

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 07-019
)
 3 State of New Hampshire Banking) Order to Show Cause
)
 4 Department,)
)
 5 Petitioner,)
)
 6 and)
)
 7 First Guarantee Mortgage, LLC)
)
 8 d/b/a Saratoga First Guarantee)
)
 9 Funding,
 10 Respondent

11
12 NOTICE OF ORDER

13 This Order commences an adjudicative proceeding under the provisions of
14 RSA 397-A, RSA 383:10-d, RSA 541-A and BAN 200, et seq.

15 LEGAL AUTHORITY AND JURISDICTION

16 Pursuant to RSA 397-A:17, the Banking Department of the State of New
17 Hampshire (hereinafter the "Department") has the authority to issue an order
18 to show cause why license revocation penalties for violations of New
19 Hampshire Banking laws should not be imposed.

20 Pursuant to RSA 397-A:15-a, licensees shall acknowledge and respond to
21 consumer complaints forwarded by the Department.

22 Pursuant to RSA 397-A:21, the Commissioner has the authority to
23 suspend, revoke or deny any license and to impose administrative penalties of
24 up to \$2,500.00 for each violation of New Hampshire banking law and rules.

25 Pursuant to RSA 383:10-d the Commissioner shall investigate conduct that
is or may be an unfair or deceptive act or practice under RSA 358-A and exempt
under RSA 358-A:3, I or that may violate any of the provisions of Titles XXXV

1 and XXXVI and administrative rules adopted thereunder. The commissioner may
2 hold hearings relative to such conduct and may order restitution for a person
3 or persons adversely affected by such conduct. The Commissioner may utilize
4 all remedies available under the Act.

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

7 The above named respondent has the right to request a hearing on this
8 Order to Show Cause, as well as the right to be represented by counsel at the
9 Respondent's own expense. All hearings shall comply with RSA 541-A. Any such
10 request for a hearing shall be in writing, and signed by the respondent or
11 the duly authorized agent of the above named respondent, and shall be
12 delivered either by hand or certified mail, return receipt requested, to the
13 Banking Department, State of New Hampshire, 64B Old Suncook Road, Concord, NH
14 03301. Such hearings will be scheduled within 10 days of the request. If the
15 Respondent fails to appear at the hearing after being duly notified, such
16 person shall be deemed in default, and the proceeding may be determined against
17 the Respondent upon consideration of the Order to Show Cause, the allegations
18 of which may be deemed to be true. Respondents are entitled to reasonable
19 notice regarding the hearing date.

20 If the Respondent fails to request a hearing within 30 calendar days of
21 receipt of such order or reach formal settlement with the Department within
22 that time frame, then such person shall likewise be deemed in default, and the
23 orders shall, on the thirty-first day, become permanent, and shall remain in
24 full force and effect until and unless later modified or vacated by the
25 commissioner, for good cause shown.

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

27 The Staff Petition dated January 30, 2007 (a copy of which is attached
28 hereto) is incorporated by reference hereto.

29 **ORDER**

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State of New Hampshire Banking Department

In re the Matter of:) Case No.: 07-019
)
State of New Hampshire Banking) Staff Petition
Department,)
Petitioner,)
and)
First Guarantee Mortgage, LLC)
d/b/a Saratoga First Guarantee)
Funding)
Respondent)

STATEMENT OF ALLEGATIONS

I. The staff of the Banking Department, State of New Hampshire (hereinafter referred to as the "Department") alleges the following facts:

1. FIRST GUARANTEE MORTGAGE, LLC is licensed as a mortgage banker and has held said license since 2004.
2. FIRST GUARANTEE MORTGAGE, LLC's principal office is located at 21 Congress Street, Saratoga Springs, New York 12866.
3. FIRST GUARANTEE MORTGAGE, LLC failed to respond to a consumer complaint sent to the company via certified mail on June 14, 2006 and was received on June 21, 2006. A 60 day reminder letter was sent to the company on August 31, 2006. The letter advised that the due date for the response was August 22, 2006 and that a \$50.00 dollar fine accrues for every day the response is late.

- 1 4. On September 25, 2006 the Department received a letter statin a
2 response would be forwarded on September 27, 2006.
- 3 5. The Department sent a letter to FIRST GUARANTEE MORTGAGE, LLC on
4 September 29, 2006 denying the request.
- 5 6. On October 6, 2006 the Department received FIRST GUARANTEE MORTGAGE,
6 LLC's response.
- 7 7. After reviewing the response, the Department determined the response
8 was inadequate and notified FIRST GUARANTEE MORTGAGE, LLC via certified
9 mail on October 13, 2006 that the \$50.00 fine was continuing to accrue
10 and the Department required the entire loan file.
- 11 8. On November 21, 2006 the Department sent a certified notifying FIRST
12 GUARANTEE MORTGAGE, LLC that it had notified licensing to cease work on
13 any renewal application(s) submitted by the licensee due to the
14 licensee's failure to respond.
- 15 9. It has been more than 130 days since August 22, 2006.
- 16 10. FIRST GUARANTEE MORTGAGE, LLC has failed to adequately address the
17 complaint or respond to the subsequent letters sent by the Department.
- 18 11. Due to the New Hampshire Banking Department's error the licensee was
19 issued a license for 2007.

20 II. The staff of the Banking Department, State of New Hampshire alleges the
21 following issues of law:

- 22 1. The Banking Department ("Department"), has jurisdiction over the
23 licensing and regulation of persons engaged in first mortgage banker /
24 broker activities pursuant to NH RSA 397-A:3.
- 25 2. Pursuant to the New Hampshire Banking laws, 397-A:15-a, a licensee
shall send an acknowledgement within 30 days of its receipt of a
consumer complaint.

- 1 3. Pursuant to the New Hampshire Banking laws, 397-A:15-a (a) and (b), a
2 licensee shall conduct an investigation and either make appropriate
3 corrections or send a written explanation to the consumer within 60
4 days of its receipt of the complaint as a response.
- 5 4. Pursuant to NH RSA 397-A:15-a II a \$50.00 per day fine accrues for each
6 day the response is overdue.
- 7 5. RSA 397-A:21 IV provides that any person who, either knowingly or
8 negligently, violates any provision of RSA 397-A, may upon hearing, and
9 in addition to any other penalty provided for by law, be subject to
10 suspension, revocation, or denial of any registration or license, or an
11 administrative fine not to exceed \$2,500, or both. Each of the acts
12 specified shall constitute a separate violation, and such
13 administrative action or fine may be imposed in addition to any
14 criminal penalties or civil liabilities imposed by New Hampshire
15 banking laws. Respondent is subject to revocation and/or
16 administrative fines for violations of RSA 397-A:13.

17 **RELIEF REQUESTED**

18 The staff of the Banking Department requests the Commissioner take the
19 following action:

- 20 1. Find as fact the allegations contained in section I of the Statement of
21 Allegations of this petition.
- 22 2. Make conclusions of law relative to the allegations contained in section
23 II of the Statement of Allegations of this petition.
- 24 3. Assess fines and administrative penalties in accordance RSA 397-A:21, for
25 violations of the New Hampshire Banking Laws, RSA 397-15-a, in the number
and amount equal to the violations set forth in section II of the
Statement of Allegations of this petition. Respondent is subject to an
administrative penalty of \$2,500 for violating RSA 397-A:15-a in addition

1 to the statutory fine, by its failure to submit a complete response to
2 the consumer complaint.

3 4. Order the Respondent to pay the statutory fine of \$8,050.00 for failure
4 to comply with RSA 397-A:15-a

5 5. Order FIRST GUARANTEE MORTGAGE, LLC to show cause why their license
6 should not be revoked for failure to respond to department inquiries.

7 6. Order restitution to the consumer pursuant to RSA 383:10-d.

8 7. Take such other administrative and legal actions as are necessary for
9 enforcement of the New Hampshire Banking laws, the protection of New
10 Hampshire citizens, and to provide other equitable relief.

11 **RIGHT TO AMEND**

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

17
18 Respectfully submitted by:

19
20 _____
21 /s/
James Shepard
Staff Attorney

20 _____
21 1/30/07
Date