

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-282
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Eastern Atlantic Mortgage Company Inc,)
)
 8 and Joseph McSharry,)
)
 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,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 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.

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

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

25 If any of the above named Respondents fails to request a hearing within

1 30 calendar days of receipt of such order or reach a formal written and
2 executed settlement with the Department within that time frame, then such
3 person shall likewise be deemed in default, and the orders shall, on the
4 thirty-first day, become permanent, and shall remain in full force and effect
5 until and unless later modified or vacated by the Commissioner, for good cause
6 shown.

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

8 The Staff Petition dated July 1, 2009 (a copy of which is attached
9 hereto) is incorporated by reference hereto.

10 **ORDER**

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

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

16 It is hereby ORDERED, that:

- 17 1. Respondent Eastern Atlantic Mortgage Company Inc ("Respondent
18 Eastern Atlantic") shall show cause why penalties in the
19 amount of \$5,000.00 should not be imposed against it;
- 20 2. Respondent Joseph McSharry ("Respondent McSharry") shall show
21 cause why penalties in the amount of \$7,500.00 should not be
22 imposed against him;
- 23 3. The above named Respondents shall show cause why, in addition
24 to the penalties listed in Paragraphs 1 through 2 above, the
25 \$500.00 examination fee should not be paid to the Department;

1 4. The above named Respondents shall show cause why, in addition
2 to the penalties listed in Paragraphs 1 through 3 above,
3 statutory penalties of \$2,500.00 should not be imposed for
4 failing to file the 2007 annual report;

5 5. Respondents shall be jointly and severally liable for the
6 above amounts alleged in Paragraphs 1 through 4 above;

7 6. The above named Respondents shall show cause why, in addition
8 to the penalties listed in Paragraphs 1 through 5 above,
9 Respondent Eastern Atlantic's license should not be revoked.

10 It is hereby further ORDERED that:

11 7. Along with the administrative penalties listed for the above
12 named Respondents, the outstanding sum of \$3,000.00 shall be
13 immediately paid; and

14 8. Failure to request a hearing within 30 days of the date of
15 receipt or valid delivery of this Order shall result in a
16 default judgment being rendered and administrative penalties
17 imposed upon the defaulting Respondent(s).

18
19 SIGNED,

20
21 Dated: 07/01/09

22 /s/
PETER C. HILDRETH
23 BANK COMMISSIONER
24
25

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-282
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 3 State of New Hampshire Banking)
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 4 Department,) Staff Petition
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 5 Petitioner,) July 1, 2009
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 6 and)
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 7 Eastern Atlantic Mortgage Company Inc,)
)
 8 and Joseph McSharry,)
)
 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 Eastern Atlantic Mortgage Company Inc (hereinafter
15 "Respondent Eastern Atlantic") was licensed as a Mortgage Broker
16 from at least 1998 (with an amended license date of March 13,
17 2006) until its license expired on December 31, 2007.
- 18 2. Respondent Joseph McSharry (hereinafter "Respondent McSharry")
19 was the President of Respondent Eastern Atlantic, when licensed
20 by the Department.

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

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

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

1 4. The Department conducted an examination of Respondent Eastern
2 Atlantic on August 20, 2007, while Respondent Eastern Atlantic
3 was still licensed with the Department. Respondents failed to
4 facilitate the examination.

5 5. On November 20, 2007, the Department mailed the invoice for
6 \$500.00 to Respondent Eastern Atlantic, via U.S. Certified Mail
7 Return Receipt requested, which Respondents received on December
8 3, 2007.

9 6. The above named Respondents failed to respond to the November 20,
10 2007 correspondence from the Department.

11 7. The Department, via U.S. mail, mailed a second notice on January
12 3, 2008 and a third notice on February 5, 2008.

13 8. The above named Respondents did not respond to any of the three
14 notices for payment of the \$500.00 invoice.

15 9. To date, the above named Respondents still owe the \$500.00
16 examination fee for the one day examination.

17 **Violation of RSA 397-A:13, I Failure to File Annual Report (1 Count):**

18 10. Paragraphs 1 through 9 are hereby realleged as fully set forth
19 herein.

20 11. The 2007 Annual Report was due on or before February 1, 2008.

21 12. On January 7, 2008, the Department sent an email notification to
22 all companies who owed the Department annual reports, whether the
23 companies were expired, surrendered or currently licensed.
24 Email delivery was unsuccessful.

25 13. To date, the Respondents have failed to file the 2007 annual

1 report.

2 14. To date, the accrued penalty for failure to file an annual report
3 has reached the maximum cap of \$2,500.00 (\$25.00 per day; maximum
4 \$2,500.00).

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 14 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:12,V provides that the expense of such examination shall
13 be chargeable to and paid by the licensee. Each of the above
14 named Respondents violated this provision on at least one
15 occasion as alleged above. To date, the above named Respondents
16 have failed to pay the \$500.00 examination invoice.

17 4. RSA 397-A:13,I provides that a licensee shall file its annual
18 report on or before February 1 each year concerning operations
19 for the preceding year or license period ending December 31.
20 Each of the above named Respondents violated this provision on at
21 least one occasion as alleged above. The \$2,500.00 is calculated
22 pursuant to RSA 397-A:13,IV below.

23 5. RSA 397-A:13,IV provides that any mortgage banker or broker
24 failing to file the annual report or financial statement within
25 the time prescribed may be required to pay to the Department a

1 penalty of \$25.00 per calendar day for each day the annual report
2 is overdue, for a maximum of \$2,500.00.

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

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

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

23 9. RSA 397-A:21,IV provides that any person who, either knowingly or
24 negligently, violates any provision of Chapter 397-A, may upon
25 hearing, and in addition to any other penalty provided for by

1 law, be subject to an administrative fine not to exceed
2 \$2,500.00, or both. Each of the acts specified shall constitute
3 a separate violation, and such administrative action or fine may
4 be imposed in addition to any criminal penalties or civil
5 liabilities imposed by New Hampshire Banking laws.

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

22 **III. RELIEF REQUESTED**

23 The staff of the Department requests the Commissioner take the following
24 action:

- 25 1. Find as fact the allegations contained in section I of this Staff

