

1 State of New Hampshire Banking Department

3	In re the Matter of:)Case No.: 10-017
)
4	State of New Hampshire Banking)RSA 541-A:31,III Notice of Hearing
)Regarding Order to Show Cause with
5	Department,)Immediate Emergency Suspension and
)Cease and Desist Order
6	Petitioner,)
)
7	and)
)
8	Atlantic Mortgage Corporation and)
)
9	Ronald P. Leclerc,)
)
10	Respondents)
)

12 NOTICE OF HEARING PURSUANT TO RSA 541-A:31,III

13 Pursuant to RSA 397-A:17,I the Commissioner of the New Hampshire
14 Banking Department (hereinafter "Department") has the authority to issue an
15 order to show cause why license revocation or suspension and penalties for
16 violations of RSA Chapter 397-A should not be imposed. The Commissioner may
17 by order summarily postpone or suspend any license or application pending
18 final determination of any order to show cause, or other order, or of any
19 other proceeding under RSA 397-A:17, provided that the Commissioner finds
20 that the public interest would be irreparably harmed by delaying in issuing
21 such order.

22 RSA 397-A:17,I further provides in part that the Commissioner may by
23 order, upon due notice and opportunity for hearing, assess penalties or
24 deny, suspend, or revoke a license or application if it is in the public
25 interest and the applicant, respondent, or licensee, any partner, officer,

1 member, or director, any person occupying a similar status or performing
2 similar functions, or any person directly or indirectly controlling the
3 applicant, respondent, or licensee has, inter alia,: (a) violated any
4 provision of RSA Chapter 397-A or rules thereunder, (b) not met the
5 standards established in RSA Chapter 397-A..., (d) has filed an application
6 for licensing which as of its effective date, or as of any date after
7 filing in the case of an order denying effectiveness, was incomplete in any
8 material respect, or contained any statement which was, in light of the
9 circumstances under which it was made, false or misleading with respect to
10 any material fact..., (e) has made a false or misleading statement to the
11 Commissioner or in any reports to the Commissioner, (f) has made fraudulent
12 misrepresentations, has circumvented or concealed, through whatever
13 subterfuge or device, any of the material particulars or the nature thereof
14 required to be stated or furnished to a borrower under the provisions of
15 RSA Chapter 397-A..., or (k) engaged in dishonest or unethical practices in
16 the conduct of the business of making or collecting mortgage loans.

17 Pursuant to RSA 397-A:17,II(a), the Commissioner has the authority to
18 order or direct persons subject to RSA Chapter 397-A to cease and desist
19 from conducting business, including immediate temporary orders to cease and
20 desist.

21 Pursuant to RSA 397-A:17,II(b), the Commissioner has the authority to
22 order or direct persons subject to RSA Chapter 397-A to cease any harmful
23 activities or violations of RSA Chapter 397-A, including immediate
24 temporary orders to cease and desist.

25

1 Pursuant to RSA 397-A:17,II(c), the Commissioner has the authority to
2 enter immediate temporary orders to cease business under a license if the
3 Commissioner has determined that such license was erroneously granted or
4 the licensee is currently in violation of RSA Chapter 397-A, or rules or
5 order thereunder.

6 Pursuant to RSA 397-A:17,II(e)(1) the Commissioner has the authority
7 to remove or ban from office or employment, including license revocation,
8 any person conducting business under RSA Chapter 397-A who violates RSA
9 Chapter 397-A.

10 Pursuant to RSA 397-A:17,II(e)(4) the Commissioner has the authority
11 to remove or ban from office or employment, including license revocation,
12 any person conducting business under RSA Chapter 397-A if by a
13 preponderance of evidence the Commissioner determines that the person no
14 longer demonstrates the financial responsibility, character, and general
15 fitness such as to command the confidence of the community and to warrant a
16 determination that the person subject to RSA Chapter 397-A will operate
17 honestly, fairly, and efficiently within the purposes of RSA Chapter 397-A.

18 Pursuant to RSA 397-A:17,II(f) the Commissioner has the authority to
19 deny, suspend, revoke, condition, or decline to renew a license if an
20 applicant or licensee fails at any time to meet the requirements of RSA
21 397-A:5,IV-c or RSA 397-A:5,IV-d, or withholds information or makes a
22 material misstatement in an application for a license or renewal of a
23 license. RSA 397-A:5,IV-c, (a)(5) states the Commissioner shall not issue a
24 mortgage loan originator license unless the Commissioner makes at a
25 minimum, inter alia, a finding that the applicant has demonstrated

1 financial responsibility, character, and general fitness such as to command
2 the confidence of the community and to warrant a determination that the
3 mortgage loan originator will operate honestly, fairly, and efficiently
4 within the purposes of RSA Chapter 397-A. RSA 397-A:5,IV-d(a)(1) states
5 that, in addition to other provisions of New Hampshire law and rules, in
6 order to be eligible to renew a license, a mortgage originator shall, inter
7 alia, meet and continue to meet the minimum standards for license issuance
8 under RSA 397-A:5,IV-c.

9 Pursuant to RSA 397-A:17,III, if the Commissioner finds that
10 protection of consumers, lenders, or investors requires emergency action
11 and incorporates a finding to that effect in his or her order, immediate
12 suspension of a license may be ordered pending an adjudicative proceeding.
13 The adjudicative proceeding shall be commenced not later than 10 business
14 days after the date of the order suspending the license. Unless expressly
15 waived by the license, the Commissioner's failure to commence an
16 adjudicative proceeding within 10 business days shall mean that the
17 suspension order is automatically vacated.

18 Pursuant to RSA 397-A:17,V, the Department may take action for
19 immediate suspension of a license, pursuant to RSA 541-A:30,III.

20 Pursuant to RSA 397-A:17,VIII, in addition to any other penalty
21 provided for under RSA Chapter 397-A or RSA 383:10-d, after notice and
22 opportunity for hearing, the Commissioner may enter an order of rescission,
23 restitution, or disgorgement of profits directed to a person who has
24 violated RSA Chapter 397-A, or a rule or order thereunder.

25

1 Pursuant to RSA 397-A:17,IX, in addition to any other penalty
2 provided for under RSA Chapter 397-A, after notice and opportunity for
3 hearing, the Commissioner may assess fines and penalties against a mortgage
4 loan originator in an amount not to exceed \$25,000.00 (for each violation)
5 if the Commissioner finds the mortgage loan originator has violated or
6 failed to comply with the S.A.F.E. Mortgage Licensing Act of 2008, Public
7 Law 110-289, Title V or any regulation or order issued thereunder. Each of
8 the acts specified shall constitute a separate violation.

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

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

17 Pursuant to RSA 397-A:18,II, the Department has the authority to
18 issue and cause to be served an order requiring any person engaged in any
19 act or practice constituting a violation of RSA Chapter 397-A or any rule
20 or order thereunder, to cease and desist from violations of RSA Chapter
21 397-A.

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

25 Pursuant to RSA 397-A:21, the Commissioner has the authority to

1 suspend, revoke or deny any license and to impose administrative penalties
2 of up to \$2,500.00 for each violation of New Hampshire banking law and
3 rules.

4 Pursuant to RSA 397-A:21,I-a, any person who willfully violates any
5 provisions of RSA 397-A:2,VI or VII or a cease and desist order or
6 injunction issued pursuant to RSA 397-A:18,II shall be guilty of a class B
7 felony. Each of the acts specified shall constitute a separate offense and
8 a prosecution or conviction for any one of such offenses shall not bar
9 prosecution or conviction of any other offense.

10 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct
11 that is or may be an unfair or deceptive act or practice under RSA Chapter
12 358-A and exempt under RSA 358-A:3,I or that may violate any of the
13 provisions of Titles XXXV and XXXVI and administrative rules adopted
14 thereunder. The Commissioner may hold hearings relative to such conduct and
15 may order restitution for a person or persons adversely affected by such
16 conduct.

17 Pursuant to RSA 541-A:30,III, if the agency finds that public health,
18 safety or welfare requires emergency action and incorporates a finding to
19 that effect in its order, immediate suspension of a license may be ordered
20 pending an adjudicative proceeding. The agency shall commence this
21 adjudicative proceeding not later than 10 working days after the date of
22 the agency order suspending the license. A record of the proceeding shall
23 be made by a certified shorthand court reporter provided by the agency.
24 Unless expressly waived by the licensee, agency failure to commence an
25 adjudicative proceeding within 10 working days shall mean that the

1 suspension order is automatically vacated.

2 On March 31, 2010, the Department issued an Order to Show Cause with
3 an Immediate Emergency Suspension and Cease and Desist Order to Respondent
4 Atlantic Mortgage Corporation ("Respondent Atlantic Mortgage") and
5 Respondent Ronald P. Leclerc ("Respondent Leclerc") regarding immediate
6 emergency suspension of Respondent Atlantic Mortgage's New Hampshire
7 Mortgage Banker license and immediate emergency suspension of Respondent
8 Leclerc's New Hampshire Mortgage Loan Originator license application. RSA
9 541-A:30,III requires the Department to hold a hearing within ten (10)
10 working days on an immediate suspension against a licensee.

11 The Department alleges the following:

12 **Issue 1: Conducting Mortgage Loan Originator Activity in New Hampshire**
13 **Without a New Hampshire Mortgage Loan Originator License (RSA**
14 **397-A:3,II) [Against Leclerc Only];**

15 **Issue 2: Employment/Retention/Engagement of a New Hampshire Unlicensed**
16 **Mortgage Loan Originator by a New Hampshire Mortgage Banker (RSA**
17 **397-A:3,III);**

18 **Issue 3: Respondent Atlantic Mortgage's Failure to File a New Hampshire**
19 **Mortgage Loan Originator Application With the Commissioner Prior**
20 **to the Originator's Commencement of Such Origination Activities**
21 **(RSA 397-A:3,III);**

22 **Issue 4: Respondent Leclerc's Failure to File a New Hampshire Mortgage**
23 **Loan Originator Application With the Commissioner Prior to**
24 **Respondent Leclerc's Commencement of Such Origination Activities**
25 **(RSA 397-A:3,III) [Against Leclerc Only];**

- 1 Issue 5: Conduct Business Covered By RSA Chapter 397-A Without a Valid
2 License Required by RSA Chapter 397-A (RSA 397-A:14,IV(d));
- 3 Issue 6: Failure to Make Disclosures Required by RSA 397-A (RSA 397-
4 A:14,IV(e));
- 5 Issue 7: Failure to Comply with RSA Chapter 397-A or Other New Hampshire
6 State Law (RSA 397-A:14,IV(f));
- 7 Issue 8: Negligently Making Any False Statement or Knowingly Make A False
8 Statement or Knowingly and Willfully Make Any Omission of a
9 Material Fact in Connection with Information or Reports Filed
10 with the Department and the Nationwide Mortgage Licensing System
11 and Registry (RSA 397-A:14,IV(h));
- 12 Issue 9: Violation of RSA Chapter 397-A Generally (RSA 397-A:17,I(a));
- 13 Issue 10: Failing to Meet Standards Established by RSA Chapter 397-A (RSA
14 397-A:17,I(b));
- 15 Issue 11: Filed a Mortgage Banker Application that was Materially
16 Incomplete and Contains False and Misleading Statements Since
17 the Application Lacked an Accompanying MU4 Application for
18 Respondent Leclerc (RSA 397-A:17,I(d));
- 19 Issue 12: Made a False or Misleading Statement to the Commissioner (RSA
20 397-A:17,I(e));
- 21 Issue 13: Made a False or Misleading Statement or Circumvented and
22 Concealed the Material Particulars Given to the Consumer (RSA
23 397-A:17,I(f));
- 24 Issue 14: Engaged in Dishonest or Unethical Practices (RSA 397-A:17,I(k));
- 25

1 **Issue 15: Violation of the Gramm-Leach-Bliley Act, Title V, and Standards**
2 **for Safeguarding Customer Information, 16 C.F.R. Section 314.3**
3 **(RSA 397-A:2,III);**

4 **Issue 16: Failure to Maintain Records for a Minimum of 3 Years (RSA 397-**
5 **A:11,I); and**

6 **Issue 17: Failure to Correct Reported Deficiencies (RSA 397-A:12,VIII).**

7 Accordingly, an adjudicative proceeding shall be commenced pursuant to
8 RSA Chapter 541-A for the purpose of permitting Respondent Atlantic Mortgage
9 and Respondent Leclerc to show compliance with the above stated violations
10 in Issues 1 through 17.

11 Each of the above named Respondents has a right to have an attorney
12 present to represent the Respondent at each Respondent's own expense, or
13 each Respondent may represent itself or himself.

14 THEREFORE, IT IS ORDERED, that Respondent Atlantic Mortgage and
15 Respondent Leclerc appear before the New Hampshire Banking Department on
16 **April 14, 2010 at 10:00 am**, at the Department's offices at 53 Regional
17 Drive, Suite 200, Concord, New Hampshire 03301, for the purpose of
18 participating in an adjudicative proceeding, at which time Respondent
19 Atlantic Mortgage and Respondent Leclerc will each have the opportunity to
20 demonstrate why the relief sought in the show cause order with immediate
21 suspension should not become permanent; and

22 IT IS FURTHER ORDERED, that if either Respondent Atlantic Mortgage or
23 Respondent Leclerc elects to be represented by Counsel, said Counsel shall
24 file notice of appearance at the earliest possible date; and

1 IT IS FURTHER ORDERED, that Maryam Torben Desfosses, Hearings
2 Examiner, New Hampshire Banking Department is designated as Hearings
3 Examiner in this matter with authority to represent the public interest
4 within the scope of the Department's authority. The Hearings Examiner shall
5 have the status of a party to this proceeding; and

6 IT IS FURTHER ORDERED, a Presiding Officer (to be appointed by the
7 Banking Commissioner) shall issue a RECOMMENDED DECISION in this matter
8 which shall be reviewed and approved, disapproved or modified by the Banking
9 Commissioner; and

10 IT IS FURTHER ORDERED, that any proposed exhibits shall be pre-marked,
11 for identification only, and filed with the Department and provided to the
12 opposing party **at least five days prior to the April 14, 2010 hearing.**
13 Hearings Examiner shall pre-mark the Department's exhibits with Arabic
14 numbers. Respondent Atlantic Mortgage and Respondent Leclerc shall pre-mark
15 exhibits with capital letters. An index/list of exhibits providing a brief
16 description of each exhibit with its corresponding pre-marked number or
17 letter shall be filed by both parties simultaneous with the filing of
18 exhibits; and

19 IT IS FURTHER ORDERED, that the parties shall exchange a list of all
20 exhibits and witnesses to be called at the hearing with a brief summary at
21 the hearing, and shall at the same time file a copy of their respective
22 lists with the Presiding Officer; and

23 IT IS FURTHER ORDERED, that all periods referenced in this notice
24 shall be calendar days. If the last day of the period so computed falls on
25 a Saturday, Sunday, or legal holiday, then the time period shall be extended

1 to include the first business day that is not a Saturday, Sunday, or legal
2 holiday; and

3 IT IS FURTHER ORDERED, that the Department shall have the burden of
4 setting forth a *prima facie* case, then Respondent Atlantic Mortgage and
5 Respondent Leclerc shall each have the burden of showing compliance with
6 applicable law by a preponderance of the evidence; and

7 IT IS FURTHER ORDERED, that Respondent Atlantic Mortgage's and
8 Respondent Leclerc's failure to appear at the time, date, and place specified
9 may result in the hearing being held *in absentia* and/or default ruling in
10 favor of the Department, without further notice or opportunity to be heard;
11 and

12 IT IS FURTHER ORDERED, that a record of the proceeding shall be made
13 by a certified shorthand court reporter provided by the Department; and

14 IT IS FURTHER ORDERED, that all documents shall be filed with the
15 Presiding Officer in the form of an original and one (1) copy and shall bear
16 a certification that a copy is being delivered to the Hearings Examiner and
17 any other parties to this matter in accordance with applicable laws. All
18 documents shall be filed by mailing or delivering them to the New Hampshire
19 Banking Department, ATTN: Presiding Officer 10-017, 53 Regional Drive, Suite
20 200, Concord, NH 03301. Filing by facsimile or electronic transmission shall
21 not be accepted; and

22 IT IS FURTHER ORDERED, that the parties may submit Proposed Orders,
23 which shall include findings of fact and conclusions of law, separately
24 stated, no later than ten (10) days following conclusion of the hearing(s) in
25 this matter; and

1 IT IS FURTHER ORDERED, that routine procedural inquiries may be made
2 by telephoning Maryam Torben Desfosses, Hearings Examiner at (603)271-3561,
3 but all other communications with the Department shall be in writing and
4 shall be filed as provided above. *Ex parte* communications are forbidden by
5 statute; and

6 IT IS FURTHER ORDERED, that a copy of this Notice of Hearing shall be
7 mailed to all named Respondents at their addresses of record and that a copy
8 shall also be delivered to Maryam Torben Desfosses, Hearings Examiner, and
9 to the Presiding Officer at the New Hampshire Banking Department.

10
11 **SO ORDERED,**

12
13 _____
14 /s/ Peter C. Hildreth
15 Commissioner
16 State of New Hampshire
17 Banking Department

18 _____
19 03/31/10
20 Date