

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-109
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Butterfly Financial Group Inc., Colin)
)
 8 Neal Hart, and William Neal Hart,)
)
 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 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-109
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) October 22, 2009
)
 6 and)
)
 7 Butterfly Financial Group Inc., Colin)
)
 8 Neal Hart, and William Neal Hart,)
)
 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 Butterfly Financial Group Inc. (hereinafter
15 "Respondent Butterfly Financial") has been licensed as a Mortgage
16 Broker from at least September 28, 2007.
- 17 2. Respondent Colin Neal Hart (hereinafter "Respondent C. Hart") is
18 the 10% owner and President of Respondent Butterfly Financial.
- 19 3. Respondent William Neal Hart (hereinafter "Respondent W. Hart")
20 is the 90% owner and Vice-President of Respondent Butterfly
21 Financial.

22 Violation of RSA 397-A:13,IV Failure to Pay Late Penalty Owed for Late

23 Filing of Financial Statement(1 Count):

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

1 5. Respondent Butterfly Financial's financial statement was due on or
2 before March 31, 2009 on NMLS based on its fiscal year end of
3 December 31, 2008.

4 6. The Department (via NMLS) received Respondent Butterfly
5 Financial's financial statement on June 9, 2009 (70 days late),
6 which generated a fine of \$1,750.00 (\$25.00 a day; maximum
7 \$2,500.00).

8 7. Invoices were sent in June, August, and September.

9 8. On October 8, 2009, a Department Examiner spoke with Respondent C.
10 Hart, who informed the Department he did not intend to pay the
11 fine and is planning on closing the company.

12 9. To date, Respondents have not paid the \$1,750.00 fine.

13 **Violation of RSA 397-A:5,III(c) Failure to Increase Surety Bond to \$50,000**

14 **(1 Count):**

15 10. Paragraphs 1 through 9 are hereby realleged as fully set forth
16 herein.

17 11. New Hampshire House Bill 0610 (effective July 31, 2009) required
18 all mortgage banker and mortgage broker licensees to increase
19 their surety bond to \$50,000.00 from \$20,000.00.

20 12. On June 16, 2009, the Department mailed the above named
21 Respondents a letter regarding the law change.

22 13. On August 20, 2009, the Department sent a reminder e-mail
23 regarding the bond change.

24 14. On October 1, 2009, the Department left a voice mail for
25 Respondent C. Hart to submit the increased surety bond by October

1 9, 2009 or face an enforcement action.

2 15. To date, the above named Respondents have failed to increase their
3 surety bond.

4 **II. ISSUES OF LAW**

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

6 1. The Department realleges the above stated facts in Paragraphs 1
7 through 15 as fully set forth herein.

8 2. The Department has jurisdiction over the licensing and regulation
9 of persons engaged in mortgage banker or broker activities
10 pursuant to NH RSA 397-A:2 and RSA 397-A:3.

11 3. RSA 397-A:5,III(c) provides that each mortgage banker applicant
12 shall post a continuous surety bond in the minimum amount of
13 \$100,000 to the commissioner that shall be increased under
14 conditions set by rule. Each mortgage broker shall post a
15 continuous surety bond in the minimum amount of \$50,000 to the
16 commissioner that shall be increased under conditions set by rule.

17 4. RSA 397-A:13,IV provides that any mortgage banker or mortgage
18 broker failing to file either the annual report or the financial
19 statement required by RSA Chapter 397-A within the time prescribed
20 may be required to pay to the Department a penalty of \$25.00 for
21 each calendar day the annual report or financial statement is
22 overdue, up to a maximum penalty of \$2,500.00 per report or
23 statement. Each of the above named Respondents violated this
24 provision on at least one occasion as alleged above. The above
25 named Respondents filed a financial statement that was 70 days

1 late, and incurred a penalty of \$1,750.00.

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

12 6. RSA 397-A:18,I provides that the Department may issue a complaint
13 setting forth charges whenever the Department is of the opinion
14 that the licensee or person over whom the Department has
15 jurisdiction, has violated any provision of RSA Chapter 397-A or
16 orders thereunder.

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

25 8. RSA 397-A:21,V provides that every person who directly or

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

16 **III. RELIEF REQUESTED**

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

- 19 1. Find as fact the allegations contained in section I of this Staff
20 Petition;
- 21 2. Make conclusions of law relative to the allegations contained in
22 section II of this Staff Petition;
- 23 3. Pursuant to RSA 397-A:17, order each of the above named
24 Respondents to show cause why their license should not be revoked;
- 25 4. Assess fines and administrative penalties in accordance with RSA

