

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-081
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 First Option Mortgage Corp, Christopher)
)
 8 L. Germano, and Mark Belmain,)
)
 9 Respondents)

10 NOTICE OF ORDER

11 This Order to Show Cause commences an adjudicative proceeding under
12 the provisions 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:17,II(e)(1) the Commissioner has the authority
19 to remove or ban from office or employment, including license revocation,
20 any person conducting business under RSA Chapter 397-A who violates RSA
21 Chapter 397-A.

22 Pursuant to RSA 397-A:17,IX, in addition to any other penalty provided
23 for under RSA Chapter 397-A, after notice and opportunity for hearing, the
24 Commissioner may assess fines and penalties against a mortgage loan
25 originator in an amount not to exceed \$25,000.00 (for each violation) if the

1 Commissioner finds the mortgage loan originator has violated or failed to
2 comply with the S.A.F.E. Mortgage Licensing Act of 2008, Public Law 110-289,
3 Title V or any regulation or order issued thereunder.

4 Pursuant to RSA 397-A:17,X, an action to enforce any provision of RSA
5 Chapter 397-A shall be commenced within 6 years after the date on which the
6 violation occurred.

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

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

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

19 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct
20 that is or may be an unfair or deceptive act or practice under RSA Chapter
21 358-A and exempt under RSA 358-A:3,I or that may violate any of the
22 provisions of Titles XXXV and XXXVI and administrative rules adopted
23 thereunder. The Commissioner may hold hearings relative to such conduct and
24 may order restitution for a person or persons adversely affected by such
25 conduct.

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-081
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) January 12, 2010
)
 6 and)
)
 7 First Option Mortgage Corp, Christopher)
)
 8 L. Germano, and Mark Belmain,)
)
 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 First Option Mortgage Corp (hereinafter "Respondent
15 First Option") has been licensed as a Mortgage Broker from at
16 least June 4, 2003.
- 17 2. Respondent Christopher L. Germano (hereinafter "Respondent
18 Germano") is a 30% principal owner, control person and Treasurer
19 of Respondent First Option.
- 20 3. Respondent Mark Belmain (hereinafter "Respondent Belmain") is a
21 70% owner, control person and President of Respondent First
22 Option.

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 (2 Counts):

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

6 5. The Department conducted an examination of Respondent First Option
7 on January 12, 2009.

8 6. On April 17, 2009, the Department mailed the report of examination
9 and invoice for \$1,511.30 to Respondent First Option, via U.S.
10 Certified Mail Return Receipt requested, which the Respondents
11 received on April 21, 2009.

12 7. The above named Respondents failed to respond to the April 17,
13 2009 correspondence from the Department.

14 8. The Department, via U.S. mail, mailed a second notice on May 21,
15 2009 and a third notice on July 22, 2009.

16 9. The Department's Examiner-in-Charge telephoned the above named
17 Respondents on July 27, 2009 and left several voice mails, which
18 the above named Respondents have not returned.

19 10. On July 27, 2009, the Department mailed a final letter with
20 invoice for \$1,511.30 to Respondent First Option, via U.S.
21 Certified Mail Return Receipt requested, which the Respondents
22 received on July 30, 2009.

23 11. To date, the above named Respondents still owe the \$1,511.30
24 examination fee for the 1.7 day examination.
25

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 11 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 RSA 397-A:2 and RSA 397-A:3.
- 8 3. RSA 397-A:12,V provides that the expense of such examination shall
9 be chargeable to and paid by the licensee. Each of the above
10 named Respondents violated this provision on at least one occasion
11 as alleged above. To date, the above named Respondents have
12 failed to pay the \$1,511.30 examination invoice.
- 13 4. RSA 397-A:13,VI provides that any officer, owner, manager or agent
14 of any licensee shall reply promptly in writing, or other
15 designated form, to any written inquiry from the Department.
16 Respondent Germano and Respondent Belmain each violated this
17 provision on at least two occasions as alleged above.
- 18 5. RSA 397-A:17,I provides in part that the Commissioner may by
19 order, upon due notice and opportunity for hearing, assess
20 penalties or deny, suspend, or revoke a license or application if
21 it is in the public interest and the applicant, respondent, or
22 licensee, any partner, officer, member, or director, any person
23 occupying a similar status or performing similar functions, or any
24 person directly or indirectly controlling the applicant,
25 respondent, or licensee: (a) has violated any provision of RSA

1 Chapter 397-A or rules thereunder, or (b) has not met the
2 standards established in RSA Chapter 397-A.

3 6. RSA 397-A:17,II(e)(1) provides that the Commissioner may issue an
4 order or directive to remove or ban from office or employment,
5 including license revocation, any person conducting business under
6 RSA Chapter 397-A who violates RSA Chapter 397-A.

7 7. RSA 397-A:17,IX provides that in addition to any other penalty
8 provided for under RSA Chapter 397-A, after notice and opportunity
9 for hearing, the Commissioner may assess fines and penalties
10 against a mortgage loan originator in an amount not to exceed
11 \$25,000.00 if the Commissioner finds the mortgage loan originator
12 has violated or failed to comply with the S.A.F.E. Mortgage
13 Licensing Act of 2008, Public Law 110-289, Title V or any
14 regulation or order issued thereunder.

15 8. RSA 397-A:17,X provides an action to enforce any provision of RSA
16 Chapter 397-A shall be commenced within 6 years after the date on
17 which the violation occurred.

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

23 10. RSA 397-A:21,IV provides that any person who, either knowingly or
24 negligently, violates any provision of RSA Chapter 397-A, may
25 upon hearing, and in addition to any other penalty provided for

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

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

22 **III. RELIEF REQUESTED**

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

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

