

1 State of New Hampshire Banking Department

2	In re the Matter of:) Case No.: 06-196
)
3	State of New Hampshire Banking)
4	Department,) Order to Show Cause
)
5	Petitioner,)
)
6	and)
)
7	Old Yankee Mortgage LLC, and Dennis R.)
)
8	Avard,)
)
9	Respondents)

10 NOTICE OF ORDER

11 This Order commences an adjudicative proceeding under the provisions
12 of RSA 397-A and RSA 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, 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 541-A.
15 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 June 11 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 Old Yankee Mortgage LLC ("Respondent Old Yankee
18 Mortgage") shall show cause why penalties in the amount of
19 \$2,500.00 should not be imposed against it;
- 20 2. Respondent Dennis R. Avard ("Respondent Avard") shall show
21 cause why penalties in the amount of \$2,500.00 should not be
22 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 \$421.00 examination fee should not be paid to the Department;

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 06-196
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)
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)
 7 Old Yankee Mortgage LLC, and Dennis R.)
)
 8 Avard,)
)
 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 Old Yankee Mortgage LLC (hereinafter "Respondent Old
15 Yankee Mortgage") was licensed as a Mortgage Broker from at
16 least January 13, 2003 until its license expired on December 31,
17 2005.
- 18 2. Respondent Dennis R. Avard (hereinafter "Respondent Avard") was
19 the Member of Respondent Old Yankee Mortgage, when licensed by
20 the Department.

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

- 22 3. Paragraphs 1 through 2 are hereby realleged as fully set forth
23 herein.
- 24 4. The Department conducted an examination of Respondent Old Yankee
25 Mortgage on October 26, 2005, while Respondent Old Yankee

1 Mortgage was still licensed with the Department.

2 5. On March 2, 2006, the Department mailed the report of examination
3 and invoice for \$421.00 to Respondent Old Yankee Mortgage, via
4 U.S. Certified Mail Return Receipt requested, which the post
5 office returned to the Department on March 22, 2006 as
6 "unclaimed".

7 6. On March 22, 2006, the Department again mailed the report of
8 examination and invoice for \$421.00 to Respondent Old Yankee
9 Mortgage, via U.S. Certified Mail Return Receipt requested, which
10 the post office returned to the Department on March 30, 2006 as
11 "moved left no address".

12 7. On April 6, 2006, the Department again mailed the report of
13 examination and invoice for \$421.00 to Respondent Old Yankee
14 Mortgage, via U.S. Certified Mail Return Receipt requested, which
15 the post office returned to the Department on April 13, 2006 as
16 "moved left no address".

17 8. Finally, the Department mailed the invoice and report of
18 examination to Respondents' registered agent, Earl S. Carrel of
19 Backus, Meyer, Solomon & Branch LLP.

20 9. To date, the above named Respondents still owe the \$421.00
21 examination fee for the one day examination.

22 **II. ISSUES OF LAW**

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

24 1. The Department realleges the above stated facts in Paragraphs 1
25 through 9 as fully set forth herein.

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

4 3. RSA 397-A:12,V provides that the expense of such examination shall
5 be chargeable to and paid by the licensee. Each of the above
6 named Respondents violated this provision on at least one
7 occasion as alleged above. To date, the above named Respondents
8 have failed to pay the \$421.00 examination invoice.

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

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

24 6. RSA 397-A:21,IV provides that any person who, either knowingly or
25 negligently, violates any provision of Chapter 397-A, may upon

1 hearing, and in addition to any other penalty provided for by
2 law, be subject to an administrative fine not to exceed
3 \$2,500.00, or both. Each of the acts specified shall constitute
4 a separate violation, and such administrative action or fine may
5 be imposed in addition to any criminal penalties or civil
6 liabilities imposed by New Hampshire Banking laws.

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

1 **III. RELIEF REQUESTED**

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

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

17 **IV. RIGHT TO AMEND**

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

22 Respectfully submitted by:

23
24 /s/
Maryam Torben Desfosses
25 Hearings Examiner

 06/11/09
Date