

1 State of New Hampshire Banking Department

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

10 NOTICE OF ORDER

11 This Order to Show Cause with Immediate Emergency Suspension and
12 Cease and Desist Order commences an adjudicative proceeding under the
13 provisions of RSA Chapter 397-A and RSA Chapter 541-A (including but not
14 limited to RSA 541-A:30).

15 LEGAL AUTHORITY AND JURISDICTION

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

25 RSA 397-A:17,I further provides in part that the Commissioner may by

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

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

24 Pursuant to RSA 397-A:17,II(b), the Commissioner has the authority to
25 order or direct persons subject to RSA Chapter 397-A to cease any harmful

1 activities or violations of RSA Chapter 397-A, including immediate
2 temporary orders to cease and desist.

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

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

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

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

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

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

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

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

1 violated RSA Chapter 397-A, or a rule or order thereunder.

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

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

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

18 Pursuant to RSA 397-A:18,II, the Department has the authority to
19 issue and cause to be served an order requiring any person engaged in any
20 act or practice constituting a violation of RSA Chapter 397-A or any rule
21 or order thereunder, to cease and desist from violations of RSA Chapter
22 397-A.

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 RSA Chapter 397-A.

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

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

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

1 adjudicative proceeding within 10 working days shall mean that the
2 suspension order is automatically vacated.

3 **NOTICE OF RIGHT TO REQUEST A HEARING**

4 Pursuant to RSA 541-A:30, the Department shall hold a hearing within
5 ten (10) working days after the date of this Order to Show Cause with
6 Immediate Emergency Suspension and Cease and Desist Order suspending
7 Respondent Atlantic Mortgage Corporation's New Hampshire mortgage banker
8 license and Respondent Ronald P. Leclerc's New Hampshire mortgage loan
9 originator pending license application. Such hearing is noticed under
10 separate cover. A record of this proceeding shall be made by a certified
11 shorthand court reporter provided by this Department. If a Respondent fails
12 to appear at the hearing after being duly notified, such person shall be
13 deemed in default, and the proceeding may be determined against the
14 defaulting Respondent upon consideration of this Order to Show Cause with
15 Immediate Emergency Suspension and Cease and Desist Order, the allegations
16 of which may be deemed to be true.

17 After said hearing and within 20 days of the date of the hearing the
18 Commissioner shall issue a further order vacating this Order to Show Cause
19 with Immediate Emergency Suspension and Cease and Desist Order or making it
20 permanent as the facts require and making such findings as are necessary.
21 All hearings shall comply with RSA 541-A.

22 The above named Respondents have the right to be represented by
23 counsel at each Respondent's own expense. Any such request shall be in
24 writing, and signed by the Respondent or by the duly authorized agent of
25 the above named Respondent, and shall be delivered either by hand or

1 certified mail, return receipt requested, to the New Hampshire Banking
2 Department, 53 Regional Drive, Suite 200, Concord, NH 03301.

3 **STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF**

4 The Staff Petition dated March 31, 2010 (a copy of which is attached
5 hereto) is incorporated by reference hereto.

6 **ORDER**

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

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

13 WHEREAS, finding that the allegations contained in the Staff
14 Petition, if proved by a preponderance of the evidence that the above named
15 persons no longer demonstrates the financial responsibility, character, and
16 general fitness such as to command the confidence of the community and to
17 warrant a determination that the person subject to RSA Chapter 397-A will
18 operate honestly, fairly, and efficiently within the purposes of RSA
19 Chapter 397-A, forms the legal basis of the relief requested;

20 WHEREAS, finding that the public interest would be irreparably harmed
21 by delay in issuing this immediate suspension;

22 WHEREAS, finding a substantial likelihood that delay will cause
23 irreparable harm to the public, health, safety or welfare, requiring
24 emergency action;

25 WHEREAS, finding that the protection of consumers, lenders, or

1 investors requires emergency action;

2 It is hereby ORDERED, that:

- 3 1. Respondent Atlantic Mortgage Corporation's ("Respondent
4 Atlantic Mortgage") New Hampshire Mortgage Banker license
5 is immediately suspended;
- 6 2. Respondent Ronald P. Leclerc's ("Respondent Leclerc")
7 pending New Hampshire Mortgage Loan Originator license
8 application is immediately suspended; and
- 9 3. Pursuant to RSA 541-A:30,III, and adjudicative hearing
10 shall be held within ten (10) working days of the date of
11 this Order to Show Cause with Immediate Emergency
12 Suspension and Cease and Desist Order.

13 It is hereby FURTHER ORDERED, that:

- 14 4. The above named Respondents are hereby ordered to cease
15 and desist from conducting business regulated by RSA
16 Chapter 397-A in New Hampshire;
- 17 5. The above named Respondents are hereby ordered to cease
18 and desist from closing the three consumer residential
19 loans in pipeline (Consumers A, B and C);
- 20 6. The above named Respondents are hereby ordered to cease
21 and desist from violating New Hampshire state law and
22 federal law and any rules or orders thereunder;
- 23 7. Respondent Atlantic Mortgage shall show cause penalties in
24 the amount of \$70,000.00 should not be imposed against it;
- 25 8. Respondent Leclerc shall show cause why penalties in the

1 amount of \$80,000.00 should not be imposed against him
2 plus any additional penalty not to exceed \$25,000.00 for
3 each violation (\$800,000.00) pursuant to RSA 397-A:17,IX;

4 9. The above named Respondents are ordered to show cause why
5 a refund to Consumers A, B and C of any and all fees
6 charged and/or collected should not be given;

7 10. Nothing in this Order to Show Cause with Immediate
8 Emergency Suspension and Cease and Desist Order shall
9 prevent the Department from taking any further
10 administrative action under New Hampshire law;

11 11. Nothing in this Order to Show Cause and Cease and Desist
12 Order shall prevent the Attorney General from bringing an
13 action against the above named Respondents in any New
14 Hampshire superior court, with or without prior
15 administrative action by the Commissioner;

16 12. The above named Respondents shall be jointly and severally
17 liable for the above amounts alleged in Paragraphs 1
18 through 11 above;

19 13. Respondent Atlantic Mortgage shall show cause why, in
20 addition to the penalties listed in Paragraphs 1 through
21 12 above, Respondent Atlantic Mortgage's Mortgage Banker
22 license should not be revoked;

23 14. Respondent Leclerc shall show cause why, in addition to
24 the penalties listed in Paragraphs 1 through 13 above,
25 Respondent Leclerc's New Hampshire Mortgage Loan

1 Originator license application should not be revoked;

2 15. Respondent Leclerc shall show cause why, in addition to
3 the penalties listed in Paragraphs 1 through 14 above,
4 Respondent Leclerc should not be removed or banned from
5 office or employment;

6 It is hereby further ORDERED that:

7 16. Along with the administrative penalties listed for the
8 above named Respondents, any applicable rescission,
9 restitution or disgorgement of profits shall be
10 immediately paid; and

11 17. Failure to attend the hearing to be held within 10 working
12 days of this Order to Show Cause with Immediate Emergency
13 Suspension and Cease and Desist Order shall result in a
14 default judgment being rendered and administrative
15 penalties imposed upon the defaulting Respondent(s).

16
17 SIGNED,

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19 Dated: 03/31/10

_____/s/
PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 10-017
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) March 31, 2010
)
 6 and)
)
 7 Atlantic Mortgage Corporation and)
)
 8 Ronald P. Leclerc,)
)
 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 Atlantic Mortgage Corporation (hereinafter
15 "Respondent Atlantic Mortgage") has been licensed as a Mortgage
16 Banker in New Hampshire since January 1, 1997 (with an amended
17 license date of March 30, 2006).
- 18 2. Respondent Ronald P. Leclerc (hereinafter "Respondent Leclerc")
19 is the 100% owner, control person and Director of Respondent
20 Atlantic Mortgage.
- 21 3. Respondent Leclerc is not a licensed New Hampshire Mortgage
22 Loan Originator.
- 23 4. Respondent Atlantic Mortgage has no licensed New Hampshire
24 Mortgage Loan Originators.

1 Violation of RSA 397-A:3,II Conducting Mortgage Loan Originator Activity in
2 New Hampshire Without a New Hampshire Mortgage Loan Originator License (3
3 Counts Against Respondent Leclerc Only):

4 Violation of RSA 397-A:3,III Employment/Retention/Engagement of a New
5 Hampshire Unlicensed Mortgage Loan Originator by a New Hampshire Mortgage
6 Banker (1 Count Against Each Respondent):

7 Violation of RSA 397-A:3,III Respondent Atlantic Mortgage's Failure to File
8 a New Hampshire Mortgage Loan Originator Application With the Commissioner
9 Prior to the Originator's Commencement of Such Origination Activities (1
10 Count Against Each Respondent):

11 Violation of RSA 397-A:3,III Respondent Leclerc's Failure to File a New
12 Hampshire Mortgage Loan Originator Application With the Commissioner Prior
13 to Respondent Leclerc's Commencement of Such Origination Activities (1 Count
14 Against Respondent Leclerc Only):

15 Violation of RSA 397-A:14,IV(d) Conduct Business Covered By RSA Chapter 397-
16 A Without a Valid License Required by RSA Chapter 397-A (3 Counts):

17 Violation of RSA 397-A:14,IV(e) Failure to Make Disclosures Required by RSA
18 397-A (1 Count):

19 Violation of RSA 397-A:14,IV(f) Failure to Comply with RSA Chapter 397-A or
20 Other New Hampshire State Law (4 Counts):

21 Violation of RSA 397-A:14,IV(h) Negligently Making Any False Statement or
22 Knowingly Make A False Statement or Knowingly and Willfully Make Any
23 Omission of a Material Fact in Connection with Information or Reports Filed
24 with the Department and the Nationwide Mortgage Licensing System and
25 Registry (1 Count):

1 Violation of RSA 397-A:17,I(a) Violation of RSA Chapter 397-A Generally (4
2 Counts):

3 Violation of RSA 397-A:17,I(b) Failing to Meet Standards Established by RSA
4 Chapter 397-A (1 Count):

5 Violation of RSA 397-A:17,I(d) Filed a Mortgage Banker Application that was
6 Materially Incomplete and Contains False and Misleading Statements Since the
7 Application Lacked an Accompanying MU4 Application for Respondent Leclerc (1
8 Count):

9 Violation of RSA 397-A:17,I(e) Made a False or Misleading Statement to the
10 Commissioner (1 Count):

11 Violation of RSA 397-A:17,I(f) Made a False or Misleading Statement or
12 Circumvented and Concealed the Material Particulars Given to the Consumer (3
13 Counts):

14 Violation of RSA 397-A:17,I(k) Engaged in Dishonest or Unethical Practices
15 (4 Counts):

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

18 6. On December 30, 2009, Respondent Leclerc of Respondent Atlantic
19 Mortgage filed and attested to the completeness of the Atlantic
20 Mortgage Corporation New Hampshire MU1 NMLS Mortgage Banker
21 license application but failed to provide a New Hampshire MU4
22 NMLS Mortgage Loan Originator application for Respondent
23 Leclerc. The MU4 Mortgage Loan Originator application for
24 Respondent Leclerc is necessary since Respondent Atlantic
25 Mortgage currently has no licensed New Hampshire mortgage loan

1 originators.

2 7. Since Respondent Atlantic Mortgage (located in New Hampshire)
3 has no active and licensed New Hampshire mortgage loan
4 originators, it should not have conducted any residential
5 mortgage loan activity in New Hampshire, which would be subject
6 to RSA Chapter 397-A.

7 8. The Department began an examination of Respondent Atlantic
8 Mortgage on January 4, 2010.

9 9. During the January 4, 2010 examination, the Department's
10 Examiner observed the above named Respondents have not
11 conducted any residential mortgage loan activity since July
12 2008. Prior to July 2008, the above named Respondents only
13 originated and closed one subordinate lien loan.

14 10. On or about March 19, 2010, the Department's Examiner conducted
15 an onsite examination of Respondent Atlantic Mortgage.

16 11. During the March 19, 2010 examination, the Department's
17 Examiner observed the above named Respondents originated three
18 consumer residential loans (not have closed).

19 12. These three consumer residential loans are the only loans
20 originated by the above named Respondents since the July 2008
21 Department examination of the above.

22 13. Respondent Leclerc originated all three consumer residential
23 loans without a New Hampshire Mortgage Loan Originator license.

24 14. Respondent Leclerc finally submitted and attested to a New
25 Hampshire MU4 Mortgage Loan Originator application on or about

1 March 24, 2010.

2 15. To date, Respondent Leclerc is not licensed as a New Hampshire
3 Loan Originator.

4 Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for
5 Safeguarding Customer Information, 16 C.F.R. Section 314.3 via RSA 397-

6 A:2,III (1 Count):

7 Violation of RSA 397-A:11,I Failure to Maintain Records for a Minimum of 3
8 Years (1 Count):

9 Violation of RSA 397-A:12,VIII Failure to Correct Reported Deficiencies (1
10 Count):

11 16. Paragraphs 1 through 15 are hereby realleged as fully set forth
12 herein.

13 17. The above named Respondents have failed to maintain a
14 comprehensive information security program.

15 18. The above named Respondents are required to develop, implement,
16 and maintain a comprehensive information security program
17 (hereinafter "Information Security Program") that is written in
18 one or more readily accessible parts and contains
19 administrative, technical, and physical safeguards.

20 19. This Information Security Program was required to be
21 implemented by May 23, 2003 and was to contain the following:

22 A. a designated employee to:

23 (1). coordinate the program;

24 (2). perform a risk assessment;

25 (3). design, implement and regularly test safeguard

1 controls;

2 (4). monitor service providers and enter into contracts
3 that require service providers to implement and
4 maintain appropriate safeguards; and

5 (5). evaluate and adjust the program as necessary.

6 20. In the January 4, 2010 examination, the Department's Examiner
7 observed that the above named Respondents had failed to provide
8 and maintain a written Information Security Policy pursuant to
9 the Gramm-Leach-Bliley Act.

10 21. The Department's Examiner observed the same violation in the
11 July 2008 examination.

12 22. As a result of the lack of a written information security
13 policy, loan documents and files have been destroyed prior to
14 the minimum three year statutory retention time period.

15 23. The above named Respondents explained that they had to
16 foreclose on the loan closed and funded in 2008 and received no
17 funds from such foreclosure.

18 24. The Department's Examiner, during the January 4, 2010
19 examination, could not verify the explanation as the above
20 named Respondents admitted they destroyed all documents related
21 to the loan.

22 25. The above named Respondents had an absolute responsibility to
23 maintain such documents until at least the year 2011, three
24 years after the loan closed.

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II. ISSUES OF LAW

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

1. The Department realleges the above stated facts in Paragraphs 1 through 25 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 RSA 397-A:2 and RSA 397-A:3.
3. RSA 397-A:1,X provides that "licensee" means a person, whether mortgage banker, mortgage broker, or mortgage originator, duly licensed by the Commissioner pursuant to the provisions of RSA Chapter 397-A.
4. RSA 397-A:1,XVII(a) provides that an originator or mortgage loan originator or mortgage originator or loan originator means an individual who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain, takes a mortgage application or offers, negotiates, solicits, arranges, or finds a mortgage loan or who assists a consumer in obtaining or applying to obtain a mortgage loan by, among other things, advising on loan terms (including rates, fees, and other costs), preparing loan packages, or collecting information on behalf of the consumer with regard to a mortgage loan or who offers or negotiates terms of a residential mortgage loan. No individual may act as an originator for more than one mortgage broker, mortgage servicer, or mortgage banker. A sole proprietor licensed as a mortgage broker,

1 mortgage servicer, or mortgage banker shall also obtain a
2 license as a mortgage originator prior to engaging in the
3 activities of a mortgage originators.

4 5. RSA 397-A:2,III requires persons subject to or licensed under
5 RSA Chapter 397-A to abide by applicable federal laws and
6 regulations, the laws and rules of the State of New Hampshire,
7 and the orders of the Commissioner. Any violation of such law,
8 regulation, order, or rule is a violation of RSA Chapter 397-A.
9 Each of the above named Respondents violated this provision on
10 at least one occasion as alleged above.

11 6. As part of the Gramm-Leach-Bliley Act, 16 C.F.R. Section 314.3
12 Standards for Safeguarding Customer Information, states that
13 the licensee must develop, implement and maintain a
14 comprehensive information security program that is written in
15 or more readily accessible parts and contains administrative,
16 technical and physical safeguards. Each of the above named
17 Respondents violated this federal law on at least one occasion
18 as alleged above.

19 7. RSA 397-A:3,II provides that it is unlawful for any individual
20 to transact business in this state as an originator unless such
21 individual is licensed under RSA Chapter 397-A. An individual
22 shall not engage in the business of a mortgage loan originator
23 with respect to any dwelling without first obtaining and
24 maintaining annually a license under RSA Chapter 397-A and each
25 licensed mortgage loan originator shall register with and

1 obtain a valid unique identifier issued by the Nationwide
2 Mortgage Licensing System and Registry. Respondent Leclerc
3 violated this provision on at least three (3) occasions as
4 alleged above.

5 8. RSA 397-A:3,III provides that it is unlawful for any mortgage
6 banker or mortgage broker to employ, retain, or otherwise
7 engage an originator unless the originator is licensed. No
8 originator shall at any time represent more than one mortgage
9 banker or mortgage broker. Before an individual begins
10 activities that require licensure as an originator in New
11 Hampshire, the originator and the mortgage banker or mortgagr
12 broker who employs or retains the originator shall file an
13 application with the Commissioner to license the originator in
14 New Hampshire. Respondent Atlantic Mortgage violated this
15 provision on at least two (2) occasions and Respondent Leclerc
16 violated this provision on at least three (3) occasions as
17 alleged above.

18 9. RSA 397-A:11,I provides that the licensee (defined in RSA 397-
19 A:1,X) shall maintain such records as will enable the
20 Department to determine whether the licensee's business is in
21 compliance with the provisions of RSA Chapter 397-A and the
22 rules adopted thereof. Such records shall be maintained in a
23 readily accessible location and made available for examination
24 at the licensee's New Hampshire principal office or its New
25 Hampshire branch office or the office of its New Hampshire

1 agent for a period of at least 3 years after the loan is
2 closed, if the loan is not retained in the licensee's loan
3 portfolio, or 3 years after the loan is paid in full, if the
4 loan is retained in the licensee's loan portfolio. The above
5 named Respondents each violated this provision on at least one
6 occasion as alleged above.

7 10. RSA 397-A:12,VIII provides that upon receipt of a written
8 report of examination, the licensee shall have 30 days or such
9 additional reasonable period as the Commissioner for good cause
10 may allow, within which to review the report, recommend any
11 changes and set forth in writing the remedial course of action
12 the licensee will pursue to correct any reported deficiencies
13 outlined in the report. Each of the above named Respondents
14 violated this provision on at least one occasion as alleged
15 above.

16 11. RSA 397-A:14,IV(d) provides that no person subject to RSA
17 Chapter 397-A shall conduct any business covered by RSA Chapter
18 397-A without holding a valid license as required under RSA
19 Chapter 397-A, or assist or aid and abet any person in the
20 conduct of business under RSA Chapter 397-A without a valid
21 license as required under RSA Chapter 397-A. The above named
22 Respondents each violated this provision on at least three (3)
23 occasions as alleged above.

24 12. RSA 397-A:14,IV(e) provides that no person subject to RSA
25 Chapter 397-A shall fail to make disclosures as required by RSA

1 Chapter 397-A and any other applicable state or federal law
2 including rules and regulations thereunder. The above named
3 Respondents each violated this provision on at least one
4 occasion as alleged above.

5 13. RSA 397-A:14,IV(f) provides that no person subject to RSA
6 Chapter 397-A shall fail to comply with RSA Chapter 397-A or
7 rules or orders promulgated thereunder, or fail to comply with
8 any other state or federal law, including the rules and
9 regulations thereunder, applicable to any business authorized
10 or conducted under RSA Chapter 397-A. The above named
11 Respondents each violated this provision on at least four (4)
12 occasions as alleged above.

13 14. RSA 397-A:14,IV(h) provides that no person subject to RSA
14 Chapter 397-A shall negligently make any false statement or
15 knowingly and willfully make any omission of material fact in
16 connection with any information or reports filed with a
17 governmental agency or the Nationwide Mortgage Licensing System
18 and Registry or in connection with any investigation conducted
19 by the Commissioner or another governmental agency. The above
20 named Respondents each violated this provision on at least one
21 occasion as alleged above.

22 15. Pursuant to RSA 397-A:17,I the Commissioner of the New
23 Hampshire Banking Department (hereinafter "Department") has the
24 authority to issue an order to show cause why license
25 revocation or suspension and penalties for violations of RSA

1 Chapter 397-A should not be imposed. The Commissioner may by
2 order summarily postpone or suspend any license or application
3 pending final determine of any order to show cause, or other
4 order, or of any other proceeding under RSA 397-A:17, provided
5 that the Commissioner finds that the public interest would be
6 irreparably harmed by delaying in issuing such order.

7 16. RSA 397-A:17,I further provides in part that the Commissioner
8 may by order, upon due notice and opportunity for hearing,
9 assess penalties or deny, suspend, or revoke a license or
10 application if it is in the public interest and the applicant,
11 respondent, or licensee, any partner, officer, member, or
12 director, any person occupying a similar status or performing
13 similar functions, or any person directly or indirectly
14 controlling the applicant, respondent, or licensee has, inter
15 alia,: (a) violated any provision of RSA Chapter 397-A or rules
16 thereunder, (b) not met the standards established in RSA
17 Chapter 397-A..., (d) has filed an application for licensing which
18 as of its effective date, or as of any date after filing in the
19 case of an order denying effectiveness, was incomplete in any
20 material respect, or contained any statement which was, in
21 light of the circumstances under which it was made, false or
22 misleading with respect to any material fact..., (e) has made a
23 false or misleading statement to the Commissioner or in any
24 reports to the Commissioner, (f) has made fraudulent
25 misrepresentations, has circumvented or concealed, through

1 whatever subterfuge or device, any of the material particulars
2 or the nature thereof required to be stated or furnished to a
3 borrower under the provisions of RSA Chapter 397-A..., or (k)
4 engaged in dishonest or unethical practices in the conduct of
5 the business of making or collecting mortgage loans. The above
6 named Respondents each violated each subparagraphs (a) and (k)
7 on at least four (4) occasions, subparagraph (f) on at least
8 three (3) occasions, and subpargraphs (b), (d) and (e) on at
9 least one occasion as alleged above.

10 17. Pursuant to RSA 397-A:17,II(a), the Commissioner has the
11 authority to order or direct persons subject to RSA Chapter
12 397-A to cease and desist from conducting business, including
13 immediate temporary orders to cease and desist.

14 18. Pursuant to RSA 397-A:17,II(b), the Commissioner has the
15 authority to order or direct persons subject to RSA Chapter
16 397-A to cease any harmful activities or violations of RSA
17 Chapter 397-A, including immediate temporary orders to cease
18 and desist.

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

24 20. Pursuant to RSA 397-A:17,II(e)(1) the Commissioner has the
25 authority to remove or ban from office or employment, including

1 license revocation, any person conducting business under RSA
2 Chapter 397-A who violates RSA Chapter 397-A.

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

13 22. Pursuant to RSA 397-A:17,II(f) the Commissioner has the
14 authority to deny, suspend, revoke, condition, or decline to
15 renew a license if an applicant or licensee fails at any time
16 to meet the requirements of RSA 397-A:5,IV-c or RSA 397-A:5,IV-
17 d, or withholds information or makes a material misstatement in
18 an application for a license or renewal of a license. RSA 397-
19 A:5,IV-c, (a) (5) states the Commissioner shall not issue a
20 mortgage loan originator license unless the Commissioner makes
21 at a minimum, inter alia, a finding that the applicant has
22 demonstrated financial responsibility, character, and general
23 fitness such as to command the confidence of the community and
24 to warrant a determination that the mortgage loan originator
25 will operate honestly, fairly, and efficiently within the

1 purposes of RSA Chapter 397-A. RSA 397-A:5,IV-d(a)(1) states
2 that, in addition to other provisions of New Hampshire law and
3 rules, in order to be eligible to renew a license, a mortgage
4 originator shall, inter alia, meet and continue to meet the
5 minimum standards for license issuance under RSA 397-A:5,IV-c.

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

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

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

25 26. Pursuant to RSA 397-A:17,IX, in addition to any other penalty

1 provided for under RSA Chapter 397-A, after notice and
2 opportunity for hearing, the Commissioner may assess fines and
3 penalties against a mortgage loan originator in an amount not
4 to exceed \$25,000.00 (for each violation) if the Commissioner
5 finds the mortgage loan originator has violated or failed to
6 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
8 thereunder. Each of the acts specified shall constitute a
9 separate violation. Respondent Leclerc violated fifteen (15)
10 New Hampshire statutory provisions on at least thirty-two (32)
11 occasions total as alleged above.

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

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

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

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

4 31. RSA 397-A:21,IV provides that any person who, either knowingly
5 or negligently, violates any provision of RSA Chapter 397-A,
6 may upon hearing, and in addition to any other penalty provided
7 for by law, be subject to an administrative fine not to exceed
8 \$2,500.00, or both. Each of the acts specified shall constitute
9 a separate violation, and such administrative action or fine
10 may be imposed in addition to any criminal penalties or civil
11 liabilities imposed by New Hampshire Banking laws.

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

1 administrative action or fine may be imposed in addition to any
2 criminal or civil penalties imposed.

3 33. RSA 397-A:21,VI provides that the attorney general on the
4 Commissioner's behalf, may, with or without prior
5 administrative action by the Commissioner, bring an action
6 against any person in any superior court in New Hampshire to
7 enjoin the acts or practices and to enforce compliance with RSA
8 Chapter 397-A or any rules or orders thereunder. Upon a proper
9 showing, a permanent or temporary injunction, bar, restraining
10 order, or writ of mandamus shall be granted and a receiver may
11 be appointed for the defendant or the defendant's assets. The
12 court shall not require the Commissioner or attorney general to
13 post a bond. The court shall have the power to enforce
14 obedience to such injunction, in addition to all of the court's
15 customary powers, by a fine not exceeding \$10,000.00 or by
16 imprisonment, or both. In a proceeding in superior court under
17 RSA Chapter 397-A:21,VI where the state prevails, the
18 Commissioner and the attorney general shall be entitled to
19 recover all costs and expenses of investigation, and the court
20 shall include the costs in its final judgment.

21 34. Pursuant to RSA 397-A:21,I-a, any person who willfully violates
22 any provisions of RSA 397-A:2,VI or VII or a cease and desist
23 order or injunction issued pursuant to RSA 397-A:18,II shall be
24 guilty of a class B felony. Each of the acts specified shall
25 constitute a separate offense and a prosecution or conviction

1 for any one of such offenses shall not bar prosecution or
2 conviction of any other offense.

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

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

1 **III. RELIEF REQUESTED**

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

- 4 1. Pursuant to RSA 397-A:17,I and RSA 397-A:20,IV, find this
5 action and all resulting findings and orders herein necessary
6 and appropriate and in the public interest, and consistent with
7 the intent and purposes of the New Hampshire banking laws;
- 8 2. Find that the allegations contained in the Staff Petition, are
9 true and correct and form the legal basis of the relief
10 requested;
- 11 3. Pursuant to RSA 397-A:17,II(e) (4), find that the allegations
12 contained in this Staff Petition, if proved by a preponderance
13 of the evidence that the above named person no longer
14 demonstrates the financial responsibility, character, and
15 general fitness such as to command the confidence of the
16 community and to warrant a determination that the person
17 subject to RSA Chapter 397-A will operate honestly, fairly, and
18 efficiently within the purposes of RSA Chapter 397-A, forms the
19 legal basis of the relief requested;
- 20 4. Pursuant to RSA 397-A:17,I find that the public interest would
21 be irreparably harmed by delay in issuing this immediate
22 suspension;
- 23 5. Pursuant to RSA 541-A:30,III, find that delay will cause harm
24 to the public, health, safety or welfare, requiring emergency
25 action;

- 1 6. Pursuant to RSA 397-A:17,III, find that the protection of
2 consumers, lenders, or investors requires emergency action;
- 3 7. Find as fact the allegations contained in section I of this
4 Staff Petition;
- 5 8. Make conclusions of law relative to the allegations contained
6 in section II of this Staff Petition;
- 7 9. Pursuant to RSA 397-A:17, order Respondent Atlantic Mortgage's
8 Mortgage Banker license be immediately suspended;
- 9 10. Pursuant to RSA 397-A:17, order Respondent Leclerc's pending
10 New Hampshire Mortgage Loan Originator license application be
11 immediately suspended;
- 12 11. Pursuant to RSA 397-A:17,II (a),(b) and (c) and RSA 397-
13 A:18,II, order the above named Respondents to cease and desist
14 from conducting business regulated by RSA Chapter 397-A in New
15 Hampshire;
- 16 12. Pursuant to RSA 397-A:17,II (a),(b) and (c) and RSA 397-
17 A:18,II, order the above named Respondents to cease and desist
18 from closing the three consumer residential loans in pipeline
19 (Consumers A, B and C);
- 20 13. Pursuant to RSA 397-A:17,II (a),(b) and (c) and RSA 397-
21 A:18,II, order the above named Respondents to cease and desist
22 from violating New Hampshire state law and federal law and any
23 rules or orders thereunder;
- 24 14. Pursuant to RSA 397-A:17, order Respondent Atlantic Mortgage to
25 show cause why its New Hampshire Mortgage Banker license should

1 not be revoked;

2 15. Pursuant to RSA 397-A:17, order Respondent Leclerc to show
3 cause why his pending New Hampshire Mortgage Loan Originator
4 license application should not be revoked;

5 16. Pursuant to RSA 397-A:17,II(e)(1), order Respondent Leclerc to
6 show cause why he should not be banned or removed from office;

7 17. Pursuant to RSA 397-A:17,VIII, order Respondent Leclerc to
8 rescind, give restitution, or disgorge profits;

9 18. Pursuant to RSA 397-A:17,IX, order Respondent Leclerc to show
10 cause why, in addition to administrative penalties, he should
11 not be assessed an additional penalty not to exceed \$25,000.00
12 for each violation alleged above;

13 19. Order the above named Respondents to show cause why a refund to
14 Consumers A, B and C of any and all fees charged and/or
15 collected should not be given;

16 20. Assess fines and administrative penalties in accordance with
17 RSA 397-A:21, for violations of RSA Chapter 397-A, in the
18 number and amount equal to the violations set forth in section
19 II of this Staff Petition; and

20 21. Take such other administrative and legal actions as necessary
21 for enforcement of the New Hampshire Banking Laws, the
22 protection of New Hampshire citizens, and to provide other
23 equitable relief.

