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NOTICE OF ORDER

This Order to Show Cause commences an adjudicative proceeding under the provisions of RSA Chapter 397-A and RSA Chapter 541-A.

LEGAL AUTHORITY AND JURISDICTION

Pursuant to RSA 397-A:17, the Commissioner of the New Hampshire Banking Department (hereinafter "Department") has the authority to issue an order to show cause why license revocation and penalties for violations of New Hampshire Banking laws should not be imposed.

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

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

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

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

NOTICE OF RIGHT TO REQUEST A HEARING

The above named Respondents have the right to request a hearing on this Order to Show Cause, as well as the right to be represented by counsel at each Respondent's expense. All hearings shall comply with RSA Chapter 541-A. Any such request for a hearing shall be in writing, and signed by the Respondent or the duly authorized agent of the above named Respondent, and shall be delivered either by hand or certified mail, return receipt requested, to the Banking Department, State of New Hampshire, 53 Regional Drive, Suite 200, Concord, NH 03301. Such hearings will be scheduled within 10 days of the Department's receipt of the request. If a Respondent fails to appear at the hearing after being duly notified, such person shall be deemed in default, and the proceeding may be determined against the Respondent upon consideration of the Order to Show Cause, the allegations of which may be deemed to be true.

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If any of the above named Respondents fails to request a hearing within 30 calendar days of receipt of such order or reach a formal written and executed settlement with the Department within that time frame, then such person shall likewise be deemed in default, and the Order to Show Cause shall, on the thirty-first day, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the Commissioner, for good cause shown.

STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF

The <u>Staff Petition</u> dated January 25, 2010 (a copy of which is attached hereto) is incorporated by reference hereto.

ORDER

WHEREAS, finding it necessary and appropriate and in the public interest, and consistent with the intent and purposes of the New Hampshire banking laws; and

WHEREAS, finding that the allegations contained in the Staff Petition, if proved true and correct, form the legal basis of the relief requested;

It is hereby ORDERED, that:

- 1. Respondent The Mortgage Authority LLC ("Respondent Mortgage Authority") shall show cause why penalties in the amount of \$2,500.00 should not be imposed against it;
- 2. Respondent Gustavo Martin Reyes ("Respondent Reyes") shall show cause why penalties in the amount of \$5,000.00 should not be imposed against him;
- 3. The above named Respondents shall show cause why, in addition to the penalties listed in Paragraphs 1 through 2 above, a

1	refund in the amount of \$4,959.52 to Consumer A should not be
2	imposed;
3	4. Nothing in this Order to Show Cause shall prevent the
4	Department from taking any further administrative action
5	under New Hampshire law;
6	5. The above named Respondents shall be jointly and severally
7	liable for the above amounts alleged in Paragraphs 1 through
8	4 above.
9	6. The above named Respondent shall show cause why, in addition
10	to the penalties listed in Paragraphs 1 through 5 above,
11	Respondent Mortgage Authority's license should not be
12	revoked;
13	It is hereby further ORDERED that:
14	7. Along with the administrative penalties listed for the above
15	named Respondents, restitution should be given to Consumer A
16	in the amount of \$4,959.52; and
17	8. Failure to request a hearing within 30 days of the date of
18	receipt or valid delivery of this Order to Show Cause shall
19	result in a default judgment being rendered and
20	administrative penalties imposed upon the defaulting
21	Respondent(s).
22	SIGNED,
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24	Dated: 01/28/10
25	BANK COMMISSIONER

1	State of New Hampshire Banking Department
)Case No.: 09-141
2	In re the Matter of:
3	
)Staff Petition
4	Department,
_)January 25, 2010
5	Petitioner,
6	and)
)
7	The Mortgage Authority LLC, and Gustavo
8	Martin Reyes,
)
9	Respondents
10	I. STATEMENT OF ALLEGATIONS
	1. SIRIEMENI OF ADDEGRITORS
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 The Mortgage Authority LLC (hereinafter "Respondent
15	Mortgage Authority") was licensed as a Mortgage Broker from May
16	12, 2003 until it surrendered its license on May 19, 2008.
17	2. Respondent Gustavo Martin Reyes (hereinafter "Respondent Reyes")
18	was the 91% owner and President of Respondent Mortgage Authority,
19	when licensed by the Department.
20	Violation of RSA 397-A:15-a, I Failure to Properly Respond to a Consumer
21	Complaint via a Department Inquiry (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.

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4. Consumer A initially filed a complaint with the Department on or about March 13, 2008.

- 5. The Department mailed, via U.S. Certified Mail Return Receipt requested, the complaint the Respondents, which to Respondents received on April 4, 2008 (based on an acknowledgment sent to the Department).
- 6. Respondents had 30 days from April 4, 2008 to acknowledge the March 13, 2008 complaint and 60 days total from April 4, 2008 to respond to the Department. The 30 day deadline was May 4, 2008 and the 60 day deadline was June 3, 2008.
- 7. Respondents acknowledged the complaint in a timely manner by April 11, 2008.
- 8. Respondents partially responded substantively to the complaint in a timely manner on May 8, 2008.
- 9. However, based upon a review of the file and some missing documentation, the Department submitted a follow-up inquiry to the Respondents via U.S. Certified Mail Return Receipt requested on December 16, 2008, which Respondents received on December 26, 2008.
- 10. To date, Respondents have failed to respond to the Department's follow-up inquiry dated December 16, 2008, wherein the Department sought a copy of the appraisal request form and an explanation as to the loan's interest rate and prepayment penalty.
- 11. Since the above named Respondents have blatantly ignored the Department regarding the two inquiries that may have absolved

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them of liability, the Respondents have not met their burden to either resolve the complaint or explanation that their position was proper.

12. Therefore, the above named Respondents shall be responsible for restitution to Consumer A in the amount of \$4,959.52, which represents charges incurred by Consumer A in closing the loan that is the subject of the consumer complaint.

II. <u>ISSUES OF LAW</u>

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

- The Department realleges the above stated facts in Paragraphs 1 through 12 as fully set forth herein.
- 2. The Department has jurisdiction over the licensing and regulation of persons engaged in mortgage banker or broker activities pursuant to NH RSA 397-A:2 and RSA 397-A:3.
- 3. RSA 397-A:13,VI provides that any officer, owner, manager or agent of any licensee shall reply promptly in writing, or other designated form, to any written inquiry from the Department.

 Respondents Reyes violated this provision on at least one occasion as alleged above.
- 4. RSA 397-A:15-A,I provides that RSA Chapter 397-A licensees shall, within 30 days after receipt of a complaint, send a written acknowledgment thereof to the consumer and the Department. Not later than 60 days following receipt of such complaint, the same licensees shall conduct an investigation of the complaint and either (a) make appropriate corrections in consumer's account and

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notify both the consumer and the Department with documentation or (b) submit a written explanation or clarification to the consumer and Department, setting forth reasons why the licensee believes its actions are correct, including copies of documentary evidence thereof. Each of the above named Respondents violated this provision on at least one occasion as alleged above.

- 5. RSA 397-A:17 provides the Commissioner has the authority to issue an order to show cause why license revocation and penalties for violations of New Hampshire Banking laws should not be imposed.
- 6. RSA 397-A:17,X provides an action to enforce any provision of RSA Chapter 397-A shall be commenced within 6 years after the date on which the violation occurred.
- 7. Pursuant to RSA 397-A:18,I the Department has the authority to issue a complaint setting forth charges whenever the Department is of the opinion that the licensee or person over whom the Department has jurisdiction is violating or has violated any provision of RSA Chapter 397-A, or any rule or order thereunder.
- 8. RSA 397-A:20,IV provides that the Commissioner may issue, amend, or rescind such orders as are reasonably necessary to comply with the provisions of RSA Chapter 397-A.
- 9. RSA 397-A:21,IV provides that any person who, either knowingly or negligently, violates any provision of RSA Chapter 397-A, may upon hearing, and in addition to any other penalty provided for by law, be subject to an administrative fine not to exceed \$2,500.00, or both. Each of the acts specified shall constitute

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a separate violation, and such administrative action or fine may be imposed in addition to any criminal penalties or civil liabilities imposed by New Hampshire Banking laws.

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

III. RELIEF REQUESTED

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

- Find as fact the allegations contained in section I of this Staff
 Petition;
- 2. Make conclusions of law relative to the allegations contained in

1	section II of this Staff Petition;
2	3. Pursuant to RSA 397-A:17, order each of the above named
3	Respondents to show cause why their license should not be revoked;
4	4. Assess fines and administrative penalties in accordance with RSA
5	397-A:21, for violations of RSA Chapter 397-A, in the number and
6	amount equal to the violations set forth in section II of this
7	Staff Petition; and
8	5. Take such other administrative and legal actions as necessary for
9	enforcement of the New Hampshire Banking Laws, the protection of
10	New Hampshire citizens, and to provide other equitable relief.
11	IV. RIGHT TO AMEND
12	The Department reserves the right to amend this Staff Petition and to
13	request that the Commissioner take additional administrative action.
14	Nothing herein shall preclude the Department from bringing additional
15	enforcement action under RSA Chapter 397-A or the regulations thereunder.
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17	Respectfully submitted by:
18	/s/
19	Maryam Torben Desfosses Date Hearings Examiner
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