

1 State of New Hampshire Banking Department

)Case No.: 08-203

2 In re the Matter of:

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3 State of New Hampshire Banking

)

)Order to Show Cause

4 Department,

)

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5 Petitioner,

)

)

6 and

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7 Money-Wise Solutions LLC, and James E.

)

)

8 Crickenberger,

)

)

9 Respondents

)

10 NOTICE OF ORDER

11 This Order commences an adjudicative proceeding under the provisions  
12 of RSA 397-A and 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, 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 358-A and  
7 exempt under RSA 358-A:3,I or that may violate any of the provisions of  
8 Titles XXXV and XXXVI and administrative rules adopted thereunder. The  
9 Commissioner may hold hearings relative to such conduct and may order  
10 restitution for a person or persons adversely affected by such conduct. The  
11 Commissioner may utilize all remedies available under the Consumer  
12 Protection Act.

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

14 The above named Respondents have the right to request a hearing on  
15 this Order to Show Cause, as well as the right to be represented by counsel  
16 at each Respondent's own expense. All hearings shall comply with RSA 541-A.  
17 Any such request for a hearing shall be in writing, and signed by the  
18 Respondent or the duly authorized agent of the above named Respondent, and  
19 shall be delivered either by hand or certified mail, return receipt  
20 requested, to the Banking Department, State of New Hampshire, 53 Regional  
21 Drive, Suite 200, Concord, NH 03301. Such hearings will be scheduled within  
22 10 days of the Department's receipt of the request. If the Respondent fails  
23 to appear at the hearing after being duly notified, such person shall be  
24 deemed in default, and the proceeding may be determined against the Respondent

1 upon consideration of the Order to Show Cause, the allegations of which may be  
2 deemed to be true.

3 If any of the above named Respondents fails to request a hearing within  
4 30 calendar days of receipt of such order or reach formal settlement with the  
5 Department within that time frame, then such person shall likewise be deemed  
6 in default, and the orders shall, on the thirty-first day, become permanent,  
7 and shall remain in full force and effect until and unless later modified or  
8 vacated by the Commissioner, for good cause shown.

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

10 The Staff Petition dated January 23, 2009 (a copy of which is attached  
11 hereto) is incorporated by reference hereto.

12 **ORDER**

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

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

18 It is hereby ORDERED, that:

- 19 1. Respondent Money-Wise Solutions LLC ("Respondent Money-Wise")  
20 shall show cause why penalties in the amount of \$5,000.00  
21 should not be imposed against it;
- 22 2. Respondent James E. Crickenberger ("Respondent  
23 Crickenberger") shall show cause why penalties in the amount  
24 of \$7,500.00 should not be imposed against him;



1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 08-203  
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 3 State of New Hampshire Banking )  
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 4 Department, ) Staff Petition  
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 5 Petitioner, ) January 23, 2009  
 )  
 6 and )  
 )  
 7 Money-Wise Solutions LLC, and James E. )  
 )  
 8 Crickenberger, )  
 )  
 9 Respondents )

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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 Money-Wise Solutions LLC (hereinafter "Respondent  
15 Money-Wise") was licensed as a Mortgage Broker from at least  
16 June 29, 2004 until its license expired on December 31, 2007.
- 17 2. Respondent James E. Crickenberger (hereinafter "Respondent  
18 Crickenberger") was the 50% owner and President of Respondent  
19 Money-Wise, when licensed by the Department.

20 Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested  
21 Files in a Timely Manner (1 Count):

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

23 Violation of RSA 397-A:13,VI Failure of Officer and Owner to Respond to  
24 Department Inquiries (1 Count):

- 25 3. Paragraphs 1 through 2 are hereby realleged as fully set forth

1           herein.

2           4. The Department conducted an examination of Respondent Money-Wise  
3           on September 10, 2007, while Respondent Money-Wise was still  
4           licensed with the Department.

5           5. On August 15, 2007, the Department mailed a notice of examination  
6           to Respondent Money-Wise, via U.S. Certified Mail Return Receipt  
7           requested, which Respondents received on August 20, 2007.

8           6. The examination materials were due on September 10, 2007, which is  
9           21 days after the August 20, 2007 receipt of the August 15, 2007  
10          notice of examination.

11          7. The Department received the examination materials on November 15,  
12          2007, which was 66 days late.

13          8. Respondent Money-Wise's late submittal of examination materials  
14          generated a fine of \$3,300.00 (\$50.00 per day x 66 days).

15          9. On November 16, 2007, the Department sent Respondent Money-Wise  
16          the invoice for the late filing of examination materials, to  
17          which the above named Respondents failed to respond.

18          10. To date, the above named Respondents have failed to pay the  
19          \$3,300.00 invoice.

20          11. On January 4, 2008, the Department mailed the report of  
21          examination and invoice for \$535.00 to Respondent Money-Wise, via  
22          U.S. Certified Mail Return Receipt requested, which Respondents  
23          received on January 8, 2008.

24          12. The above named Respondents failed to respond to the January 4,  
25          2008 correspondence from the Department.

1 13. The Department, via U.S. mail, mailed a second notice on February  
2 5, 2008 and a third notice on March 14, 2008.

3 14. The above named Respondents did not respond to any of the three  
4 notices for payment of the \$535.00 invoice.

5 15. To date, the above named Respondents still owe the \$535.00  
6 examination fee for the 1.07 day examination.

7 **II. ISSUES OF LAW**

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

9 1. The Department realleges the above stated facts in Paragraphs 1  
10 through 15 as fully set forth herein.

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

14 3. RSA 397-A:11,II provides that requested files and business records  
15 must be received by the Department within 21 calendar days of  
16 request. The licensee will be subject to a \$50.00 a day fine  
17 every day after the 21-day period the records are not produced.  
18 Respondents currently owe \$3,300.00. Each of the above named  
19 Respondents violated this statute on at least one occasion as  
20 alleged above.

21 4. RSA 397-A:12,V provides that the expense of such examination shall  
22 be chargeable to and paid by the licensee. Each of the above  
23 named Respondents violated this provision on at least one  
24 occasion as alleged above. To date, the above named Respondents  
25 have failed to pay the \$535.00 examination invoice.

1           5. RSA 397-A:13,VI provides that any officer, owner, manager or agent  
2           of any licensee shall reply promptly in writing, or other  
3           designated form, to any written inquiry from the Department.  
4           Respondent Crickenberger violated this provision on at least one  
5           occasion as alleged above.

6           6. RSA 397-A:17,I provides in part that the Commissioner may by  
7           order, upon due notice and opportunity for hearing, assess  
8           penalties or deny, suspend, or revoke a license or application if  
9           it is in the public interest and the applicant, respondent, or  
10          licensee, any partner, officer, member, or director, any person  
11          occupying a similar status or performing similar functions, or  
12          any person directly or indirectly controlling the applicant,  
13          respondent, or licensee: (a) has violated any provision of RSA  
14          Chapter 397-A or rules thereunder, or (b) has not met the  
15          standards established in RSA Chapter 397-A.

16          7. RSA 397-A:18,I provides that the Department may issue a complaint  
17          setting forth charges whenever the Department is of the opinion  
18          that the licensee or person over whom the Department has  
19          jurisdiction, has violated any provision of RSA 397-A or orders  
20          thereunder.

21          8. RSA 397-A:21,IV provides that any person who, either knowingly or  
22          negligently, violates any provision of Chapter 397-A, may upon  
23          hearing, and in addition to any other penalty provided for by  
24          law, be subject to an administrative fine not to exceed  
25          \$2,500.00, or both. Each of the acts specified shall constitute

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

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

20 **III. RELIEF REQUESTED**

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

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

