

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 09-102  
 )  
 3 State of New Hampshire Banking )  
 )  
 4 Department, ) Order to Show Cause  
 )  
 5 Petitioner, )  
 )  
 6 and )  
 )  
 7 Alumni Mortgage LLC, and Michael )  
 )  
 8 Michaelis, )  
 )  
 9 Respondents )

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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: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 a Respondent fails to  
22 appear at the hearing after being duly notified, such person shall be deemed  
23 in default, and the proceeding may be determined against the Respondent upon  
24 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 January 22, 2010 (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 Alumni Mortgage LLC ("Respondent Alumni Mortgage")  
19           shall show cause why penalties in the amount of \$2,500.00  
20           should not be imposed against it;
- 21           2. Respondent Michael Michaelis ("Respondent Michaelis") shall  
22           show cause why penalties in the amount of \$5,000.00 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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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 Alumni Mortgage LLC (hereinafter "Respondent Alumni  
15 Mortgage") was licensed as a Mortgage Broker from at least May 7,  
16 2002 (with an amended license date of June 18, 2009) until it  
17 surrendered its license on October 20, 2009.
- 18 2. Respondent Michael Michaelis (hereinafter "Michaelis") was the  
19 100% owner and President of Respondent Alumni Mortgage, 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 Alumni  
2 Mortgage on April 27, 2009, while Respondent Alumni Mortgage was  
3 still licensed with the Department.
- 4 5. On July 10, 2009, the Department mailed the report of examination  
5 and invoice for \$3,281.55 to Respondent Alumni Mortgage, via U.S.  
6 Certified Mail Return Receipt requested, which Respondents  
7 received on July 13, 2009.
- 8 6. The above named Respondents failed to respond to the July 10, 2009  
9 correspondence from the Department.
- 10 7. The Department, via U.S. mail, mailed a second notice on August  
11 18, 2009 and a third notice on September 14, 2009.
- 12 8. The Department's Examiner made several telephone calls and left  
13 several voicemails for the above named Respondents.
- 14 9. To date, the above named Respondents still owe the \$3,281.55  
15 examination fee for the 3.93 day examination.

## 16 **II. ISSUES OF LAW**

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

- 18 1. The Department realleges the above stated facts in Paragraphs 1  
19 through 9 as fully set forth herein.
- 20 2. The Department has jurisdiction over the licensing and regulation  
21 of persons engaged in mortgage banker or broker activities  
22 pursuant to NH RSA 397-A:2 and RSA 397-A:3.
- 23 3. RSA 397-A:12,V provides that the expense of such examination shall  
24 be chargeable to and paid by the licensee. Each of the above  
25 named Respondents violated this provision on at least one occasion

1 as alleged above. To date, the above named Respondents have  
2 failed to pay the \$3,281.55 examination invoice for the April 2009  
3 examination.

4 4. 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 Michaelis violated this provision on at least one  
8 occasion as alleged above.

9 5. 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 6. 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 Chapter 397-A or  
23 orders thereunder.

24 7. 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 8. 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.

23 **III. RELIEF REQUESTED**

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



