

1 State of New Hampshire Banking Department

2	In re the Matter of:)	Case No.: 06-136
)	
3	State of New Hampshire Banking)	
4	Department,)	Order to Show Cause
)	
5	Petitioner,)	
)	
6	and)	
)	
7	Equistar Financial Corporation, and)	
)	
8	William Christophe Losch,)	
)	
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 Chapter
7 358-A and exempt under RSA 358-A:3,I or that may violate any of the
8 provisions of Titles XXXV and XXXVI and administrative rules adopted
9 thereunder. The Commissioner may hold hearings relative to such conduct and
10 may order restitution for a person or persons adversely affected by such
11 conduct.

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

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

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

8 STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF

9 The Staff Petition dated July 10, 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 Equistar Financial Corporation ("Respondent
19 Equistar") shall show cause why penalties in the amount of
20 \$12,500.00 should not be imposed against it;
- 21 2. Respondent William Christophe Losch ("Respondent Losch")
22 shall show cause why penalties in the amount of \$15,000.00
23 should not be imposed against him;
- 24 3. The above named Respondents shall show cause why, in addition
25 to the penalties listed in Paragraphs 1 through 2 above, the

1 fine for \$2,500.00 for the late filing of the 2004 annual
2 report as a first mortgage banker should not be paid to the
3 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 \$2,500.00 for the late filing of the 2004 annual
7 report as a second mortgage home loan lender should not be
8 paid to the Department;

9 5. The above named Respondents shall show cause why, in addition
10 to the penalties listed in Paragraphs 1 through 4 above, the
11 fine for \$1,575.00 for the late filing of the 2004 financial
12 statement as a first mortgage banker should not be paid to
13 the Department;

14 6. The above named Respondents shall show cause why, in addition
15 to the penalties listed in Paragraphs 1 through 5 above, the
16 fine for \$1,575.00 for the late filing of the 2004 financial
17 statement as a second mortgage home loan lender should not be
18 paid to the Department;

19 7. The above named Respondents shall show cause why, in addition
20 to the penalties listed in Paragraphs 1 through 6 above, the
21 fine for \$925.00 for the late filing of the 2005 annual
22 report should not be paid to the Department;

23 8. The above named Respondents shall be jointly and severally
24 liable for the above amounts alleged in Paragraphs 1 through
25 7 above;

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 06-136
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 3 State of New Hampshire Banking)
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 4 Department,) Staff Petition
)
 5 Petitioner,) July 10, 2009
)
 6 and)
)
 7 Equistar Financial Corporation, and)
)
 8 William Christophe Losch,)
)
 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 Equistar Financial Corporation (hereinafter
15 "Respondent Equistar") was licensed as a Mortgage Banker from at
16 least July 16, 2002 until its license expired on December 31,
17 2005. Respondent Equistar also had a Second Mortgage Home Loan
18 Lender license (when separately licensed per statute) from May 7,
19 2004 until September 12, 2005.
- 20 2. Respondent William Christophe Losch (hereinafter "Respondent
21 Losch") was the President and Director of Respondent Equistar,
22 when licensed by the Department.

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

2 Filing of 2004 Annual Report (2 Counts):

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

4 Department Inquiries (1 Count):

5 3. Paragraphs 1 through 2 are hereby realleged as fully set forth
6 herein.

7 4. Respondent Equistar was licensed in 2004 and therefore, subject to
8 the filing of the 2004 annual report of business.

9 5. Respondent Equistar's 2004 annual report was due on or before
10 February 1, 2005.

11 6. Respondent Equistar filed its 2004 annual report as a first
12 mortgage banker the 2004 annual report as a second mortgage home
13 loan lender 141 days late on June 22, 2005, generating a fine of
14 \$2,500.00 (\$25.00 a day x 141 days with a maximum statutory cap
15 of \$2,500.00).

16 7. The Department sent the above named Respondents invoices June 27,
17 2005, July 29, 2005, and finally on August 30, 2005.

18 8. To date, the above named Respondents have failed to respond to the
19 invoices.

20 9. The Department sent one last letter on March 3, 2006 via U.S.
21 Certified Mail Return Receipt requested, which a Nick Thomas
22 signed for on March 10, 2006.

23 10. The above named Respondents failed to respond to the March 3, 2006
24 correspondence from the Department.

25 11. To date, Respondent Equistar has failed to pay the \$5,000.00 total

1 late filing of the 2004 annual report fee.

2 12. According to notes found in the Respondent Equistar file, a
3 representative of Respondent Equistar did contact the Department
4 on or about July 13, 2006 desiring to pay the outstanding fees,
5 but failed to make such payments or follow-up with the
6 Department.

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

8 **Filing of 2004 Financial Statement (2 Counts):**

9 13. Paragraphs 1 through 11 are hereby realleged as fully set forth
10 herein.

11 14. Respondent Equistar's 2004 two financial statements (one as a
12 first mortgage banker and one as a second mortgage home loan
13 lender) were due on or before March 31, 2005.

14 15. Respondent Equistar was still licensed at the time its financial
15 statement filings were due to the Department.

16 16. The Department received Respondent Equistar's two 2004 financial
17 statements on June 2, 2005, 63 days late, which generated a fine
18 of \$1,575.00 (\$25.00 a day x 63 days).

19 17. The Department sent an invoice for \$1,575.00 on June 10, 2005 for
20 each of the two licenses held by Respondent Equistar.

21 18. A second invoice was sent by the Department on July 14, 2005.

22 19. The above named Respondents failed to respond to all such
23 invoices.

24 20. To date, Respondent Equistar has failed to pay the \$3,150.00 total
25 late filing fee of the two 2004 financial statements.

1 21. According to notes found in the Respondent Equistar file, a
2 representative of Respondent Equistar did contact the Department
3 on or about July 13, 2006 desiring to pay the outstanding fees,
4 but failed to make such payments or follow-up with the
5 Department.

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

7 **Filing of 2005 Annual Report (1 Count):**

8 22. Paragraphs 1 through 21 are hereby realleged as fully set forth
9 herein.

10 23. Respondent Equistar was licensed in 2005 and therefore, subject to
11 the filing of the 2005 annual report of business.

12 24. Respondent Equistar's 2005 annual report was due on or before
13 February 1, 2006.

14 25. Respondent Equistar filed its 2005 annual report on March 10,
15 2006, 37 days late, generating a fine of \$925.00 (\$25.00 a day x
16 37 days).

17 26. The Department sent the above named Respondents invoices March 14,
18 2006, April 14, 2006 and a third notice on June 13, 2006.

19 27. The Department sent a fourth letter on June 15, 2006.

20 28. To date, the above named Respondents have failed to respond to the
21 invoices.

22 29. To date, Respondent Equistar has failed to pay the \$925.00 late
23 filing of the 2005 annual report fee.

24 **II. ISSUES OF LAW**

25 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 29 as fully set forth herein.
- 3 2. The Department has jurisdiction over the licensing and regulation
4 of persons engaged in mortgage banker or broker activities
5 pursuant to NH RSA 397-A:2 and RSA 397-A:3.
- 6 3. In 2004 and 2005, RSA 397-A:13,I provided that a licensee shall
7 file its annual report on or before February 1 each year
8 concerning operations for the preceding year or license period
9 ending December 31.
- 10 4. In 2004 and 2005, RSA 397-A:13,II provided that a licensee shall
11 file its financial statement with the Commissioner within 90 days
12 from the date of its fiscal year end.
- 13 5. In RSA 397-A:13,IV provided and still provides that any mortgage
14 banker or mortgage broker failing to file either the annual report
15 or the financial statement required by RSA Chapter 397-A within
16 the time prescribed may be required to pay to the Department a
17 penalty of \$25.00 for each calendar day the annual report or
18 financial statement is overdue, up to a maximum penalty of
19 \$2,500.00 per report or statement. Each of the above named
20 Respondents violated this provision on at least five occasions as
21 alleged above. The above named Respondents filed the 2004 annual
22 report 141 days late, and incurred a penalty of \$2,500.00. The
23 above named Respondents filed the 2005 annual report 37 days late,
24 and incurred a penalty of \$925.00. The above named Respondents
25

1 filed a financial statement that was 63 days late, and incurred a
2 penalty of \$1,575.00.

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 Losch violated this provision on at least one occasion
7 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 any
14 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 Chapter 397-A or
22 orders thereunder.

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

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

