

1 State of New Hampshire Banking Department

|   |                                      |                                     |
|---|--------------------------------------|-------------------------------------|
| 2 | In re the Matter of:                 | ) Case No.: 07-046                  |
|   |                                      | )                                   |
| 3 | State of New Hampshire Banking       | )                                   |
| 4 | Department,                          | ) Order to Show Cause for Breach of |
|   |                                      | ) July 16, 2007 Consent Order       |
| 5 | Petitioner,                          | )                                   |
|   |                                      | )                                   |
| 6 | and                                  | )                                   |
|   |                                      | )                                   |
| 7 | Professional Mortgage Corporation of | )                                   |
|   |                                      | )                                   |
| 8 | America,                             | )                                   |
|   |                                      | )                                   |
| 9 | Respondent                           | )                                   |

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

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

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

8           The Staff Petition dated January 30, 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 Professional Mortgage Corporation of America  
18           ("Respondent Professional Mortgage") shall show cause why  
19           penalties in the amount of \$5,000.00 should not be imposed  
20           against it for violations of the July 16, 2007 Consent Order;
- 21           2. The above named Respondent shall show cause why, in addition  
22           to the penalties listed in Paragraph 1 above, the  
23           administrative fine of \$1,000.00 in the July 16, 2007 Consent  
24           Order should not be voided and replaced with the original



1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 07-046  
 )  
 3 State of New Hampshire Banking )  
 )  
 4 Department, ) Staff Petition  
 )  
 5 Petitioner, ) January 30, 2009  
 )  
 6 and )  
 )  
 7 Professional Mortgage Corporation of )  
 )  
 8 America, )  
 )  
 9 Respondent )

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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 Professional Mortgage Corporation of America  
 15 (hereinafter "Respondent Professional Mortgage") was licensed as  
 16 a Mortgage Broker from at least March 2, 2004 (with an amended  
 17 license date of June 13, 2005) until its license was revoked on  
 18 April 13, 2007.

19 BREACH OF July 2007 CONSENT ORDER

20 Violation of RSA 397-A:17, I(e) False or Misleading Statements to

21 Commissioner (1 Count):

22 Violation of RSA 397-A:17, I(a) via RSA 397-A:2, III Breach of Consent Orders

23 (1 Count):

24 2. Paragraph 1 is hereby realleged as fully set forth herein.  
 25 3. On July 16, 2007, Respondent Professional Mortgage and the

1 entered into a consent agreement, whereby the Respondent would  
2 pay \$1,000.00 in an administrative penalty and \$6,250.00 in  
3 statutory penalties.

4 4. The Respondent has failed to pay the \$1,000.00 administrative  
5 penalty.

6 5. The Respondent has failed to pay the \$5,750.00 remaining amount  
7 owed on the statutory penalty.

8 6. Stuart MacDonald's signature on the July 16, 2007 Consent Order  
9 (as representative of Respondent Professional Mortgage) indicated  
10 that Respondent would pay the sum due.

11 7. The Respondent's failure to pay amounts to a false or misleading  
12 statement to the Commissioner.

## 13 **II. ISSUES OF LAW**

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

15 1. The Department realleges the above stated facts in Paragraphs 1  
16 through 7 as fully set forth herein.

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

20 3. RSA 397-A:1, XVIII defines "person" as an individual, corporation,  
21 business trust, estate, trust, partnership, association, 2 or  
22 more persons having a joint or common interest, or any other  
23 legal or commercial entity however organized.

24 4. RSA 397-A:2, III requires persons subject to or licensed under RSA  
25 Chapter 397-A to abide by applicable federal laws and

1 regulations, the laws and rules of the State of New Hampshire,  
2 and the orders of the Commissioner. Any violation of such law,  
3 regulation, order, or rule is a violation of RSA Chapter 397-A.  
4 The above named Respondent violated this statute on at least one  
5 occasion as alleged above.

6 5. RSA 397-A:17,I(a) provides that the Commissioner may by order,  
7 upon due notice and opportunity for hearing, assess penalties or  
8 deny, suspend, or revoke a license if it is in the public  
9 interest and the respondent, or licensee, any partner, officer,  
10 member, or director, any person occupying a similar status or  
11 performing similar functions, or any person directly or  
12 indirectly controlling the respondent, or licensee has violated  
13 any provision of RSA Chapter 397-A or rules thereunder. The  
14 above named Respondent violated RSA 397-A:2, III by breaching the  
15 Consent Orders as alleged above.

16 6. RSA 397-A:17,I(e) provides that licensees are prohibited from  
17 making false or misleading statements to the Commissioner or in  
18 any reports to the Commissioner. The above named Respondent  
19 violated this provision on at least one occasion as alleged  
20 above. The Respondent has failed to pay the remaining \$5,750.00  
21 of the \$6,250.00 statutory penalty and failed to pay the  
22 \$1,000.00 administrative penalty.

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

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

3 8. 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 **III. RELIEF REQUESTED**

12 The staff of the Department requests the Commissioner take the following  
13 action:

- 14 1. Find as fact the allegations contained in section I of this Staff  
15 Petition;
- 16 2. Make conclusions of law relative to the allegations contained in  
17 section II of this Staff Petition;
- 18 3. Assess fines and administrative penalties in accordance with RSA  
19 397-A:21, for violations of Chapter 397-A, in the number and amount  
20 equal to the violations set forth in section II of this Staff  
21 Petition; and
- 22 4. Take such other administrative and legal actions as necessary for  
23 enforcement of the New Hampshire Banking Laws, the protection of  
24 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

7 Respectfully submitted by:

8  
9                   /s/                                  
10 Maryam Torben Desfosses  
11 Hearings Examiner

                  01/30/09                    
  Date