

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
25 upon consideration of the Order to Show Cause, the allegations of which may be

1 deemed to be true.

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

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

9 The Staff Petition dated January 13, 2009 (a copy of which is attached
10 hereto) is incorporated by reference hereto.

11 **ORDER**

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

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

17 It is hereby ORDERED, that:

- 18 1. Respondent Managed Investments Inc (d/b/a Tani and
19 Associates) ("Respondent Managed Investments") shall show
20 cause why penalties in the amount of \$17,500.00 should not be
21 imposed against it;
- 22 2. Respondent Kip Tani ("Respondent Tani") shall show cause why
23 penalties in the amount of \$22,500.00 should not be imposed
24 against him;
- 25 3. The above named Respondents shall show cause why, in addition

1 to the penalties listed in Paragraphs 1 through 2 above, the
2 fine for \$350.00 for the late filing of the financial
3 statement should not be paid to the Department;

4 4. The above named Respondents shall show cause why, in addition
5 to the penalties listed in Paragraphs 1 through 3 above, the
6 fine for \$1,725.00 for the late filing of the 2004 annual
7 report should not be paid to the Department;

8 5. The above named Respondents shall show cause why, in addition
9 to the penalties listed in Paragraphs 1 through 4 above,
10 statutory penalties of \$2,500.00 should not be imposed for
11 failing to file the 2005 annual report;

12 6. The above named Respondents shall show cause why, in addition
13 to the penalties listed in Paragraphs 1 through 5 above, the
14 \$757.80 examination fee should not be paid to the Department;

15 7. The above named Respondents shall be jointly and severally
16 liable for the above amounts alleged in Paragraphs 1 through
17 6 above;

18 8. The above named Respondents shall show cause why, in addition
19 to the penalties listed in Paragraphs 1 through 7 above,
20 Respondent Managed Investments Inc's license should not be
21 revoked.

22 It is hereby further ORDERED that:

23 9. Along with the administrative penalties listed for the above
24 named Respondents, the outstanding sum of \$5,332.80 shall be
25 immediately paid; and

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 06-127
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) January 13, 2009
)
 6 and)
)
 7 Managed Investments Inc (d/b/a Tani and)
)
 8 Associates), and Kip Tani,)
)
 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 Managed Investments Inc (d/b/a Tani and Associates)
 15 (hereinafter "Respondent Managed Investments") was licensed as a
 16 Mortgage Broker from at least June 11, 2004 until its license
 17 expired on December 31, 2005.
- 18 2. Respondent Kip Tani (hereinafter "Respondent Tani") was the
 19 President of Respondent Managed Investments, when licensed by
 20 the Department.

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

22 Filing of Financial Statement(1 Count):

23 Violation of RSA 397-A:13,VI Failure of Officer and Owner to Respond to

24 Department Inquiries (2 Counts):

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

1 herein.

2 4. Respondent Managed Investments' 2004 financial statement was due
3 on or before March 31, 2005.

4 5. Respondent Managed Investments was still licensed at the time its
5 financial statement filing was due to the Department.

6 6. The Department received Respondent Managed Investments' financial
7 statement on April 14, 2005 (14 days late), which generated a
8 fine of \$350.00 (\$25.00 a day x 14 days).

9 7. The Department sent invoices to Respondent Managed Investments in
10 April, June by regular mail and by U.S. Certified Mail on July 1,
11 2005.

12 8. The above named Respondents failed to respond to all three
13 invoices.

14 9. On March 23, 2006, the Department sent a final letter via U.S.
15 Certified Mail Return Receipt requested, which a Polly Tani
16 signed for on March 27, 2006.

17 10. To date, Respondent Managed Investments has failed to pay the
18 \$350.00 late filing of the 2004 financial statement fee.

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

20 **Filing of Annual Report (1 Count):**

21 11. Paragraphs 1 through 10 are hereby realleged as fully set forth
22 herein.

23 12. Respondent Managed Investments was licensed in 2005 and therefore,
24 subject to the filing of the 2004 annual report of business.

25 13. Respondent Managed Investments' 2004 annual report was due on or

1 before February 1, 2005.

2 14. Respondent Managed Investments filed its 2004 annual report on
3 April 11, 2005 (69 days late), which generated a fine of
4 \$1,725.00 (\$25.00 a day x 69 days).

5 15. The Department sent the above named Respondents invoices June 22,
6 2005, July 20, 2005, July 29, 2005 and finally on August 30,
7 2005.

8 16. With no response from the above named Respondents, the Department
9 sent a final letter on March 23, 2006, to which the above named
10 Respondents have failed to respond.

11 17. To date, Respondent Managed Investments has failed to pay the
12 \$1,725.00 late filing of the 2004 annual report fee.

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

14 18. Paragraphs 1 through 17 are hereby realleged as fully set forth
15 herein.

16 19. On January 5, 2006, the Department notified the above named
17 Respondents by letter of the 2005 annual report filing
18 requirements.

19 20. Respondents Managed Investments was still licensed in 2005, and
20 thus was required to provide a 2005 annual report.

21 21. To date, Respondent Managed Investments has failed to file the
22 2005 annual report.

23 22. To date, the penalty for failing to file an annual report has
24 accrued to the cap of \$2,500.00.
25

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

2 Violation of RSA 397-A:10,IV Failure to Update Information on File with
3 Commissioner (3 Counts):

4 23. Paragraphs 1 through 22 are hereby realleged as fully set forth
5 herein.

6 24. The Department conducted an examination of Respondent Managed
7 Investments Inc on March 20, 2006, for activities that occurred
8 while Respondent Managed Investments was licensed with the
9 Department.

10 25. On August 2, 2006, the Department mailed the report of examination
11 and invoice for \$757.80 to Respondent Managed Investments, via
12 U.S. Certified Mail Return Receipt requested, which was returned
13 to the Department on August 10, 2006 as "not deliverable. Unable
14 to Forward".

15 26. The Department then sent the Report of Examination, along with the
16 invoice for \$757.80, to Respondent Managed Investments via UPS on
17 August 11, 2006. The documents were returned to the Department
18 on August 16, 2006 as "undeliverable".

19 27. The Department telephoned the numbers the Department had on file
20 for the above named Respondents. The telephone numbers were
21 defunct cell phone numbers.

22 28. The Department attempted to fax the above named Respondents but
23 the fax number always rang with no response.

24 29. To date, the above named Respondents have failed to pay the
25 \$757.80 examination invoice for the 1.8 day exam.

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II. ISSUES OF LAW

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

1. The Department realleges the above stated facts in Paragraphs 1 through 30 as fully set forth herein.
2. The Department has jurisdiction over the licensing and regulation of persons engaged in mortgage banker or broker activities pursuant to NH RSA 397-A:2 and RSA 397-A:3.
3. RSA 397-A:10,IV provides that persons licensed under RSA Chapter 397-A are under a continuing obligation to update information on file with the Commissioner. Each of the above named Respondents failed to update the Commissioner on at least three occasions as alleged above.
4. RSA 397-A:12,I provides that the Department may examine the business affairs of any licensee or any other person, whether licensed or not, as it deems necessary to determine compliance with RSA Chapter 397-A and the rules adopted pursuant to it and with the Consumer Credit Protection Act, as amended.
5. RSA 397-A:12,V provides that the expense of such examination shall be chargeable to and paid by the licensee. Each of the above named Respondents violated this provision on at least one occasion as alleged above. To date, the above named Respondents have failed to pay the \$757.80 examination invoice.
6. RSA 397-A:13,I provides that a licensee shall file its annual report on or before February 1 each year concerning operations for the preceding year or license period ending December 31.

1 Each of the above named Respondents violated this provision on at
2 least one occasion as alleged above by failing to file the 2005
3 annual report and accrued a fine of \$2,500.00 as calculated under
4 RSA 397-A:13,IV.

5 7. RSA 397-A:13,IV provides that any mortgage banker or mortgage
6 broker failing to file either the annual report or the financial
7 statement required by RSA Chapter 397-A within the time
8 prescribed may be required to pay to the Department a penalty of
9 \$25.00 for each calendar day the annual report or financial
10 statement is overdue, up to a maximum penalty of \$2,500.00 per
11 report or statement. Each of the above named Respondents violated
12 this provision on at least two occasions as alleged above. The
13 above named Respondents filed a financial statement that was 69
14 days late, and incurred a penalty of \$1,725.00. The above named
15 Respondents filed the 2004 annual report that was 14 days late,
16 and incurred a penalty of \$350.00.

17 8. RSA 397-A:13,VI provides that any officer, owner, manager or agent
18 of any licensee shall reply promptly in writing, or other
19 designated form, to any written inquiry from the Department.
20 Respondent Tani violated this provision on at least two occasions
21 as alleged above.

22 9. RSA 397-A:18,I provides that the Department may issue a complaint
23 setting forth charges whenever the Department is of the opinion
24 that the licensee or person over whom the Department has
25

1 jurisdiction, has violated any provision of RSA Chapter 397-A or
2 orders thereunder.

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

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

1 imposed.

2 **III. RELIEF REQUESTED**

3 The staff of the Department requests the Commissioner take the following
4 action:

- 5 1. Find as fact the allegations contained in section I of this Staff
6 Petition;
- 7 2. Make conclusions of law relative to the allegations contained in
8 section II of this Staff Petition;
- 9 3. Pursuant to RSA 397-A:17, order each of the above named
10 Respondents to show cause why their license should not be revoked;
- 11 4. Assess fines and administrative penalties in accordance with RSA
12 397-A:21, for violations of Chapter 397-A, in the number and amount
13 equal to the violations set forth in section II of this Staff
14 Petition; and
- 15 5. Take such other administrative and legal actions as necessary for
16 enforcement of the New Hampshire Banking Laws, the protection of
17 New Hampshire citizens, and to provide other equitable relief.

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