

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-047
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Premier Mortgage Capital, Inc (d/b/a)
)
 8 Premier Mortgage Capital of Virginia),)
)
 9 Stephen Bennett, and Alexander Fink,)
)
 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 formal settlement with the
3 Department within that time frame, then such person shall likewise be deemed
4 in default, and the orders shall, on the thirty-first day, become permanent,
5 and shall remain in full force and effect until and unless later modified or
6 vacated by the Commissioner, for good cause shown.

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

8 The Staff Petition dated May 6, 2009 (a copy of which is attached
9 hereto) is incorporated by reference hereto.

10 **ORDER**

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

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

16 It is hereby ORDERED, that:

- 17 1. Respondent Premier Mortgage Capital, Inc (d/b/a Premier
18 Mortgage Capital of Virginia) ("Respondent Premier Mortgage")
19 shall show cause why penalties in the amount of \$2,500.00
20 should not be imposed against it;
- 21 2. Respondent Stephen Bennett ("Respondent Bennett") shall show
22 cause why penalties in the amount of \$2,500.00 should not be
23 imposed against him;
- 24 3. Respondent Alexander Fink ("Respondent Fink") shall show
25 cause why penalties in the amount of \$2,500.00 should not be

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 7 Premier Mortgage Capital, Inc (d/b/a)
)
 8 Premier Mortgage Capital of Virginia),)
)
 9 Stephen Bennett, and Alexander Fink,)
)
 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 Premier Mortgage Capital, Inc (d/b/a Premier Mortgage
16 Capital of Virginia) (hereinafter "Respondent Premier Mortgage")
17 has been licensed as a Mortgage Banker since October 11, 2007.
- 18 2. Respondent Stephen Bennett (hereinafter "Respondent Bennett") is
19 the 50% owner and President of Respondent Premier Mortgage.
- 20 3. Respondent Alexander Fink (hereinafter "Respondent Fink") is the
21 50% owner and Chief Operating Officer of Respondent Premier
22 Mortgage.

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

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

1 5. The Department conducted an examination of Respondent Premier
2 Mortgage on February 4, 2008.

3 6. On December 8, 2008, the Department mailed the report of
4 examination and invoice for \$1,365.00 to Respondent Premier
5 Mortgage, via U.S. Certified Mail Return Receipt requested, which
6 Respondents received on December 23, 2008.

7 7. The Department, via U.S. mail, mailed a second notice on January
8 20, 2009 and a third notice on February 20, 2009.

9 8. A Department Examiner spoke with Respondent Bennett, who indicated
10 he would pay the examination fee on a payment plan and forward
11 the tracking number for the first payment via e-mail.

12 9. With no further response from Respondents or a payment, the
13 Department Examiner telephoned and left voice mail messages for
14 Respondent Bennett on April 6, April 7, April 8 and April 9,
15 2009.

16 10. The above named Respondents did not respond to any of the notices
17 for payment of the \$1,365.00 invoice.

18 11. To date, the above named Respondents still owe the \$1,365.00
19 examination fee for the 2.73 day examination.

20 **II. ISSUES OF LAW**

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

22 1. The Department realleges the above stated facts in Paragraphs 1
23 through 11 as fully set forth herein.

24 2. The Department has jurisdiction over the licensing and regulation
25 of persons engaged in mortgage banker or broker activities

1 pursuant to NH RSA 397-A:2 and RSA 397-A:3.

2 3. RSA 397-A:12,V provides that the expense of such examination shall
3 be chargeable to and paid by the licensee. Each of the above
4 named Respondents violated this provision on at least one
5 occasion as alleged above. To date, the above named Respondents
6 have failed to pay the \$1,365.00 examination invoice.

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

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

22 6. RSA 397-A:21,IV provides that any person who, either knowingly or
23 negligently, violates any provision of Chapter 397-A, may upon
24 hearing, and in addition to any other penalty provided for by
25 law, be subject to an administrative fine not to exceed

1 \$2,500.00, or both. Each of the acts specified shall constitute
2 a separate violation, and such administrative action or fine may
3 be imposed in addition to any criminal penalties or civil
4 liabilities imposed by New Hampshire Banking laws.

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

21 **III. RELIEF REQUESTED**

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

- 24 1. Find as fact the allegations contained in section I of this Staff
25 Petition;

