

1 State of New Hampshire Banking Department

2

3 In re the Matter of:) Case No.: 07-078
)
 4 State of New Hampshire Banking) Order to Show Cause
)
 5 Department,) With Immediate Suspension
)
 6 and) And
)
 7 Southstar Funding LLC, Southstar) Cease and Desist Order
)
 8 Partners LLC, Peter R. Norden, ██████████)
)
 9 ██████████, Timbuktu Inc., Kirk Smith,)
)
 10 and Toni Ward,)
)
 11 Respondents)

12
13 NOTICE OF ORDER

14 This Order commences an adjudicative proceeding under the provisions of
15 RSA 397-A, RSA 383:10-d, RSA 541-A and BAN 200 et seq.

16 LEGAL AUTHORITY AND JURISDICTION

17 Pursuant to RSA 397-A:17, the Commissioner of the New Hampshire Banking
 18 Department (hereinafter "the Department") may issue an Order to Show Cause
 19 why a license should not be revoked. RSA 397-A:17 states that the
 20 Department may issue such Order when a licensee violates any provision of the
 21 Chapter, fails to meet the standards espoused in the Chapter, or for other
 22 reasons. RSA 397-A:21 states the Commissioner may impose penalties of up to
 23 \$2,500 per violation of the chapter.

24 Pursuant to RSA 397-A:18 II, the Banking Department of the State of New
 25 Hampshire (hereinafter the "Department") has the authority to issue and cause
 to be served an order requiring any person engaged in any act or practice
 constituting a violation of RSA 397-A or any rule or order thereunder, to
 cease and desist from violations of RSA 397-A.

1 Pursuant to RSA 397-A:17 and RSA 541-A:30 the Commissioner may by order
2 summarily postpone or suspend any license or application pending final
3 determination of any order to show cause, or other order, or of any other
4 proceeding under this section, provided the commissioner finds that the public
5 interest would be irreparably harmed by delay in issuing such order

6 Pursuant to RSA 397-A:20, the Commissioner may issue, amend, or rescind
7 such orders as are reasonably necessary to comply with the provisions of the
8 Chapter.

9 Pursuant to RSA 397-A:21, the Commissioner has the authority to
10 suspend, revoke or deny any license and to impose administrative penalties of
11 up to \$2,500.00 for each violation of New Hampshire banking law and rules.

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

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

20 The above named respondents have the right to request a hearing on this
21 Order to Show Cause and Order to Cease and Desist, as well as the right to be
22 represented by counsel. In accordance with RSA 541-A a hearing shall be held
23 not more than ten days from the signing of this Order.

24 After said hearing and within 20 days of the date of the hearing the
25 commissioner shall issue a further order vacating the cease and desist order or
making it permanent as the facts require and making such findings as are
necessary on the Show Cause order. All hearings shall comply with 541-A. If
the person to whom an order is issued fails to appear at the hearing after

1 being duly notified, such person shall be deemed in default, and the proceeding
2 may be determined against him or her upon consideration of the cease and desist
3 order, the allegations of which may be deemed to be true.

4 If respondents fail to request a hearing or respond to the orders
5 within 30 calendar days of receipt of these orders, respondents shall be
6 deemed in default, the penalties requested will be imposed, and the Cease and
7 Desist will be become permanent on the 31st day.

8 Any such request for a hearing shall be in writing, and signed by the
9 respondent or by the duly authorized agent of the above named respondent, and
10 shall be delivered either by hand or certified mail, return receipt request,
11 to the Banking Department, State of New Hampshire, 64B Old Suncook Road,
12 Concord, NH 03301.

13 **STATEMENT OF ALLEGATIONS**

14 The allegations contained in the Staff Petition dated April 2, 2007 (a
15 copy of which is attached hereto) are incorporated by reference hereto.

16 **ORDER**

17 WHEREAS, finding it necessary and appropriate and in the public
18 interest, and consistent with the intent and purposes of the New Hampshire
19 banking laws, and

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

22 It is hereby ORDERED, that:

- 23 1. The Respondents are hereby ordered to immediately cease
24 violating New Hampshire law; and
- 25 2. The Respondents are hereby Ordered to cease taking
applications for mortgage loans until such time as this Order
is rescinded; and

State of New Hampshire Banking Department

In re the Matter of:) Case No.: 07-078
)
State of New Hampshire Banking) Staff Petition
)
Department,)
)
Petitioner,) April 2, 2007
)
and)
)
Southstar Funding LLC, Southstar)
)
Partners LLC, Peter R. Norden, [REDACTED])
)
[REDACTED], Timbuktu Inc., Kirk Smith,
and Toni Ward,
Respondents

STATEMENT OF ALLEGATIONS

- I. The Staff of the Banking Department, State of New Hampshire (hereinafter referred to as the "Department") alleges the following facts:
1. Southstar Funding LLC (hereinafter, "Respondent Southstar" or "Southstar" or "licensee") is currently licensed as a Mortgage Banker.
 2. Respondent's principal place of business is Atlanta, Georgia.
 3. Respondent Southstar is owned 51% by Respondent Southstar Funding Partners (hereinafter "Respondent Partners" or "Partners") with the remainder being owned by Respondent Timbuktu Inc. (hereinafter "Respondent Timbuktu" or "Timbuktu")

1 4. Respondent Partners has as members Respondents Peter R. Norden and
2 [REDACTED] (hereinafter "Respondent Norden" and "Respondent
3 [REDACTED]", respectively).

4 5. Respondent Kirk Smith (hereinafter "Respondent Smith") is the
5 president of Respondent Southstar.

6 6. Respondent Toni Ward (hereinafter "Respondent Ward") is the vice-
7 president of Southstar and its compliance officer.

8 7. On or about April 2, 2007 the Department became aware of the
9 financial instability of Respondent including its decision to
10 immediately stop doing business of any kind and its attempt to
11 illegally recover funds from settlement agents.

12 8. Respondent failed to notify the Department of its decision to cease
13 doing business and its intended abandonment of all business
14 operations.

15 9. On April 2, 2007 by email communication from Respondent Ward the
16 Department was able to confirm the licensee had no present ability to
17 respond to any regulatory inquiries, give a pipeline report, or
18 otherwise confirm their level of ongoing business in New Hampshire.

19 10. The Respondent is currently unable to operate with the financial
20 integrity necessary to warrant the public confidence.

21 11. If these conditions existed at time of Respondent's application the
22 Commissioner would have been justified in denying the license.

23
24 **ISSUES OF LAW**

25 II. The staff of the Department, alleges the following issues of law:

- 1 1. The Department realleges the above stated facts in paragraphs 1
2 through 11 of Section 1.
- 3 2. The Department has jurisdiction over the licensing and
4 regulation of persons engaged in mortgage banker activities
5 pursuant to NH RSA 397-A:3.
- 6 3. Pursuant to New Hampshire Banking law, RSA 397-A:5 the
7 Commissioner at time of completed application has 120 days to
8 determine whether the applicant's financial resources,
9 experience, personnel, and record of past or proposed conduct
10 warrant the public's confidence and issuance of a license.
- 11 4. Licensees must notify the Department within 5 business days of
12 the occurrence of certain events according to BAN 2407.01. Said
13 events include the termination or default of existing lines of
14 credit and the exercise of recourse rights by investors.
- 15 5. Pursuant to RSA 397-A:14-b licensee's must fund loans at
16 closing.
- 17 6. Pursuant to RSA 397-A:17 the Commissioner may issue an order
18 requiring a person to whom any license has been granted or any
19 person under the commissioner's jurisdiction to show cause why
20 the license should not be revoked, suspended, or penalties
21 imposed, or both, for violations of this chapter.
- 22 7. Pursuant to RSA 397-A:17 the Commissioner may issue an order
23 requiring a person to whom any license has been granted or any
24 person under the commissioner's jurisdiction to show cause why
25 the license should not be revoked, suspended, or penalties
 imposed when the licensee or a person under its control is not

1 qualified on the basis of such factors as experience, knowledge,
2 and financial integrity.

3 8. Pursuant to RSA 397-A:18 the Department may issue a Cease and
4 Desist Order against anyone who it has reasonable cause to
5 believe is in violation of the provisions of the Chapter or a
6 rule or order under the Chapter.

7 9. Pursuant to RSA 397-A:20 the Commissioner may issue such order
8 as are reasonably necessary to carry out the provisions of the
9 Chapter.

10 10. RSA 397-A:21 IV provides that any person who, either knowingly
11 or negligently, violates any provision of Chapter 397-A, may
12 upon hearing, and in addition to any other penalty provided for
13 by law, be subject to an administrative fine not to exceed
14 \$2,500, or both. Each of the acts specified shall constitute a
15 separate violation, and such administrative action or fine may
16 be imposed in addition to any criminal penalties or civil
17 liabilities imposed by New Hampshire Banking laws.

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

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

8 **RELIEF REQUESTED**

9 III. The staff of the Department requests the Commissioner take the
10 following Action:

- 11 1. Find as fact the allegations contained in section I of this
12 petition;
- 13 2. Make conclusions of law relative to the allegations contained
14 in section II of this petition;
- 15 3. Assess fines and administrative penalties in accordance with
16 RSA 397-A:21, for violations of Chapter 397-A, in the number
17 and amount equal to the violations set forth in section II of
18 this petition against each of the named Respondents; and
- 19 4. Order an immediate suspension of their New Hampshire mortgage
20 banker license; and
- 21 5. Order Respondent to show cause why their license should not be
22 Revoked; and
- 23 6. In accordance with RSA 397-A:18, Order the Respondent to Cease
24 and Desist from violations of New Hampshire Law; and
- 25 7. In accordance with RSA 397-A:20, Order the Respondent to
immediately cease taking mortgage applications; and

