

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 07-155
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Low.com, Inc., Oversee.net, Inc., Fred)
)
 8 W. Hsu, Sam Aidun, and Lawrence C. Ng,)
)
 9 Respondents)

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

1 deemed to be true.

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

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

9 The Staff Petition dated December 31, 2008 (a copy of which is
10 attached hereto) is incorporated by reference hereto.

11 **ORDER**

12 WHEREAS, finding it necessary and appropriate and in the public
13 interest, and consistent with the intent and purposes of the New Hampshire
14 banking laws, and

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

17 It is hereby ORDERED, that:

- 18 1. Respondent Low.com, Inc. ("Respondent Low.com") shall show
19 cause why penalties in the amount of \$7,500.00 should not be
20 imposed against it;
- 21 2. Respondent Oversee.net, Inc. ("Respondent Oversee.net") shall
22 show cause why penalties in the amount of \$7,500.00 should
23 not be imposed against it;
- 24 3. Respondent Fred W. Hsu ("Respondent Hsu") shall show cause
25 why penalties in the amount of \$22,500.00 should not be

1 imposed against him;

2 4. Respondent Sam Aidun ("Respondent Aidun") shall show cause
3 why penalties in the amount of \$22,500.00 should not be
4 imposed against him;

5 5. Respondent Lawrence C. Ng ("Respondent Ng") shall show cause
6 why penalties in the amount of \$22,500.00 should not be
7 imposed against him;

8 6. The above named Respondents shall show cause why, in addition
9 to the penalties listed in Paragraphs 1 through 5 above,
10 statutory penalties of \$2,500.00 should not be imposed for
11 failing to file the 2007 Annual Report;

12 7. The above named Respondents shall show cause why, in addition
13 to the penalties listed in Paragraphs 1 through 6 above, the
14 \$500.00 examination fee should not be paid to the Department;

15 8. Respondents shall be jointly and severally liable for the
16 above amounts alleged in Paragraphs 1 through 7 above;

17 9. The above named Respondents shall show cause why, in addition
18 to the penalties listed in Paragraphs 1 through 8 above,
19 Respondent Low.com's license should not be revoked.

20 It is hereby further ORDERED that:

21 10. Along with the administrative penalties listed for the above
22 named Respondents, the outstanding statutory penalty of
23 \$3,000.00 shall be immediately paid; and
24
25

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 07-155
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 7 Low.com, Inc., Oversee.net, Inc., Fred)
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 8 W. Hsu, Sam Aidun, and Lawrence C. Ng,)
)
 9 Respondents)

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 Low.com, Inc. (hereinafter "Low.com") was licensed as
15 a Mortgage Broker from at least September 28, 2006 (with an
16 amended license date of August 31, 2007) until its license
17 expired on December 31, 2007.
- 18 2. Respondent Oversee.net, Inc. (hereinafter "Respondent
19 Oversee.net") was the 100% owner of Respondent Low.com, when
20 licensed by the Department.
- 21 3. Respondent Fred W. Hsu (hereinafter "Respondent Hsu") was the
22 President of Respondent Low.com, when licensed by the
23 Department.
- 24 4. Respondent Sam Aidun (hereinafter "Respondent Aidun") was the
25 Vice President of Respondent Low.com, when licensed by the

1 Department.

2 5. Respondent Lawrence C. Ng (hereinafter "Respondent Ng") was the
3 Director of Respondent Low.com, when licensed by the Department.

4 Violation of RSA 397-A:10-a,I(a) Failure to Properly Surrender License (1
5 Count):

6 Violation of RSA 397-A:13,I Failure to File Annual Report (1 Count):

7 Violation of RSA 397-A:13,VI Failure of Officer and Owner to Respond to
8 Department Inquiries (3 Counts):

9 6. Paragraphs 1 through 15 are hereby realleged as fully set forth
10 herein.

11 7. The 2007 Annual Report was due on or before February 1, 2008.

12 8. On January 18, 2008, the Department sent a certified letter
13 advising the Respondents that Respondent Low.com's license had
14 expired on December 31, 2007 and that Respondents had to file
15 proper surrender forms and an annual report.

16 9. On February 5, 2008, the Department sent another certified letter
17 that the annual report was due on February 1, 2008.

18 10. On February 19, 2008, the Department sent another certified
19 reminder letter that Respondents still needed to complete the
20 surrender forms, the publication notice and provide the annual
21 report.

22 11. To date, the Department has not received copies of the publication
23 notice nor the expiration paperwork nor the 2007 annual report.

24 12. To date, the accrued penalty for failure to file an annual report
25 has reached the maximum cap of \$2,500.00.

1 Violation of RSA 397-A:12,V Failure to Pay Examination Fee (1 Count):

2 Violation of RSA 397-A:13,VI Failure of Officer and Owner to Respond to

3 Department Inquiries (2 Counts):

4 13. Paragraphs 1 through 12 are hereby realleged as fully set forth
5 herein.

6 14. The Department conducted an examination of Respondent Low.com on
7 September 17, 2007, while Respondent Low.com was still licensed
8 with the Department.

9 15. On February 12, 2008, the Department mailed the invoice for
10 \$500.00 to Respondent Low.com, via U.S. Certified Mail Return
11 Receipt requested, which Respondents received on February 20,
12 2008.

13 16. The above named Respondents failed to respond to the February 12,
14 2008 correspondence from the Department.

15 17. The Department, via U.S. mail, mailed a second notice on March 14,
16 2008 and a third notice, via U.S. Certified Mail Return Receipt
17 requested, was mailed on May 21, 2008, which Respondents received
18 on May 26, 2008.

19 18. The above named Respondents did not respond to any of the three
20 notices for payment of the \$500.00 invoice.

21 19. To date, the above named Respondents still owe the \$500.00
22 examination fee for the one day examination.

23 **II. ISSUES OF LAW**

24 The staff of the Department, alleges the following issues of law:

25 1. The Department realleges the above stated facts in Paragraphs 1

1 through 19 as fully set forth herein.

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

5 3. RSA 397-A:10-a, I(a) provides that a licensee who ceases to engage
6 in the business of a mortgage banker or mortgage broker at any
7 time during a license year for any cause shall surrender such
8 license in person or by registered or certified mail to the
9 Commissioner within 15 calendar days of such cessation, and shall
10 cause to be published in a newspaper of general circulation in the
11 licensee's market area a notice to such effect. Each of the above
12 named Respondents violated this statute on at least one occasion
13 as alleged above.

14 4. RSA 397-A:12, V provides that the expense of such examination shall
15 be chargeable to and paid by the licensee. Each of the above
16 named Respondents violated this provision on at least one
17 occasion as alleged above. To date, the above named Respondents
18 have failed to pay the \$500.00 examination invoice.

19 5. RSA 397-A:13, I provides that a licensee shall file its annual
20 report on or before February 1 each year concerning operations
21 for the preceding year or license period ending December 31.
22 Each of the above named Respondents violated this provision on at
23 least one occasion as alleged above.

24 6. RSA 397-A:13, IV provides that any mortgage banker or broker
25 failing to file the annual report or financial statement within

1 the time prescribed may be required to pay to the Department a
2 penalty of \$25.00 per calendar day for each day the annual report
3 is overdue, for a maximum of \$2,500.00. Each of the above named
4 Respondents failed to file the annual report and filed the
5 financial statement late. Each has capped at the maximum of
6 \$2,500.00, for a total of \$5,000.00 in statutory penalties alone.

7 7. RSA 397-A:13,VI provides that any officer, owner, manager or agent
8 of any licensee shall reply promptly in writing, or other
9 designated form, to any written inquiry from the Department.
10 Respondent Hsu, Respondent Aidun and Respondent Ng each violated
11 this provision on at least five occasions as alleged above.

12 8. RSA 397-A:18,I provides that the Department may issue a complaint
13 setting forth charges whenever the Department is of the opinion
14 that the licensee or person over whom the Department has
15 jurisdiction, has violated any provision of RSA 397-A or orders
16 thereunder.

17 9. RSA 397-A:21,IV provides that any person who, either knowingly or
18 negligently, violates any provision of Chapter 397-A, may upon
19 hearing, and in addition to any other penalty provided for by
20 law, be subject to an administrative fine not to exceed
21 \$2,500.00, or both. Each of the acts specified shall constitute
22 a separate violation, and such administrative action or fine may
23 be imposed in addition to any criminal penalties or civil
24 liabilities imposed by New Hampshire Banking laws.

25 10. RSA 397-A:21,V provides that every person who directly or

1 indirectly controls a person liable under this section, every
2 partner, principal executive officer or director of such person,
3 every person occupying a similar status or performing a similar
4 function, every employee of such person who materially aids in the
5 act constituting the violation, and every licensee or person acting
6 as a common law agent who materially aids in the acts constituting
7 the violation, either knowingly or negligently, may, upon notice
8 and opportunity for hearing, and in addition to any other penalty
9 provided for by law, be subject to suspension, revocation, or
10 denial of any registration or license, including the forfeiture of
11 any application fee, or the imposition of an administrative fine
12 not to exceed \$2,500, or both. Each of the acts specified shall
13 constitute a separate violation, and such administrative action or
14 fine may be imposed in addition to any criminal or civil penalties
15 imposed.

16 **III. RELIEF REQUESTED**

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

- 19 1. Find as fact the allegations contained in section I of this Staff
20 Petition;
- 21 2. Make conclusions of law relative to the allegations contained in
22 section II of this Staff Petition;
- 23 3. Pursuant to RSA 397-A:17, order each of the above named
24 Respondents to show cause why their license should not be revoked;
- 25 4. Assess fines and administrative penalties in accordance with RSA

