

1 State of New Hampshire Banking Department

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3 In re the Matter of: ) Case No.: 07-093  
 )  
 4 State of New Hampshire Banking ) Adjudicative Hearing Decision:  
 ) Post-Order Motion to Impose and  
 5 Department, ) Order to Pay Fines  
 )  
 6 Petitioner, )  
 )  
 7 and )  
 )  
 8 Mortgages Unlimited Corporation, )  
 )  
 9 Respondent )  
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11 PROCEDURAL CASE HISTORY

- 12 1. New Hampshire Bank Commissioner Peter Hildreth (hereinafter  
 13 "Commissioner Hildreth") issued an Order to Show Cause with Immediate  
 14 Suspension on April 26, 2007.
- 15 2. Commissioner Hildreth issued a Notice of Hearing in this matter on  
 16 April 26, 2007. The allegation stated in the notice is the failure to  
 17 post a continuous surety bond.
- 18 3. On April 27, 2007 Commissioner Hildreth issued an Amended Order lifting  
 19 the suspension of Respondent's license, but all other provisions of the  
 20 Order to Show Cause remained in effect.
- 21 4. Commissioner Hildreth issued an Amended Notice of Hearing on June 14,  
 22 2007. Allegations stated in the Amended Notice of Hearing included  
 23 failure to post a continuous surety bond in violation of RSA 397-A:5,  
 24 failure to respond to Department inquiries relating to the surety bond  
 25 in violation of RSA 397-A:13, failure to file financial statements that

1 satisfied RSA 397-A:13, and failure to respond to Department inquiries  
2 relating to the financial statements in violation of RSA 397-A:13.

3 5. Commissioner Hildreth issued an Amended Notice of Hearing on July 10,  
4 2007. Allegations stated in the Amended Notice of Hearing included  
5 failure to post a continuous surety bond in violation of RSA 397-A:5,  
6 failure to respond to Department inquiries relating to the surety bond  
7 in violation of RSA 397-A:13, failure to file financial statements that  
8 satisfied RSA 397-A:13, and failure to respond to Department inquiries  
9 relating to the financial statements in violation of RSA 397-A:13.

10 6. The New Hampshire Banking Department received a letter dated July 30,  
11 2007 from the Carl E. Mara and Charles Rheinhardt of Mortgages  
12 Unlimited Corporation. The letter indicated "no contest" to the  
13 charges brought forth by the New Hampshire Banking Department.

14 7. Presiding Officer Maryam Torben Desfosses conducted a public hearing in  
15 the matter on July 24, 2007.

16 8. Stipulations submitted by Banking Department Staff Attorney James  
17 Shepard and Mortgages Unlimited Corporation Vice President Mr. Carl E.  
18 Mata on July 24, 2007 clarified and summarized the issues attested to  
19 in the hearing.

20 9. Commissioner Hildreth issued a decision pursuant to the recommendation  
21 of Presiding Officer Maryam Torben Desfosses on August 8, 2007.  
22 Pursuant to the stipulations made by the two parties, Mortgages  
23 Unlimited Corporation received a fine in the amount of \$10,000.00; with  
24 \$3,000.00 of that fine TEMPORARILY SUSPENDED on the condition that  
25 Respondent shall commit no further infractions of RSA Chapter 397-A and

1 shall respond to all Department inquiries in an expeditious manner for  
2 a period of two years.

3 10. On January 3, 2008 Petitioner issued a Post-Hearing Motion to Impose  
4 Suspended Fine ("Petitioner's Post-Hearing Motion").

5 11. On February 4, 2008, Respondent issued an "appeal" to the Department  
6 regarding Petitioner's Post-Hearing Motion.

7 12. On April 7, 2008, Commissioner Hildreth issued a decision that the  
8 issues raised in Petitioner's Post-Hearing Motion must go to public  
9 hearing.

10 13. The Presiding Officer conducted a hearing on May 5, 2008.

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12 **STATUTORY AUTHORITY**

13 1. RSA 397-A:13, VI ("Annual Report") provides that a licensee shall reply  
14 promptly in writing to any written inquiry from the Commissioner  
15 requesting a reply.

16 2. RSA 397-A:12 ("Examinations"), I provides "the banking department may  
17 examine the business affairs of any licensee...as it deems necessary to  
18 determine compliance with this chapter and rules adopted pursuant to  
19 it..."

20 3. RSA 397-A:12 ("Examinations), V provides the "expense of such  
21 examination shall be chargeable to and paid by the licensee. The  
22 procedure for such payment shall be the same as for payments by  
23 institutions for costs of examinations under RSA 383:11..."

24 4. RSA 383:11 ("Payment of Cost of Examination") provides the "bank  
25 commissioner shall, each fiscal year, charge and collect from the  
institutions, the condition and management of which he or she is

1 required to examine under the provisions of...RSA 397-A..., the total  
2 amount appropriated for the bank commissioner's department."

3 5. RSA 383:11 ("Payment of Cost of Examination"), I provides the  
4 calculation for the examination fee.

5 6. RSA 383:11 ("Payment of Cost of Examination"), III provides that  
6 "[p]ayments of the charges provided for by paragraphs I and II shall be  
7 made within 60 days of receipt of the notice thereof."

8 7. RSA 397-A:12 ("Examinations"), VI provides "in any investigation to  
9 determine whether any person has violated or is about to violate this  
10 chapter or any rule or order under this chapter, upon the  
11 commissioner's finding that the person violated this chapter or a rule  
12 or order under this chapter, or the person charged with the violation  
13 being found in defaults, the commissioner shall be entitled to recover  
14 the cost of the investigation, in addition to any other penalty  
15 provided for under this chapter."

16 8. RSA 397-A:1 ("Definitions"), XVIII defines Person as an "individual,  
17 corporation, business trust, estate, trust, partnership, association, 2  
18 or more persons having a joint or common interest, or any other legal  
19 or commercial entity however organized.

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21 **FACTUAL FINDINGS**

22 **A. Commissioner's Order**

23 1. Sometime in August 2007, the Respondent received the August 8, 2007  
24 Order of the Commissioner (hereinafter, "Commissioner's Order") to pay an  
25 administrative fee. [Petitioner's Exhibit 1 and Testimony of Mr. Carl  
Mata]

1           2. The Commissioner's Order temporarily suspended a portion of the  
2 \$10,000 fine upon certain conditions: that Respondent shall commit no  
3 further infractions of RSA 397-A and shall respond to all Department  
4 inquiries in an expeditious manner for a period of two years.

5 [Petitioner's Exhibit 1]

6           3. Mr. Carl Mata read the Commissioner's Order, did not understand the  
7 portion dealing with the suspension of \$3,000 upon no further infractions  
8 but did not contact James Shepard or the New Hampshire Banking Department  
9 when the Commissioner's Order was issued to Mortgages Unlimited  
10 Corporation. [Testimony of Mr. Carl Mata]

11           **B. Notification of Fine**

12           1. The Respondent received by facsimile, on or about November 19, 2007,  
13 a Notification of Fine invoice from the New Hampshire Banking Department  
14 with a "Date Billed" of November 19, 2007, a "Due Date" of December 19,  
15 2007 and a total administrative fine of \$7,000. [Exhibit 2 and Testimony  
16 of Charles Rheinhardt]

17           2. The Respondent received by certified mail and facsimile, on November  
18 19, 2007, correspondence from Consumer Credit Division Staff Attorney  
19 James Shepard indicating that Mortgages Unlimited Corporation has yet to  
20 pay the \$7,000 administrative fine ordered in 07-093, which is the  
21 Commissioner's Order. [Exhibit 3, Exhibit 4 and Testimony of Ms. Carolyn  
22 Dolph and Mr. Carl Mata]

23           3. The Respondent knew it had to pay \$7,000 from the Commissioner's  
24 Order in August 2007. [Testimony of Mr. Carl Mata]

1           4. Respondent did not immediately contact Consumer Credit Division  
2 Staff Attorney James Shepard after receiving the November 15, 2007  
3 reminder letter marked Exhibit 3. [Testimony of Mr. Carl Mata]

4           5. Respondent, in fact, waited until December 31, 2007 to make first  
5 contact with James Shepard and/or with the Department's General Counsel.  
6 [Testimony of Mr. Carl Mata]

7           **C. Payment of Fine**

8           1. The \$7,000 fine from the Commissioner's Order was due by December  
9 19, 2007 based on the Notification of Fine. [Exhibit 2]

10          2. The Respondent did not pay the \$7,000 fine until January 7, 2008.  
11 [Exhibit 5, Testimony of Mr. Charles Rheinhardt and Ms. Carolyn Dolph]

12          3. Respondent did not convey any attempts to pay the \$7,000 fine  
13 between November 19, 2007 and December 19, 2007 to the New Hampshire  
14 Banking Department. [Testimony of Mr. Rheinhardt]

15          4. Respondent did not make any attempt to contact the New Hampshire  
16 Banking Department when he received the November 15, 2007 letter from  
17 James Shepard. [Testimony of Mr. Charles Rheinhardt]

18          5. The time lapse between August 8, 2007 and November 19, 2007 is 103  
19 days, which is greater than 60 days.

20          6. The time lapse between August 8, 2007 and January 7, 2008 is 152  
21 days, which is greater than 60 days.

22           **D. Payment of Examination Fee**

23          1. An examination fee \$3,535.00 was billed via an October 26, 2007  
24 invoice with a due date of November 25, 2007. [Exhibit 5 and Testimony of  
25 Ms. Carolyn Dolph]



1 ORDER

2 Having considered the evidence submitted by the parties and the Presiding  
3 Officer, it is this 27<sup>th</sup> day of May, 2008 ORDERED:

- 4 1. Pursuant to New Hampshire Administrative Rule 204.13(e), entitled  
5 "Decisions", I find in favor of the Petitioner on the proposed findings  
6 of fact submitted by Hearing Counsel James Shepard.
- 7 2. I hereby find Respondent liable for three separate violations of RSA  
8 397-A:13, VI.
- 9 3. I hereby find Respondent liable for the violation of RSA 397-A:12, V  
10 together with RSA 383:11, paragraph III in particular.
- 11 4. I hereby find Respondent liable for the violation of RSA 397-A:12, VI.
- 12 5. Respondent is hereby ordered to pay within 30 days the remaining \$3,000  
13 of the previously suspended fine.
- 14 6. I hereby find that should Respondent fail to fully pay the \$3,000 fine,  
15 Respondent shall be subject to a revocation hearing.
- 16 7. I hereby find that should Petitioner decide to pursue the underlying  
17 violations of RSA 397-A:13, RSA 397-A:12 together with RSA 383:11, they  
18 must be pursued under a separate notice of hearing.
- 19  
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21 Dated: 5/27/08

22 /s/  
Peter C. Hildreth  
Bank Commissioner

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