

1 State of New Hampshire Banking Department

2	In re the Matter of:) Case No.: 10-004
)
3	State of New Hampshire Banking)
4	Department,) Order to Show Cause and
)
5	Petitioner,) Cease and Desist Order
)
6	and)
)
7	Dargon Law Firm P.L.L.C. (a/k/a)
)
8	www.dargonlaw.com), and Daniel Paul)
)
9	Dargon, Esq.,)
)
10	Respondents)

11 NOTICE OF ORDER

12 This Order to Show Cause and Cease and Desist Order commences an
13 adjudicative proceeding under the provisions of RSA Chapter 397-A and RSA
14 Chapter 541-A.

15 LEGAL AUTHORITY AND JURISDICTION

16 Pursuant to RSA 397-A:17,I the Commissioner of the New Hampshire
17 Banking Department (hereinafter "Department") has the authority to issue an
18 order to show cause to any person to whom a license has been granted or any
19 person under the Commissioner's jurisdiction why license revocation or
20 suspension and/or penalties for violations of RSA Chapter 397-A should not
21 be imposed. The Commissioner may by order summarily postpone or suspend any
22 license or application pending final determination of any order to show
23 cause, or other order, or of any other proceeding under RSA 397-A:17,
24 provided that the Commissioner finds that the public interest would be
25 irreparably harmed by delaying in issuing such order.

1 RSA 397-A:17,I further provides in part that the Commissioner may by
2 order, upon due notice and opportunity for hearing, assess penalties or
3 deny, suspend, decline to renew, or revoke a license or application and bar
4 any person from licensure if it is in the public interest and the
5 applicant, respondent, or licensee, any partner, officer, member, or
6 director, any person occupying a similar status or performing similar
7 functions, or any person directly or indirectly controlling the applicant,
8 respondent, or licensee has, inter alia,: (a) violated any provision of RSA
9 Chapter 397-A or rules thereunder and (b) not met the standards established
10 in RSA Chapter 397-A.

11 Pursuant to RSA 397-A:17,II(a), the Commissioner has the authority to
12 order or direct persons subject to RSA Chapter 397-A to cease and desist
13 from conducting business, including immediate temporary orders to cease and
14 desist.

15 Pursuant to RSA 397-A:17,II(b), the Commissioner has the authority to
16 order or direct persons subject to RSA Chapter 397-A to cease any harmful
17 activities or violations of RSA Chapter 397-A, including immediate
18 temporary orders to cease and desist.

19 Pursuant to RSA 397-A:17,II(e)(1) the Commissioner has the authority
20 to remove or ban from office or employment, including license revocation,
21 any person conducting business under RSA Chapter 397-A who violates RSA
22 Chapter 397-A.

23 Pursuant to RSA 397-A:17,II(e)(4) the Commissioner has the authority
24 to remove or ban from office or employment, including license revocation,
25 any person conducting business under RSA Chapter 397-A if by a

1 preponderance of evidence the Commissioner determines that the person no
2 longer demonstrates the financial responsibility, character, and general
3 fitness such as to command the confidence of the community and to warrant a
4 determination that the person subject to RSA Chapter 397-A will operate
5 honestly, fairly, and efficiently within the purposes of RSA Chapter 397-A.

6 Pursuant to RSA 397-A:17,VIII, in addition to any other penalty
7 provided for under RSA Chapter 397-A or RSA 383:10-d, after notice and
8 opportunity for hearing, the Commissioner may enter an order of rescission,
9 restitution, or disgorgement of profits directed to a person who has
10 violated RSA Chapter 397-A, or a rule or order thereunder. Rescission,
11 restitution, or disgorgement of profits shall be in addition to any other
12 penalty provided for under RSA 397-A or RSA 383:10-d.

13 Pursuant to RSA 397-A:17,IX, in addition to any other penalty
14 provided for under RSA Chapter 397-A, after notice and opportunity for
15 hearing, the Commissioner may assess fines and penalties against a mortgage
16 loan originator in an amount not to exceed \$25,000.00 (for each violation)
17 if the Commissioner finds the mortgage loan originator has violated or
18 failed to comply with the S.A.F.E. Mortgage Licensing Act of 2008, Public
19 Law 110-289, Title V or any regulation or order issued thereunder. Each of
20 the acts specified shall constitute a separate violation.

21 Pursuant to RSA 397-A:17,X, an action to enforce any provision of RSA
22 Chapter 397-A shall be commenced within 6 years after the date on which the
23 violation occurred.

24 Pursuant to RSA 397-A:18, the Department has the authority to issue a
25 complaint setting forth charges whenever the Department is of the opinion

1 that the licensee or person over whom the Department has jurisdiction is
2 violating or has violated any provision of RSA Chapter 397-A, or any rule
3 or order thereunder.

4 Pursuant to RSA 397-A:18,II, the Department has the authority to
5 issue and cause to be served an order requiring any person engaged in any
6 act or practice constituting a violation of RSA Chapter 397-A or any rule
7 or order thereunder, to cease and desist from violations of RSA Chapter
8 397-A.

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

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

16 Pursuant to RSA 397-A:21,I-a, any person who willfully violates any
17 provisions of RSA 397-A:2,VI or VII or a cease and desist order or
18 injunction issued pursuant to RSA 397-A:18,II shall be guilty of a class B
19 felony. Each of the acts specified shall constitute a separate offense and
20 a prosecution or conviction for any one of such offenses shall not bar
21 prosecution or conviction of any other offense.

22 Pursuant to RSA 397-A:12,VI, in any investigation to determine
23 whether any person has violated or is about to violate RSA Chapter 397-A,
24 or any rule or order thereunder, upon the Commissioner's finding that the
25 person violated RSA Chapter 397-A, or a rule or order thereunder, or the

1 person charged with the violation being found in default, the Commissioner
2 shall be entitled to recover the cost of the investigation, in addition to
3 any other penalty provided for under RSA Chapter 397-A.

4 Pursuant to RSA 397-A:16,IV, in referencing RSA 397-A:3, only
5 mortgage brokers, mortgage bankers, and mortgage originators licensed under
6 the provisions of RSA Chapter 397-A shall be entitled to retain commissions
7 for services rendered.

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

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

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

1 person shall be deemed in default, and the proceeding may be determined
2 against the Respondent upon consideration of the Order to Show Cause and Cease
3 and Desist Order, the allegations of which may be deemed to be true.

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

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

12 The Staff Petition dated April 1, 2010 (a copy of which is attached
13 hereto) is incorporated by reference hereto.

14 **ORDER**

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

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

21 WHEREAS, finding that the allegations contained in the Staff
22 Petition, if proved by a preponderance of the evidence that the above named
23 persons no longer demonstrates the financial responsibility, character, and
24 general fitness such as to command the confidence of the community and to
25 warrant a determination that the person subject to RSA Chapter 397-A will

1 operate honestly, fairly, and efficiently within the purposes of RSA
2 Chapter 397-A, forms the legal basis of the relief requested; and

3 WHEREAS, finding that the allegations contained in the Staff
4 Petition, if prove the above named persons violated RSA Chapter 397-A or a
5 rule or order thereunder, or if the above named person(s) charged with such
6 violation(s) are found in default, recovery of investigation costs in
7 addition to any other penalty would be appropriate;

8 It is hereby ORDERED, that:

- 9 1. The above named Respondents are hereby ordered to cease
10 and desist from conducting business regulated by RSA
11 Chapter 397-A in New Hampshire;
- 12 2. The above named Respondents are hereby ordered to cease
13 and desist from violating New Hampshire state law and
14 federal law and any rules or orders thereunder;
- 15 3. The above named Respondents are hereby ordered to cease
16 and desist from closing any consumer residential loan
17 modifications currently in the pipeline but must transfer
18 those consumers currently in the pipeline to a duly
19 licensed New Hampshire Mortgage Loan Originator through a
20 duly licensed New Hampshire Mortgage Broker or Mortgage
21 Banker and must obtain the Department's approval prior to
22 such transfer(s);
- 23 4. The above named Respondents are hereby ordered to cease
24 and desist from obtaining or signing any new clients who
25 may need or seek consumer residential mortgage loan

1 modifications subject to RSA Chapter 397-A for properties
2 located in New Hampshire;

3 5. The above named Respondents are hereby ordered to cease
4 and desist from any and all advertising related directly
5 or indirectly to consumer residential mortgage loan
6 modifications subject to RSA 397-A for properties located
7 in New Hampshire;

8 6. Respondent Dargon Law Firm, P.L.L.C. (a/k/a
9 www.dargonlaw.com) ("Respondent Dargon Law") shall show
10 cause penalties in the amount of \$3,765,000.00 should not
11 be imposed against it;

12 7. Respondent Daniel Paul Dargon, Esq. ("Respondent Dargon")
13 shall show cause why penalties in the amount of
14 \$6,265,000.00 should not be imposed against him plus any
15 additional penalty not to exceed \$25,000.00 for each
16 violation (\$62,627,500.00) pursuant to RSA 397-A:17, IX;

17 8. The above named Respondents are ordered to show cause why,
18 in addition to the penalties listed in Paragraphs 1
19 through 7 above, a refund to Respondent Dargon Law's
20 consumer residential mortgage loan modification clients of
21 any and all fees charged and/or collected should not be
22 given;

23 9. The above named Respondents are ordered to show cause why,
24 in addition to the penalties listed in Paragraphs 1
25

1 through 8 above, payment of the Department's cost of
2 investigation should not be given;

3 10. Nothing in this Order to Show Cause and Cease and Desist
4 Order shall prevent the Department from taking any further
5 administrative action under New Hampshire law;

6 11. Nothing in this Order to Show Cause and Cease and Desist
7 Order shall prevent the Attorney General from bringing an
8 action against the above named Respondents in any New
9 Hampshire superior court, with or without prior
10 administrative action by the Commissioner;

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

14 13. Respondent Dargon shall each show cause why, in addition
15 to the penalties listed in Paragraphs 1 through 12 above,
16 he should not be removed or banned from office or
17 employment as a New Hampshire Mortgage Loan Originator;

18 It is hereby further ORDERED that:

19 14. Along with the administrative penalties listed for the
20 above named Respondents, any applicable consumer
21 restitution, the Department's cost of investigation, and
22 any other applicable rescission, restitution or
23 disgorgement of profits shall be immediately paid; and
24
25

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

6
7 SIGNED,

8
9 Dated: 04/01/10

_____/s/
PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 10-004
)
 3 State of New Hampshire Banking)
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 4 Department,) Staff Petition
)
 5 Petitioner,) April 1, 2010
)
 6 and)
)
 7 Dargon Law Firm P.L.L.C. (a/k/a)
)
 8 www.dargonlaw.com), and Daniel Paul)
)
 9 Dargon, Esq.,)
)
 10 Respondents)

11 I. STATEMENT OF ALLEGATIONS

12 The Staff of the Banking Department, State of New Hampshire (hereinafter
13 "Department") alleges the following facts:

14 Facts Common on All Counts:

- 15 1. Respondent Dargon Law Firm, P.L.L.C. (a/k/a www.dargonlaw.com)
 16 (hereinafter "Respondent Dargon Law") has been registered with
 17 the New Hampshire Secretary of State as a limited liability
 18 company since November 14, 2008.
- 19 2. Respondent Daniel Paul Dargon, Esq. (hereinafter "Respondent
 20 Dargon") has been a member of the New Hampshire Bar Association
 21 since 2008.
- 22 3. Respondent Dargon Law is not a New Hampshire Mortgage Banker or
 23 New Hampshire Mortgage Servicer since it does not fund or
 24 service such New Hampshire consumer residential mortgage loans
 25 once they are modified. Respondent Dargon Law acts as a New

1 Hampshire Mortgage Broker.

2 4. Respondent Dargon Law is not a licensed New Hampshire Mortgage
3 Broker and has not submitted an application for licensure.

4 5. Respondent Dargon is not a licensed New Hampshire Mortgage Loan
5 Originator and has not submitted an application for licensure.

6 6. Respondent Dargon Law has no licensed New Hampshire Mortgage
7 Loan Originators or applicants for licensure with the
8 Department.

9 Violation of RSA 397-A:3,I via RSA 397-A:2,III Engaging in Mortgage
10 Banking/Brokering In Its Own Name or On Behalf of Other Persons Without A
11 New Hampshire Mortgage Broker License (750 Counts Against Each Respondent)

12 Violation of RSA 397-A:3,II Conducting Mortgage Loan Originator Activity in
13 New Hampshire Without a New Hampshire Mortgage Loan Originator License (250
14 Counts Against Respondent Dargon Only):

15 Violation of RSA 397-A:12,VII Failure to Facilitate Exam (1 Count Against
16 Each Respondent):

17 Violation of RSA 397-A:14,IV(d) Conducting Business or Assisting/ Aiding/
18 Abetting Any Person in the Conduct of Business Without a Valid New Hampshire
19 Mortgage Broker License Required by RSA Chapter 397-A (750 Counts Against
20 Each Respondent):

21 Violation of RSA 397-A:14,IV(d) Conducting Business or Assisting/ Aiding/
22 Abetting Any Person in the Conduct of Business Without a Valid New
23 Hampshire Mortgage Loan Originator License (750 Counts Against Respondent
24 Dargon):

25 Violation of RSA 397-A:17,I(a) Violation of RSA Chapter 397-A Generally (4

1 Counts Against Each Respondent):

2 Violation of RSA 397-A:17,I(b) Failing to Meet Standards Established by RSA

3 Chapter 397-A (1 Count Against Each Respondent):

4 7. Paragraphs 1 through 6 are hereby realleged as fully set forth
5 herein.

6 8. Between approximately December 2009 through about February
7 2010, a New Hampshire resident who is also a Department
8 Examiner, received a solicitation offering loan modifications
9 from Respondent Dargon Law.

10 9. The solicitation focuses on loan modifications ("restructuring
11 loans") and as an aside mentions additional services such as
12 help with elimination of credit card bills and other debts.

13 10. On February 9, 2010, the Department mailed an inquiry letter
14 via U.S. Certified Mail Return Receipt to the above named
15 Respondents.

16 11. On February 10, 2010, the return receipt indicated it was
17 signed by someone at Respondent Dargon Law.

18 12. On February 10, 2010, the Department and the above named
19 Respondents communicated regarding the Respondents' position
20 that Department licensure is not required.

21 13. On February 17, 2010, the Department's Investigator visited the
22 above named Respondents and was only provided a copy of the
23 standard client fee agreement and copy of the response mailed
24 to the Department.

25 14. The above named Respondents, both verbally and in a letter

1 dated February 18, 2010, refused to facilitate the examination
2 and provide the documents the Department previously requested.

3 15. The above named Respondents failed to facilitate the
4 examination by refusing to give the Department's Investigator
5 copies of (a) any advertisements, solicitations and
6 communications, (b) any mailing lists regarding loan
7 modification activity, (c) all leads generated from a third
8 party company and (d) a full client list. The above named
9 Respondents also failed to provide a requested explanation of
10 how the above named Respondents made payments to all
11 advertising agencies, agents, marketing firms and third party
12 companies who generate leads on Respondent Dargon Law's behalf.

13 16. A review of Respondent Dargon Law's website clearly shows that
14 the above named Respondents actively conduct consumer
15 residential mortgage loan modifications. The introductory
16 paragraph to Respondents' mortgage loan modification product is
17 "If you are struggling or late with your mortgage, we can
18 help".

19 17. In conversations with Department staff, Respondent Dargon
20 admitted that the law firm (Respondent Dargon Law) has a
21 screening process whereby it takes consumers as clients only if
22 those consumers meet certain loan modification criteria.

23 18. In subsequent conversations with the Department, Respondent
24 Dargon has communicated each attorney working at Respondent
25 Dargon Law who works on mortgage loan modifications has at any

1 given point in time about fifty (50) open mortgage loan
2 modification files.

3 19. There are approximately five attorneys employed by Respondent
4 Dargon Law who conduct mortgage loan modifications. Five
5 attorneys multiplied by approximately fifty open mortgage loan
6 modification files by each attorney is 250 open clients. With
7 an approximate four month time period to obtain and process a
8 mortgage loan modification, over a one year period, there have
9 been at minimum 750 mortgage loan modifications conducted by
10 and/or assisted, aided, or abetted by Respondent Dargon Law and
11 Respondent Dargon.

12 20. The sample contract the Department received from the above
13 named Respondents indicates that an upfront fee of \$2,500.00 is
14 received for services rendered.

15 21. The sample contract given by the above named Respondents states
16 as the first option for the Consumer to check under Scope of
17 Services and after "Client is hiring Dargon Law to represent
18 Client in one or more of the following matters" the following:
19 Client's request for negotiation of a loan modification on
20 Client's residential real property.

21 22. If the above named Respondents obtained such monies, those
22 monies should be refunded to those New Hampshire consumers for
23 such consumer residential mortgage loan modifications.

24 23. Further, the above named Respondents are also responsible to
25 pay any applicable rescission, other restitution or

1 disgorgement of profits.

2 24. On or about March 30, 2010, the Department offered the above
3 named Respondents the opportunity to voluntarily stop taking
4 such consumer residential loan modification cases and refund
5 fees or the Department would seek a public enforcement action.
6 The above named Respondents simply refused to stop taking such
7 cases.

8 **II. ISSUES OF LAW**

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

- 10 1. The Department realleges the above stated facts in Paragraphs 1
11 through 24 as fully set forth herein.
- 12 2. The Department has jurisdiction over the licensing and
13 regulation of persons engaged in mortgage banker or broker
14 activities pursuant to RSA 397-A:2 and RSA 397-A:3.
- 15 3. RSA 397-A:1,X provides that "licensee" means a person, whether
16 mortgage banker, mortgage broker, or mortgage originator, duly
17 licensed by the Commissioner pursuant to the provisions of RSA
18 Chapter 397-A.
- 19 4. RSA 397-A:1,XVII(a) provides that an originator or mortgage
20 loan originator or mortgage originator or loan originator means
21 an individual who for direct or indirect compensation or gain
22 or in the expectation of direct or indirect compensation or
23 gain, takes a mortgage application or offers, negotiates,
24 solicits, arranges, or finds a mortgage loan or who assists a
25 consumer in obtaining or applying to obtain a mortgage loan by,

1 among other things, advising on loan terms (including rates,
2 fees, and other costs), preparing loan packages, or collecting
3 information on behalf of the consumer with regard to a mortgage
4 loan or who offers or negotiates terms of a residential
5 mortgage loan. No individual may act as an originator for more
6 than one mortgage broker, mortgage servicer, or mortgage
7 banker. A sole proprietor licensed as a mortgage broker,
8 mortgage servicer, or mortgage banker shall also obtain a
9 license as a mortgage originator prior to engaging in the
10 activities of a mortgage originators.

11 5. RSA 397-A:2,III requires persons subject to or licensed under
12 RSA Chapter 397-A to abide by applicable federal laws and
13 regulations, the laws and rules of the State of New Hampshire,
14 and the orders of the Commissioner. Any violation of such law,
15 regulation, order, or rule is a violation of RSA Chapter 397-A.
16 Each of the above named Respondents violated this provision on
17 at least seven hundred fifty (750) occasions as alleged above.

18 6. RSA 397-A:3,I provides that any person not exempt under RSA
19 397-A:4 that, in its own name or on behalf of other persons,
20 engages in the business of making or brokering mortgage loans
21 secured by real property located in the State of New Hampshire
22 shall be required to obtain a license from the Department.
23 Persons licensed as mortgage bankers may engage in the mortgage
24 broker business without obtaining a separate license.

25

1 7. RSA 397-A:3,II provides that it is unlawful for any individual
2 to transact business in this state as an originator unless such
3 individual is licensed under RSA Chapter 397-A. An individual
4 shall not engage in the business of a mortgage loan originator
5 with respect to any dwelling without first obtaining and
6 maintaining annually a license under RSA Chapter 397-A and each
7 licensed mortgage loan originator shall register with and
8 obtain a valid unique identifier issued by the Nationwide
9 Mortgage Licensing System and Registry. Respondent Dargon
10 violated this provision on at least two hundred fifty (250)
11 occasions as alleged above.

12 8. RSA 397-A:12,VI provides that in any investigation to determine
13 whether any person has violated or is about to violate RSA
14 Chapter 397-A, or any rule or order thereunder, upon the
15 Commissioner's finding that the person violated RSA Chapter
16 397-A, or a rule or order thereunder, or the person charged
17 with the violation being found in default, the Commissioner
18 shall be entitled to recover the cost of the investigation, in
19 addition to any other penalty provided for under RSA Chapter
20 397-A.

21 9. RSA 397-A:12,VII provides that every person being examined, and
22 all of the officers, directors, employees, agents, and
23 representatives of such person shall make freely available to
24 the Commissioner or his or her examiners, the accounts,
25 records, documents, files, information, assets, and matters in

1 their possession or control relating to the subject of the
2 examination and shall facilitate the examination. Each of the
3 above named Respondents violated this statute on at least one
4 occasion as alleged above.

5 10. RSA 397-A:14,IV(d) provides that no person subject to RSA
6 Chapter 397-A shall conduct any business covered by RSA Chapter
7 397-A without holding a valid license as required under RSA
8 Chapter 397-A, or assist or aid and abet any person in the
9 conduct of business under RSA Chapter 397-A without a valid
10 license as required under RSA Chapter 397-A. Respondent Dargon
11 Law violated this provision on at least seven hundred fifty
12 (750) occasions and Respondent Dargon violated this provision
13 on at least fifteen hundred (1,500) occasions as alleged above.

14 11. RSA 397-A:16,IV provides, in referencing RSA 397-A:3, only
15 mortgage brokers, mortgage bankers, and mortgage originators
16 licensed under the provisions of RSA Chapter 397-A shall be
17 entitled to retain commissions for services rendered.

18 12. RSA 397-A:17,I provides that the Commissioner of the New
19 Hampshire Banking Department (hereinafter "Department") has the
20 authority to issue an order to show cause to any person to whom
21 a license has been granted or any person under the
22 Commissioner's jurisdiction why license revocation or
23 suspension and/or penalties for violations of RSA Chapter 397-A
24 should not be imposed. The Commissioner may by order summarily
25 postpone or suspend any license or application pending final

1 determination of any order to show cause, or other order, or of
2 any other proceeding under RSA 397-A:17, provided that the
3 Commissioner finds that the public interest would be
4 irreparably harmed by delaying in issuing such order.

5 13. RSA 397-A:17, I further provides in part that the Commissioner
6 may by order, upon due notice and opportunity for hearing,
7 assess penalties or deny, suspend, decline to renew, or revoke
8 a license or application and bar any person from licensure 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 has, inter alia,: (a) violated any
14 provision of RSA Chapter 397-A or rules thereunder and (b) not
15 met the standards established in RSA Chapter 397-A. The above
16 named Respondents each violated subparagraph (a) on at least
17 four (4) occasions each and subparagraph (b) on at least one
18 (1) occasion as alleged above.

19 14. Pursuant to RSA 397-A:17, II(a), the Commissioner has the
20 authority to order or direct persons subject to RSA Chapter
21 397-A to cease and desist from conducting business, including
22 immediate temporary orders to cease and desist.

23 15. Pursuant to RSA 397-A:17, II(b), the Commissioner has the
24 authority to order or direct persons subject to RSA Chapter
25 397-A to cease any harmful activities or violations of RSA

1 Chapter 397-A, including immediate temporary orders to cease
2 and desist.

3 16. Pursuant to RSA 397-A:17,II(e)(1) the Commissioner has the
4 authority to remove or ban from office or employment, including
5 license revocation, any person conducting business under RSA
6 Chapter 397-A who violates RSA Chapter 397-A.

7 17. Pursuant to RSA 397-A:17,II(e)(4) the Commissioner has the
8 authority to remove or ban from office or employment, including
9 license revocation, any person conducting business under RSA
10 Chapter 397-A if by a preponderance of evidence the
11 Commissioner determines that the person no longer demonstrates
12 the financial responsibility, character, and general fitness
13 such as to command the confidence of the community and to
14 warrant a determination that the person subject to RSA Chapter
15 397-A will operate honestly, fairly, and efficiently within the
16 purposes of RSA Chapter 397-A.

17 18. Pursuant to RSA 397-A:17,VIII, in addition to any other penalty
18 provided for under RSA Chapter 397-A or RSA 383:10-d, after
19 notice and opportunity for hearing, the Commissioner may enter
20 an order of rescission, restitution, or disgorgement of profits
21 directed to a person who has violated RSA Chapter 397-A, or a
22 rule or order thereunder. Rescission, restitution, or
23 disgorgement of profits shall be in addition to any other
24 penalty provided for under RSA 397-A or RSA 383:10-d.

25 19. Pursuant to RSA 397-A:17,IX, in addition to any other penalty

1 provided for under RSA Chapter 397-A, after notice and
2 opportunity for hearing, the Commissioner may assess fines and
3 penalties against a mortgage loan originator in an amount not
4 to exceed \$25,000.00 (for each violation) if the Commissioner
5 finds the mortgage loan originator has violated or failed to
6 comply with the S.A.F.E. Mortgage Licensing Act of 2008, Public
7 Law 110-289, Title V or any regulation or order issued
8 thereunder. Each of the acts specified shall constitute a
9 separate violation. Respondent Dargon violated at least five
10 (5) New Hampshire statutory provisions on at least two thousand
11 five hundred and five (2,505) occasions total as alleged above.

12 20. Pursuant to RSA 397-A:17,X, an action to enforce any provision
13 of RSA Chapter 397-A shall be commenced within 6 years after
14 the date on which the violation occurred.

15 21. Pursuant to RSA 397-A:18,I the Department has the authority to
16 issue a complaint setting forth charges whenever the Department
17 is of the opinion that the licensee or person over whom the
18 Department has jurisdiction is violating or has violated any
19 provision of RSA Chapter 397-A, or any rule or order
20 thereunder.

21 22. Pursuant to RSA 397-A:18,II, the Department has the authority
22 to issue and cause to be served an order requiring any person
23 engaged in any act or practice constituting a violation of RSA
24 Chapter 397-A or any rule or order thereunder, to cease and
25 desist from violations of RSA Chapter 397-A.

1 23. Pursuant to RSA 397-A:20,IV the Commissioner may issue, amend,
2 or rescind such orders as are reasonably necessary to comply
3 with the provisions of RSA Chapter 397-A.

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

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

1 administrative action or fine may be imposed in addition to any
2 criminal or civil penalties imposed.

3 26. RSA 397-A:21,VI provides that the attorney general on the
4 Commissioner's behalf, may, with or without prior
5 administrative action by the Commissioner, bring an action
6 against any person in any superior court in New Hampshire to
7 enjoin the acts or practices and to enforce compliance with RSA
8 Chapter 397-A or any rules or orders thereunder. Upon a proper
9 showing, a permanent or temporary injunction, bar, restraining
10 order, or writ of mandamus shall be granted and a receiver may
11 be appointed for the defendant or the defendant's assets. The
12 court shall not require the Commissioner or attorney general to
13 post a bond. The court shall have the power to enforce
14 obedience to such injunction, in addition to all of the court's
15 customary powers, by a fine not exceeding \$10,000.00 or by
16 imprisonment, or both. In a proceeding in superior court under
17 RSA Chapter 397-A:21,VI where the state prevails, the
18 Commissioner and the attorney general shall be entitled to
19 recover all costs and expenses of investigation, and the court
20 shall include the costs in its final judgment.

21 27. Pursuant to RSA 397-A:21,I-a, any person who willfully violates
22 any provisions of RSA 397-A:2,VI or VII or a cease and desist
23 order or injunction issued pursuant to RSA 397-A:18,II shall be
24 guilty of a class B felony. Each of the acts specified shall
25 constitute a separate offense and a prosecution or conviction

1 for any one of such offenses shall not bar prosecution or
2 conviction of any other offense.

3 28. Pursuant to RSA 383:10-d, the Commissioner shall investigate
4 conduct that is or may be an unfair or deceptive act or
5 practice under RSA Chapter 358-A and exempt under RSA 358-A:3,I
6 or that may violate any of the provisions of Titles XXXV and
7 XXXVI and administrative rules adopted thereunder. The
8 Commissioner may hold hearings relative to such conduct and may
9 order restitution for a person or persons adversely affected by
10 such conduct.

11 **III. RELIEF REQUESTED**

12 The staff of the Department requests the Commissioner take the following
13 action:

- 14 1. Pursuant to RSA 397-A:17,I and RSA 397-A:20,IV, find this
15 action and all resulting findings and orders herein necessary
16 and appropriate and in the public interest, and consistent with
17 the intent and purposes of the New Hampshire banking laws;
- 18 2. Find that the allegations contained in the Staff Petition, are
19 true and correct and form the legal basis of the relief
20 requested;
- 21 3. Pursuant to RSA 397-A:17,II(e)(4), find that the allegations
22 contained in this Staff Petition, if proved by a preponderance
23 of the evidence that the above named person no longer
24 demonstrates the financial responsibility, character, and
25 general fitness such as to command the confidence of the

1 community and to warrant a determination that the person
2 subject to RSA Chapter 397-A will operate honestly, fairly, and
3 efficiently within the purposes of RSA Chapter 397-A, forms the
4 legal basis of the relief requested;

5 4. Pursuant to RSA 397-A:12,VI find that the allegations contained
6 in the Staff Petition, if prove the above named persons
7 violated RSA Chapter 397-A or a rule or order thereunder, or if
8 the above named person(s) charged with such violation(s) are
9 found in default, recovery of investigation costs in addition
10 to any other penalty would be appropriate;

11 5. Find as fact the allegations contained in section I of this
12 Staff Petition;

13 6. Make conclusions of law relative to the allegations contained
14 in section II of this Staff Petition;

15 7. Pursuant to RSA 397-A:17,II (a),(b) and (c) and RSA 397-
16 A:18,II, order the above named Respondents to cease and desist
17 from conducting business regulated by RSA Chapter 397-A in New
18 Hampshire;

19 8. Pursuant to RSA 397-A:17,II (a),(b) and (c) and RSA 397-
20 A:18,II, order the above named Respondents to cease and desist
21 from violating New Hampshire state law and federal law and any
22 rules or orders thereunder;

23 9. Pursuant to RSA 397-A:17,II (a),(b) and (c) and RSA 397-
24 A:18,II, order the above named Respondents to cease and desist
25 from closing any consumer residential loan modifications

1 currently in the pipeline but must transfer those consumers
2 currently in the pipeline to a duly licensed New Hampshire
3 Mortgage Loan Originator through a duly licensed New Hampshire
4 Mortgage Broker or Mortgage Banker and must obtain the
5 Department's approval prior to such transfer(s);

6 10. Pursuant to RSA 397-A:17,II (a), (b) and (c) and RSA 397-
7 A:18,II, order the above named Respondents to cease and desist
8 from obtaining or signing any new clients who may need or seek
9 consumer residential mortgage loan modifications subject to RSA
10 Chapter 397-A for properties located in New Hampshire;

11 11. Pursuant to RSA 397-A:17,II (a), (b) and (c) and RSA 397-
12 A:18,II, order the above named Respondents to cease and desist
13 from any and all advertising related directly or indirectly to
14 consumer residential mortgage loan modifications subject to RSA
15 397-A for properties located in New Hampshire;

16 12. Pursuant to RSA 397-A:17,II(e)(1), order the above named
17 Respondents to show cause why Respondent Dargon should not be
18 banned or removed from office as a New Hampshire Mortgage Loan
19 Originator;

20 13. Pursuant to RSA 397-A:17,VIII, order the above named
21 Respondents to rescind, give restitution, or disgorge profits;

22 14. Pursuant to RSA 397-A:17,IX, order Respondent Dargon to show
23 cause why, in addition to administrative penalties, he should
24 not be assessed an additional penalty not to exceed \$25,000.00
25 for each violation alleged above;

1 15. Order the above named Respondents to show cause why a refund to
2 Respondent Dargon Law's consumer residential mortgage loan
3 modification clients of any and all fees charged and/or
4 collected should not be given;

5 16. Order the above named Respondents to show cause why payment of
6 the Department's cost of investigation should not be given;

7 17. Assess fines and administrative penalties in accordance with
8 RSA 397-A:21, for violations of RSA Chapter 397-A, in the
9 number and amount equal to the violations set forth in section
10 II of this Staff Petition; and

11 18. Take such other administrative and legal actions as necessary
12 for enforcement of the New Hampshire Banking Laws, the
13 protection of New Hampshire citizens, and to provide other
14 equitable relief.

15 **IV. RIGHT TO AMEND**

16 The Department reserves the right to amend this Staff Petition and to
17 request that the Commissioner take additional administrative action.
18 Nothing herein shall preclude the Department from bringing additional
19 enforcement action under RSA Chapter 397-A or the regulations thereunder.
20

21 Respectfully submitted by:

22 _____
23 /s/ Maryam Torben Desfosses
24 Hearings Examiner

22 04/01/10
23 _____
24 Date