 have failed to pay the \$1,665.00 examination invoice.

16 4. RSA 397-A:13,IV provides that any mortgage banker or mortgage
17 broker failing to file either the annual report or the financial
18 statement required by RSA Chapter 397-A within the time
19 prescribed may be required to pay to the Department a penalty of
20 \$25.00 for each calendar day the annual report or financial
21 statement is overdue, up to a maximum penalty of \$2,500.00 per
22 report or statement. Each of the above named Respondents violated
23 this provision on at least one occasion as alleged above. The
24 above named Respondents filed a financial statement that was 36
25 days late, and incurred a penalty of \$900.00.

1 5. RSA 397-A:13,VI provides that any officer, owner, manager or agent
2 of any licensee shall reply promptly in writing, or other
3 designated form, to any written inquiry from the Department.
4 Respondent Erickson violated this provision on at least one
5 occasion as alleged above.

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

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

21 8. RSA 397-A:21,IV provides that any person who, either knowingly or
22 negligently, violates any provision of Chapter 397-A, may upon
23 hearing, and in addition to any other penalty provided for by
24 law, be subject to an administrative fine not to exceed
25 \$2,500.00, or both. Each of the acts specified shall constitute

1 a separate violation, and such administrative action or fine may
2 be imposed in addition to any criminal penalties or civil
3 liabilities imposed by New Hampshire Banking laws.

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

20 **III. RELIEF REQUESTED**

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

- 23 1. Find as fact the allegations contained in section I of this Staff
24 Petition;
- 25 2. Make conclusions of law relative to the allegations contained in

