

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-063
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Alpine Financial Services, LLC (d/b/a)
)
 8 MortgageOpia), and Jason J. Cabana,)
)
 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 Alpine Financial Services, LLC (d/b/a
19 MortgageOpia) ("Respondent Alpine Financial") shall show
20 cause why penalties in the amount of \$2,500.00 should not be
21 imposed against it;
- 22 2. Respondent Jason J. Cabana ("Respondent Cabana") shall show
23 cause why penalties in the amount of \$5,000.00 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 \$500.00 examination fee should not be paid to the Department;
3 4. Respondents shall be jointly and severally liable for the
4 above amounts alleged in Paragraphs 1 through 3 above;
5 5. The above named Respondents shall show cause why, in addition
6 to the penalties listed in Paragraphs 1 through 4 above,
7 Respondent Alpine Financial's license should not be revoked.

8 It is hereby further ORDERED that:

- 9 6. Along with the administrative penalties listed for the above
10 named Respondents, the outstanding sum of \$500.00 shall be
11 immediately paid; and
12 7. Failure to request a hearing within 30 days of the date of
13 receipt or valid delivery of this Order shall result in a
14 default judgment being rendered and administrative penalties
15 imposed upon the defaulting Respondent(s).

16
17 SIGNED,

18
19 Dated: 09/09/09

20 /s/
PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-063
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 3 State of New Hampshire Banking)
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 4 Department,) Staff Petition
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 7 Alpine Financial Services, LLC (d/b/a)
)
 8 MortgageOpia), and Jason J. Cabana,)
)
 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 Alpine Financial Services, LLC (d/b/a MortgageOpia)
 15 (hereinafter "Respondent Alpine Financial") was licensed as a
 16 Mortgage Broker from at least October 26, 2005 until its license
 17 expired on December 31, 2006.
- 18 2. Respondent Jason J. Cabana (hereinafter "Respondent Cabana") was
 19 the 100% owner and Member of Respondent Alpine Financial, when
 20 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 Alpine
2 Financial on August 28, 2006, while Respondent Alpine Financial
3 was still licensed with the Department.

4 5. The above named Respondents failed to facilitate the examination.

5 6. On September 25, 2007, the Department mailed the invoice for
6 \$500.00 to Respondent Alpine Financial, via U.S. Certified Mail
7 Return Receipt requested, which the post office returned to the
8 Department on October 22, 2007.

9 7. On October 23, 2007, the Department mailed the invoice for \$500.00
10 to Respondent Alpine Financial, via UPS, which Respondents
11 received on October 24, 2007.

12 8. The above named Respondents failed to respond to the October 23,
13 2007 invoice.

14 9. The Department, via U.S. mail, mailed a notice on November 1, 2007
15 and a third notice on December 7, 2007.

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

18 11. To date, the above named Respondents still owe the \$500.00
19 examination fee for the one 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 occasion
5 as alleged above. To date, the above named Respondents have
6 failed to pay the \$500.00 examination invoice.

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

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

22 6. RSA 397-A:18,I provides that the Department may issue a complaint
23 setting forth charges whenever the Department is of the opinion
24 that the licensee or person over whom the Department has
25 jurisdiction, has violated any provision of RSA Chapter 397-A or

1 orders thereunder.

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

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

III. RELIEF REQUESTED

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

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

IV. RIGHT TO AMEND

The Department reserves the right to amend this Staff Petition and to request that the Commissioner take additional administrative action. Nothing herein shall preclude the Department from bringing additional enforcement action under RSA Chapter 397-A or the regulations thereunder.

Respectfully submitted by:

_____/s/
 Maryam Torben Desfosses
 Hearings Examiner

 07/20/09
 Date