

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 07-091  
 )  
 3 State of New Hampshire Banking ) Order to Show Cause  
 )  
 4 Department, )  
 )  
 5 Petitioner, )  
 )  
 6 and )  
 )  
 7 Bay Capital Corp., )  
 )  
 8 Respondent )  
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10 NOTICE OF ORDER

11 This Order commences an adjudicative proceeding under the provisions of  
12 RSA 397-A:17, RSA 541-A and BAN 200.

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 penalties for violations of New  
17 Hampshire Banking laws should not be imposed.

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

21 NOTICE OF RIGHT TO REQUEST A HEARING

22 The above named respondent has the right to request a hearing on this  
23 Order to Show Cause, as well as the right to be represented by counsel at the  
24 Respondent's own expense. All hearings shall comply with RSA 541-A. Any such  
25 request for a hearing shall be in writing, and signed by the respondent or  
the duly authorized agent of the above named respondent, and shall be  
delivered either by hand or certified mail, return receipt requested, to the

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 April 26, 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 \$5,000.00 should not be imposed;

25 and

2. Respondents license should not be revoked; and

3. Failure to request a hearing within 30 days of the date of

receipt of this Order shall result in a default judgment being

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rendered, license revocation and administrative penalties  
imposed upon the defaulting Respondent.

SIGNED,

Dated: 4/26/07

/S/  
PETER C. HILDRETH  
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 07-091  
) )  
3 State of New Hampshire Banking ) Staff Petition  
) )  
4 Department, )  
) ) April 26, 2007  
5 Petitioner, )  
) )  
6 and )  
) )  
7 Bay Capital Corp, )  
) )  
8 Respondent )  
) )

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10 STATEMENT OF ALLEGATIONS

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

14 1. On or about September 25, 2006 the Department was scheduled to  
15 begin an examination of Bay Capital Corp (hereinafter  
16 "Respondent").

17 2. Respondent was licensed as a Mortgage Banker and at all times  
18 relevant to this action held a Department license since at least  
19 2003.

20 3. The Department sent a notice of an upcoming examination to the  
21 Respondent via US Certified Mail on August 17, 2006 (mail piece  
22 number: 7002 2030 0000 9677 3194). The Respondent received and  
23 signed for the mail piece on or about August 21, 2006.

24 4. The Respondent submitted a list of loans to the Department but did  
25 not provide any other materials.

- 1 5. The Examiner in Charge ("EIC") sent the Respondent via US  
2 Certified Mail a second letter (mail piece number: 7002 2030 0000  
3 9677 0414) referencing the first letter and requesting the loan  
4 files and additional materials. The Respondent received and  
5 signed for the mail piece on or about October 30, 2006.
- 6 6. On December 21, 2006 the Department attempted to send a third and  
7 final notice to the Respondent via facsimile.
- 8 7. To date, the Respondent has failed to provide the exam materials  
9 to the Department.

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11 **ISSUES OF LAW**

- 12 II. The staff of the Department, alleges the following issues of law:
- 13 1. The Department realleges the above stated facts in paragraphs 1  
14 through 7.
- 15 2. The Department has jurisdiction over the licensing and  
16 regulation of persons engaged in mortgage banker activities  
17 pursuant to NH RSA 397-A:3.
- 18 3. Pursuant to New Hampshire Banking law, RSA 397-A:12 the  
19 Department may examine the business affairs of any licensee or  
20 any other person, whether licensed or not, as it deems necessary  
21 to determine compliance with this Chapter and the rules adopted  
22 pursuant to it and with the Consumer Credit Protection Act, as  
23 amended (15 U.S.C. 1601 et seq.). In determining compliance,  
24 the Department may examine the books, accounts, records, files,  
25 and other documents or matters of any licensee or person. RSA  
397-A:12 further requires every person being examined, and all

1 of the officers, directors, employees, agents, and  
2 representatives of such person shall make freely available to  
3 the commissioner or his examiners, the accounts, records,  
4 documents, files, information, assets, and matters in their  
5 possession or control relating to the subject of the examination  
6 and shall facilitate the examination. The Respondent violated  
7 this provision by failing to provide the examination materials  
8 as required in the First Day Letter.

9 4. RSA 397-A:11 requires requested files be provided to the  
10 Department within 14 days of the request. The Respondent failed  
11 to submit the files within 14 days of request.

12 5. RSA 397-A:21 IV provides that any person who, either knowingly  
13 or negligently, violates any provision of Chapter 397-A, may  
14 upon hearing, and in addition to any other penalty provided for  
15 by law, be subject to an administrative fine not to exceed  
16 \$2,500, or both. Each of the acts specified shall constitute a  
17 separate violation, and such administrative action or fine may  
18 be imposed in addition to any criminal penalties or civil  
19 liabilities imposed by New Hampshire Banking laws.

20 **RELIEF REQUESTED**

21 III. The staff of the Department requests the Commissioner take the  
22 following Action:

- 23 1. Find as fact the allegations contained in section I of this  
24 petition;
- 25 2. Make conclusions of law relative to the allegations contained  
in section II of the this petition;

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3. Assess fines and administrative penalties in accordance with RSA 397-A:21, for violations of Chapter 397-A, in the number and amount equal to the violations set forth in section II of this petition; and

4. Take such other administrative and legal actions as necessary for enforcement of the New Hampshire Banking Laws, the protection of New Hampshire citizens, and to provide other equitable relief.

**RIGHT TO AMEND**

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

Respectfully submitted by:

                /S/                  
James Shepard  
Staff Attorney

                4/26/07                  
Date