

1 State of New Hampshire Banking Department

2	In re the Matter of:)	Case No.: 08-078
)	
3	State of New Hampshire Banking)	
4	Department,)	Order to Show Cause
)	
5	Petitioner,)	
)	
6	and)	
)	
7	Edgeworth Mortgage, LLC, and James N.)	
)	
8	Riccardi,)	
)	
9	Respondents)	

10 NOTICE OF ORDER

11 This Order commences an adjudicative proceeding under the provisions
12 of RSA Chapter 397-A and Chapter RSA 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 \$500.00 examination fee for the July 2007 examination should
2 not be paid to the Department;

3 4. The above named Respondents shall show cause why, in addition
4 to the penalties listed in Paragraphs 1 through 3 above, the
5 \$500.00 examination fee for the December 2008 examination
6 should not be paid to the Department;

7 5. The above named Respondents shall show cause why, in addition
8 to the penalties listed in Paragraphs 1 through 4 above, the
9 accrued fine of \$11,550.00 for failing to provide examination
10 materials should not be paid to the Department;

11 6. Respondents shall be jointly and severally liable for the
12 above amounts alleged in Paragraphs 1 through 5 above;

13 7. The above named Respondents shall show cause why, in addition
14 to the penalties listed in Paragraphs 1 through 6 above,
15 Respondent Edgeworth Mortgage's license should not be
16 revoked.

17 It is hereby further ORDERED that:

18 8. Along with the administrative penalties listed for the above
19 named Respondents, the outstanding sum of \$12,550.00 shall be
20 immediately paid; and

21
22
23 [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
24
25

1 9. Failure to request a hearing within 30 days of the date of
2 receipt or valid delivery of this Order shall result in a
3 default judgment being rendered and administrative penalties
4 imposed upon the defaulting Respondent(s).

5 SIGNED,

6
7 Dated: 09/16/09

8 /s/
9 _____
10 PETER C. HILDRETH
11 BANK COMMISSIONER
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1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-078
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) July 31, 2009
)
 6 and)
)
 7 Edgeworth Mortgage, LLC, and James N.)
)
 8 Riccardi,)
)
 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 Edgeworth Mortgage, LLC (hereinafter "Respondent
15 Edgeworth Mortgage") was licensed as a Mortgage Broker from at
16 least July 1, 2006 until its license expired on December 31,
17 2008.

18 2. Respondent James N. Riccardi (hereinafter "Respondent Riccardi")
19 was the 100% owner and Manager of Respondent Edgeworth Mortgage,
20 when licensed by the Department.

21 July 2007 Examination

22 Violation of RSA 397-A:12,VII Failure to Facilitate Exam (1 Count):

23 Violation of RSA 397-A:12,III Examinations: Failure to Provide Requested

24 Files (1 Count):

25 Violation of RSA 397-A:12,V Failure to Pay Examination Fee (1 Count):

1 Violation of RSA 397-A:13, VI Failure of Officer and Owner to Respond to

2 Department Inquiries (1 Count):

3 3. Paragraphs 1 through 2 are hereby realleged as fully set forth
4 herein.

5 4. The Department conducted an examination of Respondent Edgeworth
6 Mortgage on July 9, 2007, while Respondent Edgeworth Mortgage was
7 still licensed with the Department.

8 5. The Department sent Respondents the Notice of Examination via U.S.
9 Certified Mail Return Receipt requested on June 5, 2007, which
10 Respondents received June 12, 2007. Respondents responded and
11 provided the intitial documents to the Department in a timely
12 manner.

13 6. On October 22, 2007, the Department, via U.S. Certified Mail
14 Return Receipt requested, submitted a notice of expanded
15 examination, which Respondents received on November 19, 2007.

16 7. On April 8, 2007, the Department mailed a third notice to the
17 Respondents and has never received the requested materials for
18 review.

19 8. On July 23, 2008, the Department mailed the cost of examination
20 letter and invoice for \$500.00 to Respondent Edgeworth Mortgage,
21 via U.S. Certified Mail Return Receipt requested, which
22 Respondents received on July 24, 2008.

23 9. The above named Respondents failed to respond to the July 23, 2008
24 correspondence from the Department.

25 10. The Department, via U.S. mail, mailed another notice on October 9,

1 2008.

2 11. The above named Respondents did not respond to any of the notices
3 for payment of the \$500.00 invoice.

4 12. To date, the above named Respondents still owe the \$500.00
5 examination fee for the one day examination.

6 **Violation of RSA 397-A:12, VII Failure to Facilitate Exam (1 Count):**

7 **Violation of RSA 397-A:12, III Examinations: Failure to Provide Requested**
8 **Files (1 Count):**

9 **Violation of RSA 397-A:11, II Record Keeping: Failure to Provide Requested**
10 **Files (1 Count):**

11 **Violation of RSA 397-A:13, VI Failure of Officer and Owner to Respond to**
12 **Department Inquiries (2 Counts):**

13 13. Paragraphs 1 through 12 are hereby realleged as fully set forth
14 herein.

15 14. The Department attempted to conduct an examination of Respondent
16 Edgeworth Mortgage on December 15, 2008, while Respondent
17 Edgeworth Mortgage was still licensed with the Department.

18 15. On November 18, 2008, the Department sent the notice of
19 examination to Respondent Edgeworth Mortgage via U.S. Certified
20 Mail Return Receipt requested, which Respondents received on
21 November 21, 2008.

22 16. The materials requested in the notice of examination were due on
23 December 12, 2008, which is 21 days after the November 21, 2008
24 delivery of the notice of examination.

25 17. With no response, on February 10, 2009, the Department sent the

1 notice of examination to Respondent Edgeworth Mortgage via U.S.
2 Certified Mail Return Receipt requested, which Respondents
3 received on February 14, 2009.

4 18. To date, the Department has not received the examination materials
5 nor an acknowledgment by Respondents.

6 19. To date, fines have accrued for failing to provide the requested
7 files. The current fine to date is \$11,550.00 (\$50.00 a day x
8 231 days) and still accruing.

9 **December 2008 Examination**

10 **Violation of RSA 397-A:12, V Failure to Pay Examination Fee (1 Count):**

11 **Violation of RSA 397-A:13, VI Failure of Officer and Owner to Respond to**

12 **Department Inquiries (1 Count):**

13 20. Paragraphs 1 through 19 are hereby realleged as fully set forth
14 herein.

15 21. The Department conducted an examination of Respondent Edgeworth
16 Mortgage on December 15, 2008, while Respondent Edgeworth
17 Mortgage was licensed with the Department.

18 22. On March 10, 2009, the Department mailed the report of examination
19 and invoice for \$500.00 to Respondent Edgeworth Mortgage, via
20 U.S. Certified Mail Return Receipt requested, which Respondents
21 received on March 14, 2009.

22 23. The above named Respondents failed to respond to the March 10,
23 2009 correspondence from the Department.

24 24. The Department, via U.S. mail, mailed a second notice on April 17,
25 2009 and a third notice on May 21, 2009.

1 25. The above named Respondents did not respond to any of the three
2 notices for payment of the \$500.00 invoice.

3 26. To date, the above named Respondents still owe the \$500.00
4 examination fee for the one day examination.

5 **II. ISSUES OF LAW**

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

7 1. The Department realleges the above stated facts in Paragraphs 1
8 through 26 as fully set forth herein.

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

12 3. RSA 397-A:11,II provides that requested files and business records
13 must be received by the Department within 21 calendar days of
14 request. The licensee will be subject to a \$50.00 a day fine
15 every day after the 21-day period the records are not produced.
16 Respondents currently owe \$11,550.00. Each of the above named
17 Respondents violated this statute on at least one occasion as
18 alleged above.

19 4. RSA 397-A:12,III requires licensees to comply with examination
20 requests with or without prior notice. All books, papers, files,
21 related material, and records of assets shall be subject to the
22 Department's examination. Each of the above named Respondents
23 violated this statute on at least two occasions as alleged above.

24 5. RSA 397-A:12,V provides that the expense of such examination shall
25 be chargeable to and paid by the licensee. Each of the above

1 named Respondents violated this provision on at least two
2 occasions as alleged above. To date, the above named Respondents
3 have failed to pay the two \$500.00 examination invoices.

4 6. RSA 397-A:12,VII provides that every person being examined, and
5 all of the officers, directors, employees, agents, and
6 representatives of such person shall make freely available to the
7 Commissioner or his or her examiners, the accounts, records,
8 documents, files, information, assets, and matters in their
9 possession or control relating to the subject of the examination
10 and shall facilitate the examination. Each of the above named
11 Respondents violated this statute on at least two occasions as
12 alleged above.

13 7. RSA 397-A:13,VI provides that any officer, owner, manager or agent
14 of any licensee shall reply promptly in writing, or other
15 designated form, to any written inquiry from the Department.
16 Respondent Riccardi violated this provision on at least four
17 occasions as alleged above.

18 8. RSA 397-A:17,I provides in part that the Commissioner may by
19 order, upon due notice and opportunity for hearing, assess
20 penalties or deny, suspend, or revoke a license or application if
21 it is in the public interest and the applicant, respondent, or
22 licensee, any partner, officer, member, or director, any person
23 occupying a similar status or performing similar functions, or any
24 person directly or indirectly controlling the applicant,
25 respondent, or licensee: (a) has violated any provision of RSA

1 Chapter 397-A or rules thereunder, or (b) has not met the
2 standards established in RSA Chapter 397-A.

3 9. RSA 397-A:18,I provides that the Department may issue a complaint
4 setting forth charges whenever the Department is of the opinion
5 that the licensee or person over whom the Department has
6 jurisdiction, has violated any provision of RSA Chapter 397-A or
7 orders thereunder.

8 10. RSA 397-A:21,IV provides that any person who, either knowingly or
9 negligently, violates any provision of Chapter 397-A, may upon
10 hearing, and in addition to any other penalty provided for by
11 law, be subject to an administrative fine not to exceed
12 \$2,500.00, or both. Each of the acts specified shall constitute
13 a separate violation, and such administrative action or fine may
14 be imposed in addition to any criminal penalties or civil
15 liabilities imposed by New Hampshire Banking laws.

16 11. RSA 397-A:21,V provides that every person who directly or
17 indirectly controls a person liable under this section, every
18 partner, principal executive officer or director of such person,
19 every person occupying a similar status or performing a similar
20 function, every employee of such person who materially aids in the
21 act constituting the violation, and every licensee or person acting
22 as a common law agent who materially aids in the acts constituting
23 the violation, either knowingly or negligently, may, upon notice
24 and opportunity for hearing, and in addition to any other penalty
25 provided for by law, be subject to suspension, revocation, or

1 denial of any registration or license, including the forfeiture of
2 any application fee, or the imposition of an administrative fine
3 not to exceed \$2,500, or both. Each of the acts specified shall
4 constitute a separate violation, and such administrative action or
5 fine may be imposed in addition to any criminal or civil penalties
6 imposed.

7 **III. RELIEF REQUESTED**

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

- 10 1. Find as fact the allegations contained in section I of this Staff
11 Petition;
- 12 2. Make conclusions of law relative to the allegations contained in
13 section II of this Staff Petition;
- 14 3. Pursuant to RSA 397-A:17, order each of the above named
15 Respondents to show cause why their license should not be revoked;
- 16 4. Assess fines and administrative penalties in accordance with RSA
17 397-A:21, for violations of Chapter 397-A, in the number and
18 amount equal to the violations set forth in section II of this
19 Staff Petition; and
- 20 5. Take such other administrative and legal actions as necessary for
21 enforcement of the New Hampshire Banking Laws, the protection of
22 New Hampshire citizens, and to provide other equitable relief.

