

1 State of New Hampshire Banking Department

2	In re the Matter of:) Case No.: 06-094
)
3	State of New Hampshire Banking)
4	Department,) Order to Show Cause
)
5	Petitioner,)
)
6	and)
)
7	Genisys Financial Corp, and Lawrence A.))
)
8	MacDonald,)
)
9	Respondents)

10 NOTICE OF ORDER

11 This Order commences an adjudicative proceeding under the provisions
12 of RSA Chapter 397-A and RSA Chapter 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 Chapter
15 541-A. 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 6, 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 Genisys Financial Corp ("Respondent Genisys")
18 shall show cause why penalties in the amount of \$2,500.00
19 should not be imposed against it;
- 20 2. Respondent Lawrence A. MacDonald ("Respondent MacDonald")
21 shall show cause why penalties in the amount of \$2,500.00
22 should not be 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 unpaid fee of \$2,250.00 for the late filing of the financial

1 State of New Hampshire Banking Department

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 7 Genisys Financial Corp, and Lawrence A.)
)
 8 MacDonald,)
)
 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 Genisys Financial Corp (hereinafter "Respondent
15 Genisys") was licensed as a Mortgage Banker from at least October
16 30, 2002 until it surrendered its license on September 5, 2006.
- 17 2. Respondent Lawrence A. MacDonald (hereinafter "Respondent
18 MacDonald") was the President of Respondent Genisys, when
19 licensed by the Department.

20 Violation of RSA 397-A:13,IV Failure to Pay Late Penalty Owed for Late

21 Filing of Financial Statement(1 Count):

- 22 3. Paragraphs 1 through 2 are hereby realleged as fully set forth
23 herein.
- 24 4. Respondent Genisys's financial statement was due on or before
25 March 31, 2006.

1 5. Respondent Genisys was still licensed at the time its financial
2 statement filing was due to the Department.

3 6. The Department received Respondent Genisys's financial statement
4 on June 29, 2006 (90 days late), which generated a fine of
5 \$2,250.00 (\$25.00 a day x 90 days).

6 7. The Department submitted correspondence to Respondents on July 7,
7 2006, August 10, 2006 and on September 12, 2006 to pay the fine.

8 8. On August 21, 2006, the Department received a letter from
9 Respondent Genisys, with its license enclosed and a notification
10 of license surrender.

11 9. On September 5, 2006, the Department acknowledged receipt of the
12 license, wrote for additional surrender documents and notified
13 Respondents that surrender could not be completed without the
14 payment of the outstanding fine of \$2,250.00.

15 10. On November 15, 2006, the Department sent yet another certified
16 letter.

17 11. To date, the outstanding fine of \$2,250.00 is still unpaid.

18 **II. ISSUES OF LAW**

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

20 1. The Department realleges the above stated facts in Paragraphs 1
21 through 11 as fully set forth herein.

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

25 3. RSA 397-A:13,IV provides that any mortgage banker or broker

1 failing to file the annual report or financial statement within
2 the time prescribed may be required to pay to the Department a
3 penalty of \$25.00 per calendar day for each day the financial
4 statement is overdue, for a maximum of \$2,500.00.

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

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

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

1 in addition to any criminal penalties or civil liabilities imposed
2 by New Hampshire Banking laws.

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

19 **III. RELIEF REQUESTED**

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

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

- 1 3. Pursuant to RSA 397-A:17, order each of the above named
2 Respondents to show cause why their license should not be revoked;
- 3 4. Assess fines and administrative penalties in accordance with RSA
4 397-A:21, for violations of Chapter 397-A, in the number and
5 amount equal to the violations set forth in section II of this
6 Staff Petition; and
- 7 5. Take such other administrative and legal actions as necessary for
8 enforcement of the New Hampshire Banking Laws, the protection of
9 New Hampshire citizens, and to provide other equitable relief.

10 **IV. RIGHT TO AMEND**

11 The Department reserves the right to amend this Staff Petition and to
12 request that the Commissioner take additional administrative action.
13 Nothing herein shall preclude the Department from bringing additional
14 enforcement action under RSA 397-A or the regulations thereunder.

15 Respectfully submitted by:

16
17 /s/
Maryam Torben Desfosses
18 Hearings Examiner

07/06/09
Date