

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 06-221
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 First Consumer Credit Inc, and James D.)
)
 8 Borschow,)
)
 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 First Consumer Credit Inc ("Respondent First
18 Consumer") shall show cause why penalties in the amount of
19 \$2,500.00 should not be imposed against it;
- 20 2. Respondent James D. Borschow ("Respondent Borschow") shall
21 show cause why penalties in the amount of \$5,000.00 should
22 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 fine for \$2,500.00 for the failure to file the financial

1 statement should not be paid to the Department;

2 4. The above named Respondents shall be jointly and severally
3 liable for the above amounts alleged in Paragraphs 1 through
4 3 above;

5 5. The above named Respondents shall show cause why, in addition
6 to the penalties listed in Paragraphs 1 through 4 above,
7 Respondent First Consumer's license should not be revoked.

8 It is hereby further ORDERED that:

9 6. Along with the administrative penalties listed for the above
10 named Respondents, the outstanding sum of \$2,500.00 shall be
11 immediately paid; and

12 7. Failure to request a hearing within 30 days of the date of
13 receipt or valid delivery of this Order shall result in a
14 default judgment being rendered and administrative penalties
15 imposed upon the defaulting Respondent(s).

16
17
18 SIGNED,

19
20 Dated: 06/11/09

_____/s/_____
PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 06-221
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) June 11, 2009
)
 6 and)
)
 7 First Consumer Credit Inc, and James D.)
)
 8 Borschow,)
)
 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 First Consumer Credit Inc (hereinafter "Respondent
15 First Consumer") was licensed as a Mortgage Banker from at least
16 March 7, 2002 until its license expired on December 31, 2006.
- 17 2. Respondent James D. Borschow (hereinafter "Respondent Borschow")
18 was the President of Respondent First Consumer, when licensed by
19 the Department.

20 Violation of RSA 397-A:13,II Failure to File Financial Statement (1 Count):

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

22 Department Inquiries (1 Count):

- 23 3. Paragraphs 1 through 2 are hereby realleged as fully set forth
24 herein.
- 25 4. The Respondents' fiscal year end was December 31, 2005 and the

1 financial statement was due on or before March 31, 2006.

2 5. Respondent First Consumer was licensed on the date the financial
3 statement filing was due the Department.

4 6. The Department sent Respondent First Consumer a reminder letter on
5 January 30, 2006 via U.S. mail, with a follow-up on April 20,
6 2006 and another letter on May 23, 2006.

7 7. On May 24, 2006, the Department sent a final reminder letter via
8 U.S. Certified Mail Return Receipt requested, which Respondents
9 received on May 31, 2006.

10 8. The above named Respondents neither responded to the reminder
11 letters nor submitted the financial statement.

12 9. To date, the accrued penalty for failure to file a financial
13 statement has reached the maximum cap of \$2,500.00 (\$25.00 a day,
14 maximum \$2,500.00).

15 **II. ISSUES OF LAW**

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

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

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

22 3. RSA 397-A:13,II provides that each licensee shall file a financial
23 statement within 90 days from the date of its fiscal year end.

24 Each of the above named Respondents violated this provision on at
25

1 least one occasion as alleged above. The maximum fine has
2 accrued to \$2,500.00, as calculated by RSA 397-A:13,IV below.

3 4. RSA 397-A:13,IV provides that any mortgage banker or mortgage
4 broker failing to file either the annual report or the financial
5 statement required by RSA Chapter 397-A within the time
6 prescribed may be required to pay to the Department a penalty of
7 \$25.00 for each calendar day the annual report or financial
8 statement is overdue, up to a maximum penalty of \$2,500.00 per
9 report or statement. The above named Respondents failed to file a
10 financial statement, the fine of which has now accrued to the
11 maximum cap of \$2,500.00.

12 5. RSA 397-A:13,VI provides that any officer, owner, manager or agent
13 of any licensee shall reply promptly in writing, or other
14 designated form, to any written inquiry from the Department.
15 Respondent Borschow violated this provision on at least one
16 occasion as alleged above.

17 6. RSA 397-A:17,I provides in part that the Commissioner may by
18 order, upon due notice and opportunity for hearing, assess
19 penalties or deny, suspend, or revoke a license or application if
20 it is in the public interest and the applicant, respondent, or
21 licensee, any partner, officer, member, or director, any person
22 occupying a similar status or performing similar functions, or
23 any person directly or indirectly controlling the applicant,
24 respondent, or licensee: (a) has violated any provision of RSA
25 Chapter 397-A or rules thereunder, or (b)has not met the

1 standards established in RSA Chapter 397-A.

2 7. RSA 397-A:18,I provides that the Department may issue a complaint
3 setting forth charges whenever the Department is of the opinion
4 that the licensee or person over whom the Department has
5 jurisdiction, has violated any provision of RSA Chapter 397-A or
6 orders thereunder.

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

15 9. RSA 397-A:21,V provides that every person who directly or
16 indirectly controls a person liable under this section, every
17 partner, principal executive officer or director of such person,
18 every person occupying a similar status or performing a similar
19 function, every employee of such person who materially aids in the
20 act constituting the violation, and every licensee or person acting
21 as a common law agent who materially aids in the acts constituting
22 the violation, either knowingly or negligently, may, upon notice
23 and opportunity for hearing, and in addition to any other penalty
24 provided for by law, be subject to suspension, revocation, or
25 denial of any registration or license, including the forfeiture of

1 any application fee, or the imposition of an administrative fine
2 not to exceed \$2,500, or both. Each of the acts specified shall
3 constitute a separate violation, and such administrative action or
4 fine may be imposed in addition to any criminal or civil penalties
5 imposed.

6 **III. RELIEF REQUESTED**

7 The staff of the Department requests the Commissioner take the following
8 action:

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

1 **IV. RIGHT TO AMEND**

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

6 Respectfully submitted by:

7 /s/
8 Maryam Torben Desfosses
Hearings Examiner

 06/11/09
Date