



1 reimbursement. The Notice contained an Order signed by the Commissioner that  
2 Respondent cease and desist from violating RSA 397-A. The authority for this  
3 part of the Order is contained in RSA 541-A and RSA 397-A:18, II. See also RSA  
4 397-A:17, II.. The Commissioner may issue such an order based on “reasonable  
5 cause” that any person is violating the chapter. The Notice also contained a show  
6 cause Order. The authority for this part of the Order is contained in RSA 397-  
7 A:17, I. which provides for an order requiring any person under the  
8 Commissioner’s jurisdiction to show cause why penalties shall not be imposed for  
9 violations of RSA 397-A. Based on the facts alleged in the Notice, the  
10 Commissioner found reasonable cause to issue the cease and desist order; that the  
11 facts alleged, if true, show Respondent violated RSA 397-A; and, that the Order  
12 is necessary and appropriate to the public interest.

13 5. The Department’s alleged violations against the Respondent  
14 in the Notice were as follows:

15 a. Respondent Mortgage Resource Solutions, LLC

16 Violation #1: 1 Count for Unlicensed Activity  
17 as a Mortgage Broker. RSA 397-A:3, I.

18 Violation #2: 2 Counts for Failure to Produce requested documents  
19 relevant to an investigation. RSA 397-A:12 I.

20 Violation # 3: 1 Count for Retaining, Employing, or otherwise Engaging an  
21 Unlicensed Loan Originator. RSA 397-A:3, III.

22 b. Respondent James Khoury

23 Violation # 1: 1 Count for violation of the S.A.F.E. Act for unlicensed loan  
24 origination. RSA 397-A:17, IX.

25 *As Control Person:*

1 Violation # 2: 1 Count for Unlicensed Activity as a Loan Originator. RSA  
2 397-A:3, II.

3 Violation # 3: 2 Counts for Failure to Produce requested documents  
4 relevant to an investigation. RSA 397-A:12.

5 6. The Department sought administrative penalties of up to \$2,250 for each  
6 count of the above violations. The Department's alleged violations against  
7 Respondent also included:

8 a. An order to show cause why the investigation cost of \$2,250 should not  
9 be imposed;

10 b. An order to show cause why commissions for services rendered should  
11 not be disgorged; and

12 c. An order to show cause why fines and penalties should not be paid in the  
13 amount of \$25,000.

14 7. RSA Chapter 541-A and RSA Chapter 397-A require the Department to  
15 schedule a hearing on such matter within ten (10) calendar days of a written  
16 request for hearing unless otherwise waived by the Respondent. Respondent filed  
17 a timely request for hearing on March 23, 2011, and waived his right to a ten (10)  
18 day hearing.

19 8. The Commissioner issued a second notice ("2nd Notice") on October 7,  
20 2011. The 2<sup>nd</sup> Notice is procedural and required the Respondent to appear on  
21 Tuesday, November 15, 2011 at 10:00 am, at the New Hampshire Banking  
22 Department located at 53 Regional Drive, Suite 200, Concord, New Hampshire  
23 03301, for the purpose of participating in an adjudicative proceeding, "**at which  
24 time the Respondent will have the opportunity to demonstrate why the relief  
25 sought in the 1<sup>st</sup> notice should not become permanent.**" (emphasis added)

1           9. Pursuant to RSA 541-A:31,III(b), the legal authorities described in the  
2 2<sup>nd</sup> Notice were: **RSA 541-A:30,III**, RSA 397-A. (emphasis added)

3           10. The facts as alleged in the 1<sup>st</sup> Notice were incorporated by reference.

4           11. The 2<sup>nd</sup> Notice commenced an adjudicative proceeding pursuant to  
5 RSA 541-A:31 and the JUS 800 Rules “**for the purpose of participating in an**  
6 **adjudicative proceeding at which time the Respondents shall have the**  
7 **opportunity to demonstrate why relief sought in the Order to Cease and**  
8 **Desist and Complaint and Order to show cause should not become**  
9 **permanent.**” (emphasis added)

10           12. There were eight (8) filings of Motions to Continue Adjudicative  
11 Proceeding ultimately resulting in the hearing held on August 30, 2012.

12           13. A witness list and proposed exhibits were pre-marked, for  
13 identification only, and filed by the Department and provided to Respondent by  
14 Thursday, August 23, 2012. Respondent did not file a witness list or proposed  
15 exhibits.

16           14. Respondent was represented by Attorney Paul Russell, a non-New  
17 Hampshire attorney.

18           15. Maryam Torben Desfosses, Esquire, New Hampshire Banking  
19 Department was designated as Hearings Examiner in this matter with authority  
20 to represent the public interest within the scope of the Department’s authority.

21           16. I was delegated as Presiding Officer to preside over this matter  
22 pursuant to RSA 383:7-a; see also RSA 541-A:1, XV.

23           17. The entirety of all verbal proceedings was recorded verbatim by the  
24 Department upon my initiative.

25           18. No request for a certified court reporter was submitted in writing to me.

1 **III. PREHEARING CONFERENCE**

2 19. The Prehearing Conference was conducted August 30, 2012 to narrow  
3 the procedural issues prior to the commencement of the hearing. Both parties  
4 agreed to waive the 20 day requirement for issuing an order.<sup>1</sup> The conference was  
5 stayed in order for the Department and Respondent’s counsel to confer, followed  
6 by a conference of the Respondent and his counsel. Both sides stipulated to the  
7 facts and submitted exhibits; they waived the reading of the Notice of Hearing. It  
8 was noted that the Respondent had not filed a confidentiality and non-disclosure  
9 statement. Respondent’s counsel stated it would be filed following the prehearing  
10 conference and prior to the hearing. The statement was filed.

11 **IV. HEARING**

12 20. In an opening statement, I described the obligations of the parties as  
13 follows: **Pursuant to the notice of hearing, the burden of going forward on**  
14 **the issues is on the Department, i.e. the Department shall have the burden of**  
15 **setting forth a *prima facie* case and then the Respondent shall have the**  
16 **opportunity to show compliance with applicable law.** (emphasis added) The  
17 issue of burdens and *prima facie* case became moot due to an agreement reached  
18 by the parties. Also the parties agreed that the Cease and Desist Order went into  
19 effect when served. Whether a hearing is necessary before a Cease and Desist  
20 Order takes effect was not an issue in this case.

21 21. At the beginning of the hearing, Respondent’s counsel stated he was a  
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23 <sup>1</sup> I am grateful for the parties assent. Among many other things, one of my  
24 cases was argued during the past term and decided by the U.S. Supreme Court  
25 in June, 2013.

1 non-New Hampshire attorney and that if Mr. Khoury required a criminal attorney  
2 for criminal offenses he would request a continuance. Respondent's counsel  
3 stated a brief portrayal of the Respondent would be presented. I stated that New  
4 Hampshire bar admission was not a requirement to appear before me in this  
5 instance and that no criminal offenses were listed.

6 22. Exhibits 1 through 11-b. were admitted into evidence.

7 23. The hearing was stayed for the Department and Respondent's counsel  
8 to confer in an attempt to reach agreement. An agreement was reached.

9 24. Respondent's counsel presented a brief description of his client stating  
10 Mr. Khoury is a 32 year old man, owns Mortgage Resource Solutions, LLC and  
11 employs a staff of two (2). Counsel state that Mr. Khoury acts in his clients best  
12 interests to facilitate short sales and does not request up front money. Counsel  
13 also stated that Mr. Khoury wants to be able to continue his livelihood as he  
14 supports his parents.

15 25. The Department stated that it has not received the requested complete  
16 consumer lists from the Respondent. It noted that an employee applicant of the  
17 Respondent has recently passed the licensure exam after several attempts. HUD  
18 statements dated after February, 2011 show the Respondent violated the  
19 Department's cease and desist order. Exhibit 11.

20 26. The Department offered:

21 1.) To waive the \$2,250 investigation fee and disgorgement of the amounts  
22 for each service rendered as the gross amount was paid by the lender, not the  
23 seller and as such there was no true harm to the consumer. To disgorge the  
24 monies would be a windfall to the consumers;

25 2.) To withdraw certain counts and pursue the counts described below.

1           27. The Department requested the Respondent be fined as follows for five  
2 (5) counts:

3           1.) Respondent Mortgage Resource Solutions, LLC

4           \$1,500 for 1 Count for Unlicensed Activity  
5 as a Mortgage Broker. RSA 397-A:3, I.

6           \$1,500 for 1 count (reduced from 2 to 1) for Failure to Produce requested  
7 documents relevant to an investigation. RSA 397-A:12 I.

8           \$1,500 for 1 Count for Retaining, Employing, or otherwise Engaging an  
9 Unlicensed Loan Originator. RSA 397-A:3, III.

10          2.) Respondent James Khoury

11          \$25,000 for 1 Count for violation of the S.A.F.E. Act for unlicensed loan  
12 origination. RSA 397-A:17, IX. \$1,500 for 1 Count for Unlicensed  
13 Activity as a Loan Originator. RSA 397-A:3, II. \$1,500 for 1 count  
14 (reduced from 2 to 1) for Failure to Produce requested documents relevant  
15 to an investigation. RSA 397-A:12.

16          28. I adopt the facts alleged in the Cease and Desist Order

