

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 07-225  
 )  
 3 State of New Hampshire Banking )  
 )  
 4 Department, ) Order to Show Cause  
 )  
 5 Petitioner, )  
 )  
 6 and )  
 )  
 7 First Source Financial USA (d/b/a )  
 )  
 8 Express First Source USA), and Joseph )  
 )  
 9 Nunzio Giuliano, )  
 )  
 10 Respondents )

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11 NOTICE OF ORDER

12 This Order commences an adjudicative proceeding under the provisions  
13 of RSA Chapter 397-A and RSA Chapter 541-A.

14 LEGAL AUTHORITY AND JURISDICTION

15 Pursuant to RSA 397-A:17, the Banking Department of the State of New  
16 Hampshire (hereinafter the "Department") has the authority to issue an order  
17 to show cause why license revocation and penalties for violations of New  
18 Hampshire Banking laws should not be imposed.

19 Pursuant to RSA 397-A:18, the Department has the authority to issue a  
20 complaint setting forth charges whenever the Department is of the opinion  
21 that the licensee or person over whom the Department has jurisdiction is  
22 violating or has violated any provision of RSA Chapter 397-A, or any rule or  
23 order thereunder.

24 Pursuant to RSA 397-A:20,IV the Commissioner may issue, amend, or  
25 rescind such orders as are reasonably necessary to comply with the

1 provisions of the Chapter.

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

6 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct  
7 that is or may be an unfair or deceptive act or practice under RSA Chapter  
8 358-A and exempt under RSA 358-A:3,I or that may violate any of the  
9 provisions of Titles XXXV and XXXVI and administrative rules adopted  
10 thereunder. The Commissioner may hold hearings relative to such conduct and  
11 may order restitution for a person or persons adversely affected by such  
12 conduct.

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 Chapter  
17 541-A. 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 a formal written and  
4 executed settlement with the Department within that time frame, then such  
5 person shall likewise be deemed in default, and the orders shall, on the  
6 thirty-first day, become permanent, and shall remain in full force and effect  
7 until and unless later modified or vacated by the Commissioner, for good cause  
8 shown.

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

10 The Staff Petition dated July 9, 2009 (a copy of which is attached  
11 hereto) is incorporated by reference hereto.

12 **ORDER**

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

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

18 It is hereby ORDERED, that:

- 19 1. Respondent First Source Financial USA (d/b/a Express First  
20 Source USA) ("Respondent First Source") shall show cause why  
21 penalties in the amount of \$10,000.00 should not be imposed  
22 against it;
- 23 2. Respondent Joseph Nunzio Giuliano ("Respondent Giuliano")  
24 shall show cause why penalties in the amount of \$15,000.00  
25 should not be imposed against him;

1 3. The above named Respondents shall show cause why, in addition  
2 to the penalties listed in Paragraphs 1 through 2 above, the  
3 accrued fine of \$13,050.00 for failing to provide examination  
4 materials should not be paid to the Department;

5 4. The above named Respondents shall show cause why, in addition  
6 to the penalties listed in Paragraphs 1 through 3 above,  
7 statutory penalties of \$2,500.00 should not be imposed for  
8 failing to file the 2007 annual report;

9 5. Respondents shall be jointly and severally liable for the  
10 above amounts alleged in Paragraphs 1 through 4 above;

11 6. The above named Respondents shall show cause why, in addition  
12 to the penalties listed in Paragraphs 1 through 5 above,  
13 Respondent First Source's license should not be revoked.

14 It is hereby further ORDERED that:

15 7. Along with the administrative penalties listed for the above  
16 named Respondents, the outstanding sum of \$15,550.00 shall be  
17 immediately paid; and

18 8. Failure to request a hearing within 30 days of the date of  
19 receipt or valid delivery of this Order shall result in a  
20 default judgment being rendered and administrative penalties  
21 imposed upon the defaulting Respondent(s).

22 SIGNED,

23  
24 Dated: 07/09/09

25 /s/  
PETER C. HILDRETH  
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 07-225  
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 4 Department, ) Staff Petition  
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 5 Petitioner, ) July 9, 2009  
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 6 and )  
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 7 First Source Financial USA (d/b/a )  
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 8 Express First Source USA), and Joseph )  
 )  
 9 Nunzio Giuliano, )  
 )  
 10 Respondents )

11 I. STATEMENT OF ALLEGATIONS

12 The Staff of the Banking Department, State of New Hampshire (hereinafter  
13 "Department") alleges the following facts:

14 Facts Common on All Counts:

- 15 1. Respondent First Source Financial USA (d/b/a Express First Source  
16 USA) (hereinafter "Respondent First Source") was licensed as a  
17 Mortgage Broker from at least November 12, 2002 (with an amended  
18 license date of July 11, 2006) until its license expired on  
19 December 31, 2007.
- 20 2. Respondent Joseph Nunzio Giuliano (hereinafter "Respondent  
21 Giuliano") was the President of Respondent First Source, when  
22 licensed by the Department.

23 Violation of RSA 397-A:12,VII Failure to Facilitate Exam (1 Count):

24 Violation of RSA 397-A:12,III Examinations: Failure to Provide Requested

25 Files (1 Count):

1 Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested

2 Files (1 Count):

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

4 Department Inquiries (2 Counts):

5 3. Paragraphs 1 through 2 are hereby realleged as fully set forth  
6 herein.

7 4. The Department attempted to conduct an examination of Respondent  
8 First Source on June 11, 2007, while Respondent First Source was  
9 still licensed with the Department.

10 5. On May 14, 2007, the Department sent the notice of examination to  
11 Respondent First Source via U.S. Certified Mail Return Receipt  
12 requested, which Respondents received on May 21, 2007.

13 6. With no response, on June 26, 2007, the Department sent the notice  
14 of examination to Respondent First Source via facsimile and  
15 email, the facsimile of which was successful.

16 7. The materials requested in the notice of examination were due on  
17 June 11, 2007, which is 21 days after the May 21, 2007 delivery  
18 of the notice of examination.

19 8. To date, the Department has not received the examination materials  
20 nor have Respondents acknowledged the examination.

21 9. To date, fines have accrued for failing to provide the requested  
22 files. The current fine to date is \$13,050.00 (\$50.00 a day x  
23 261 days) and still accruing.

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

2 10. Paragraphs 1 through 9 are hereby realleged as fully set forth  
3 herein.

4 11. Respondent First Source was licensed in 2007, and thus subject  
5 to the filing of a 2007 annual report with the Department.

6 12. The 2007 annual report was due on or before February 1, 2008.

7 13. On January 4, 2008, the Department mailed a certified letter  
8 advising that Respondents' license had expired and directed  
9 Respondents to complete surrender/expiration forms to submit to  
10 the Department. The post office returned the letter to the  
11 Department as "not deliverable as addressed" with no forwarding  
12 address.

13 14. On January 18, 2008, the Department mailed a follow-up reminder  
14 of the annual report filing requirement. The post office  
15 returned the letter to the Department as "not deliverable as  
16 addressed" with no forwarding address.

17 15. On February 5, 2008, the Department via U.S. Certified Mail  
18 Return Receipt requested, mailed a third letter regarding the  
19 annual report filing requirement. The post office returned the  
20 letter to the Department as "not deliverable as addressed" with  
21 no forwarding address.

22 16. To date, Respondent First Source has failed to file the 2007  
23 annual report or surrender/expiration documents.

24 17. To date, the penalty for failing to file an annual report has  
25 accrued to the maximum cap of \$2,500.00 (\$25.00 a day, maximum

1                   \$2,500).

2   **II. ISSUES OF LAW**

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

4           1. The Department realleges the above stated facts in Paragraphs 1  
5           through 17 as fully set forth herein.

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

9           3. RSA 397-A:11,II provides that requested files and business records  
10           must be received by the Department within 21 calendar days of  
11           request. The licensee will be subject to a \$50.00 a day fine  
12           every day after the 21-day period the records are not produced.  
13           Respondents currently owe \$13,050.00. Each of the above named  
14           Respondents violated this statute on at least one occasion as  
15           alleged above.

16           4. RSA 397-A:12,III requires licensees to comply with examination  
17           requests with or without prior notice. All books, papers, files,  
18           related material, and records of assets shall be subject to the  
19           Department's examination. Each of the above named Respondents  
20           violated this statute on at least one occasion as alleged above.

21           5. RSA 397-A:12,VII provides that every person being examined, and  
22           all of the officers, directors, employees, agents, and  
23           representatives of such person shall make freely available to the  
24           Commissioner or his or her examiners, the accounts, records,  
25           documents, files, information, assets, and matters in their



1 possession or control relating to the subject of the examination  
2 and shall facilitate the examination. Each of the above named  
3 Respondents violated this statute on at least one occasion as  
4 alleged above.

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

10 7. RSA 397-A:13,VI provides that any officer, owner, manager or agent  
11 of any licensee shall reply promptly in writing, or other  
12 designated form, to any written inquiry from the Department.  
13 Respondent Giuliano violated this provision on at least two  
14 occasions as alleged above.

15 8. RSA 397-A:17,I provides in part that the Commissioner may by  
16 order, upon due notice and opportunity for hearing, assess  
17 penalties or deny, suspend, or revoke a license or application if  
18 it is in the public interest and the applicant, respondent, or  
19 licensee, any partner, officer, member, or director, any person  
20 occupying a similar status or performing similar functions, or any  
21 person directly or indirectly controlling the applicant,  
22 respondent, or licensee: (a) has violated any provision of RSA  
23 Chapter 397-A or rules thereunder, or (b) has not met the  
24 standards established in RSA Chapter 397-A.

25 9. RSA 397-A:18,I provides that the Department may issue a complaint

1 setting forth charges whenever the Department is of the opinion  
2 that the licensee or person over whom the Department has  
3 jurisdiction, has violated any provision of RSA 397-A or orders  
4 thereunder.

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

13 11. RSA 397-A:21,V provides that every person who directly or  
14 indirectly controls a person liable under this section, every  
15 partner, principal executive officer or director of such person,  
16 every person occupying a similar status or performing a similar  
17 function, every employee of such person who materially aids in the  
18 act constituting the violation, and every licensee or person acting  
19 as a common law agent who materially aids in the acts constituting  
20 the violation, either knowingly or negligently, may, upon notice  
21 and opportunity for hearing, and in addition to any other penalty  
22 provided for by law, be subject to suspension, revocation, or  
23 denial of any registration or license, including the forfeiture of  
24 any application fee, or the imposition of an administrative fine  
25 not to exceed \$2,500, or both. Each of the acts specified shall

1 constitute a separate violation, and such administrative action or  
2 fine may be imposed in addition to any criminal or civil penalties  
3 imposed.

4 **III. RELIEF REQUESTED**

5 The staff of the Department requests the Commissioner take the following  
6 action:

- 7 1. Find as fact the allegations contained in section I of this Staff  
8 Petition;
- 9 2. Make conclusions of law relative to the allegations contained in  
10 section II of this Staff Petition;
- 11 3. Pursuant to RSA 397-A:17, order each of the above named  
12 Respondents to show cause why their license should not be revoked;
- 13 4. Assess fines and administrative penalties in accordance with RSA  
14 397-A:21, for violations of Chapter 397-A, in the number and  
15 amount equal to the violations set forth in section II of this  
16 Staff Petition; and
- 17 5. Take such other administrative and legal actions as necessary for  
18 enforcement of the New Hampshire Banking Laws, the protection of  
19 New Hampshire citizens, and to provide other equitable relief.

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