

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-055
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Express Mortgage Corporation (d/b/a)
)
 8 Marstan Mortgage), and Mark P. Stanton,)
)
 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 9, 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 Express Mortgage Corporation (d/b/a Marstan
19 Mortgage) ("Respondent Express Mortgage") shall show cause
20 why penalties in the amount of \$7,500.00 should not be
21 imposed against it;
- 22 2. Respondent Mark P. Stanton ("Respondent Stanton") shall show
23 cause why penalties in the amount of \$12,500.00 should not be
24 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 accrued fine of \$11,500.00 for failing to provide examination
3 materials should not be paid to the 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 Express Mortgage'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 \$11,500.00 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: 07/09/09

21 /s/
PETER C. HILDRETH
22 BANK COMMISSIONER
23
24
25

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-055
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 3 State of New Hampshire Banking)
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 4 Department,) Staff Petition
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 5 Petitioner,) July 9, 2009
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 7 Express Mortgage Corporation (d/b/a)
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 8 Marstan Mortgage), and Mark P. Stanton,)
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 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 Express Mortgage Corporation (d/b/a Marstan Mortgage)
15 (hereinafter "Respondent Express Mortgage") was licensed as a
16 Mortgage Broker from at least June 14, 2006 until it its license
17 expired on December 31, 2008.

18 2. Respondent Mark P. Stanton (hereinafter "Respondent Stanton") was
19 the President of Respondent Express Mortgage, when licensed by
20 the Department.

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

22 Violation of RSA 397-A:12,III Examinations: Failure to Provide Requested
23 Files (1 Count):

24 Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested
25 Files (1 Count):

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

2 Department Inquiries (2 Counts):

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

5 4. The Department attempted to conduct an examination of Respondent
6 Express Mortgage on November 24, 2008, while Respondent Express
7 Mortgage was still licensed with the Department.

8 5. On October 27, 2008, the Department sent the notice of examination
9 to Respondent Express Mortgage via U.S. Certified Mail Return
10 Receipt requested, which Respondents received on October 31,
11 2008.

12 6. With no response, on January 22, 2009, the Department sent the
13 notice of examination to Respondent Express Mortgage via U.S.
14 Certified Mail Return Receipt requested, which Respondents
15 received on February 2, 2009.

16 7. The materials requested in the notice of examination were due on
17 November 21, 2008, which is 21 days after the October 31, 2008
18 delivery of the notice of examination.

19 8. To date, the Department has not received the examination materials
20 nor have Respondents acknowledged the examination.

21 9. To date, fines have accrued for failing to provide the requested
22 files. The current fine to date is \$11,500.00 (\$50.00 a day x
23 230 days) and still accruing.

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 9 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 \$11,500.00. 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,VII provides that every person being examined, and
21 all of the officers, directors, employees, agents, and
22 representatives of such person shall make freely available to the
23 Commissioner or his or her examiners, the accounts, records,
24 documents, files, information, assets, and matters in their
25 possession or control relating to the subject of the examination

1 and shall facilitate the examination. Each of the above named
2 Respondents violated this statute on at least one occasion as
3 alleged above.

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

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

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

24 9. RSA 397-A:21,IV provides that any person who, either knowingly or
25 negligently, violates any provision of Chapter 397-A, may upon

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

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

1 **III. RELIEF REQUESTED**

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

4 1. Find as fact the allegations contained in section I of this Staff
5 Petition;

6 2. Make conclusions of law relative to the allegations contained in
7 section II of this Staff Petition;

8 3. Pursuant to RSA 397-A:17, order each of the above named
9 Respondents to show cause why their license should not be revoked;

10 4. Assess fines and administrative penalties in accordance with RSA
11 397-A:21, for violations of Chapter 397-A, in the number and
12 amount equal to the violations set forth in section II of this
13 Staff Petition; and

14 5. Take such other administrative and legal actions as necessary for
15 enforcement of the New Hampshire Banking Laws, the protection of
16 New Hampshire citizens, and to provide other equitable relief.

17 **IV. RIGHT TO AMEND**

18 The Department reserves the right to amend this Staff Petition and to
19 request that the Commissioner take additional administrative action.

20 Nothing herein shall preclude the Department from bringing additional
21 enforcement action under RSA Chapter 397-A or the regulations thereunder.

22 Respectfully submitted by:

23
24 _____
25 /s/ Maryam Torben Desfosses
Hearings Examiner

07/09/09
Date