

1 Banking Department, State of New Hampshire, 64B Old Suncook Road, Concord, NH
2 03301. Such hearings will be scheduled within 10 days of the request. If the
3 Respondent fails to appear at the hearing after being duly notified, such
4 person shall be deemed in default, and the proceeding may be determined against
5 the Respondent upon consideration of the Order to Show Cause, the allegations
6 of which may be deemed to be true. Respondents are entitled to at least 30
7 days' notice regarding the hearing date.

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

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

15 The Staff Petition dated March 19, 2007 (a copy of which is attached
16 hereto) is incorporated by reference hereto.

17 **ORDER**

18 WHEREAS, finding it necessary and appropriate and in the public
19 interest, and consistent with the intent and purposes of the New Hampshire
20 banking laws, and

21 WHEREAS, finding that the allegations contained in the Staff Petition,
22 if proved true and correct, form the legal basis of the relief requested,

23 It is hereby ORDERED, that the Respondent shall show cause why:

- 24 1. Administrative penalties of \$110,000.00 (\$2,500.00 x 44 loans)
25 should not be imposed for failure to provide and/or keep
required records; and
2. Respondent's license should not be revoked; and

It is hereby ORDERED that:

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 07-050
)
 3 State of New Hampshire Banking) Staff Petition
)
 4 Department,)
)
 5 Petitioner,) March 19, 2007
)
 6 and)
)
 7 Merit Financial Inc.,)
)
 8 Respondent)
)

9
10 STATEMENT OF ALLEGATIONS

- 11 1. The Staff of the Banking Department, State of New Hampshire
 12 (hereinafter referred to as the "Department") alleges the following
 13 facts:
- 14 2. On or about July 10, 2006 the Department was scheduled to begin an
 15 examination of Merit Financial Inc. (hereinafter "Respondent") for the
 16 18 months preceding.
- 17 3. Respondent was licensed as a Mortgage Banker and at all times relevant
 18 to this action held a Department license since at least 2004.
- 19 4. The Department sent a notice of an upcoming examination to the
 20 Respondent via US Certified Mail on May 26, 2006 (mail piece number:
 21 7002 2410 0005 1958 6310). The Respondent received and signed for the
 22 mail piece on or about June 3, 2006.
- 23 5. The Examiner in Charge (hereinafter "EIC") attempted to contact the
 24 Respondent on July 31, 2006 via telephone at the contact numbers on
 25 record with the Department. The EIC received no response.
6. The EIC attempted to contact the Respondent via email and again by

1 telephone on July 31, 2006 but was unable to get a response.

2 7. On August 21, 2006 the EIC attempted to contact the Respondent via
3 facsimile and email and was again unable to get a response. The fax
4 response was "busy/no response".

5 8. The EIC researched recent newspaper articles concerning the Respondent
6 and determined that the Respondent had ceased operations in May 2006.

7 9. To date, the Respondent has not provided any exam materials.

8 10. The Respondent self reported closing 44 loans for 2005. Thus
9 information for at least 44 loans is due and owing the department.

10 11. The length of time from date of request of the files to this petition
11 date is 289 days.

12 12. A report of examination along with an invoice for \$500.00 for the time
13 spent trying to complete the examination was sent to Respondent on
14 October 27, 2006 by certified mail and received on November 2, 2006.
15 This invoice has not been paid to date.

16 13. The licensee has allowed their license to expire but has not completed
17 the expiration/surrender process to date.

18
19 **ISSUES OF LAW**

20 14. The staff of the Department, alleges the following issues of law:

21 1. The Department realleges the above stated facts in paragraphs 1
22 through 10.

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

3. Every licensee who maintains records in another state are

1 required to return such files and/or a loan list within 21 days
2 of a request by the Department. Failure to do so subjects the
3 licensee to a fine of \$50 per day after 21 days and subject to
4 revocation after 60 days. The Respondent is therefore
5 responsible for a fine of \$14,450 and subject to revocation.

6 4. Pursuant to New Hampshire Banking law, RSA 397-A:12 the
7 Department may examine the business affairs of any licensee or
8 any other person, whether licensed or not, as it deems necessary
9 to determine compliance with this Chapter and the rules adopted
10 pursuant to it and with the Consumer Credit Protection Act, as
11 amended (15 U.S.C. 1601 et seq.). In determining compliance,
12 the Department may examine the books, accounts, records, files,
13 and other documents or matters of any licensee or person. RSA
14 397-A:12 further requires every person being examined, and all
15 of the officers, directors, employees, agents, and
16 representatives of such person shall make freely available to
17 the commissioner or his examiners, the accounts, records,
18 documents, files, information, assets, and matters in their
19 possession or control relating to the subject of the examination
20 and shall facilitate the examination. The Respondent violated
21 this provision for every one of their loans by failing to
22 provide the examination materials in a timely fashion as
23 required in the First Day Letter.

24 5. RSA 397-A:12 further provides that licensees shall pay all costs
25 of the examination. Respondent has violated this provision by
failing to timely pay his examination fees.

1 equitable relief.

2 RIGHT TO AMEND

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

7 Respectfully submitted by:

8
9 /s/
10 James Shepard
Staff Attorney

3/21/07
Date