

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 07-226
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Patriot Financial USA, Inc (d/b/a PFU),)
)
 8 Michael A. Foote, and Zach C. Southall,)
)
 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.

11 **NOTICE OF RIGHT TO REQUEST A HEARING**

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

25 If any of the above named Respondents fails to request a hearing within

1 30 calendar days of receipt of such order or reach a formal written and
2 executed settlement with the Department within that time frame, then such
3 person shall likewise be deemed in default, and the orders shall, on the
4 thirty-first day, become permanent, and shall remain in full force and effect
5 until and unless later modified or vacated by the Commissioner, for good cause
6 shown.

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

8 The Staff Petition dated June 16, 2009 (a copy of which is attached
9 hereto) is incorporated by reference hereto.

10 **ORDER**

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

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

16 It is hereby ORDERED, that:

- 17 1. Respondent Patriot Financial USA, Inc (d/b/a PFU)
18 ("Respondent Patriot Financial") shall show cause why
19 penalties in the amount of \$12,500.00 should not be imposed
20 against it;
- 21 2. Respondent Michael A. Foote ("Respondent Foote") shall show
22 cause why penalties in the amount of \$20,000.00 should not be
23 imposed against him;
- 24 3. Respondent Zach C. Southall ("Respondent Southall" shall show
25 cause why penalties in the amount of \$20,000.00 should not be

1 imposed against him;

2 4. The above named Respondents shall show cause why, in addition
3 to the penalties listed in Paragraphs 1 through 3 above, the
4 \$500.00 examination fee should not be paid to the Department;

5 5. The above named Respondents shall show cause why, in addition
6 to the penalties listed in Paragraphs 1 through 4 above, the
7 accrued fine of \$40,650.00 for failing to provide examination
8 materials (and still accruing) should not be paid to the
9 Department;

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

14 7. The above named Respondents shall be jointly and severally
15 liable for the above amounts alleged in Paragraphs 1 through
16 6 above;

17 8. The above named Respondents shall show cause why, in addition
18 to the penalties listed in Paragraphs 1 through 7 above,
19 Respondent Patriot Financial's license should not be revoked.

20 It is hereby further ORDERED that:

21 9. Along with the administrative penalties listed for the above
22 named Respondents, the outstanding sum of \$43,650.00 shall be
23 immediately paid; and

1 10. Failure to request a hearing within 30 days of the date of
2 receipt or valid delivery of this Order shall result in a
3 default judgment being rendered and administrative penalties
4 imposed upon the defaulting Respondent(s).

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6 SIGNED,

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8 Dated: 06/17/09

9 /s/
PETER C. HILDRETH
BANK COMMISSIONER

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1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 07-226
3 State of New Hampshire Banking)
4 Department,) Staff Petition
5 Petitioner,) June 16, 2009
6 and)
7 Patriot Financial USA, Inc (d/b/a PFU),)
8 Michael A. Foote, and Zach C. Southall,)
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 Patriot Financial USA, Inc (d/b/a PFU) (hereinafter
15 "Respondent Patriot Financial") was licensed as a Mortgage
16 Broker from at least January 1, 2006 until its license expired
17 on December 31, 2007.
- 18 2. Respondent Michael A. Foote (hereinafter "Respondent Foote") was
19 the 50% owner, Co-President, Chief Executive Officer and
20 Secretary of Respondent Patriot Financial, when licensed by the
21 Department.
- 22 3. Respondent Zach C. Southall (hereinafter "Respondent Southall")
23 was the 50% owner, Co-President, and Chief Financial Officer of
24 Respondent Patriot Financial, when licensed by the Department.

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

2 Violation of RSA 397-A:12,III Examinations: Failure to Provide Requested
3 Files (1 Count):

4 Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested
5 Files (1 Count):

6 Violation of RSA 397-A:13,VI Failure of Officer and Owner to Respond to
7 Department Inquiries (2 Counts):

8 4. Paragraphs 1 through 3 are hereby realleged as fully set forth
9 herein.

10 5. The Department conducted an examination of Respondent Patriot
11 Financial on February 5, 2007, while Respondent Patriot Financial
12 was still licensed with the Department.

13 6. Respondent Patriot Financial submitted the required documentation
14 for the pre-examination phase.

15 7. On February 28, 2007, the Department's Examiner then submitted a
16 request for loan files for the examination to Respondent Patriot
17 Financial via U.S. Certified Mail Return Receipt requested, which
18 Respondents received on March 5, 2007.

19 8. The materials requested in the notice of examination were due on
20 March 26, 2007, which is 21 days after the March 5, 2007 delivery
21 of the notice of examination.

22 9. On April 2, 2007, an individual who identified himself as "Zach"
23 indicated he bought out his partner, the files were maintained
24 off-site and he would retrieve them and send them to the
25 Department.

1 10. With no response from the above named Respondents, the Department
2 mailed a second notice via U.S. Certified Mail Return Receipt
3 requested on July 20, 2007, which Respondents received on July
4 27, 2007.

5 11. The Department also emailed the second notice, which Respondents
6 received the same day.

7 12. To date, the Department has not received the examination
8 materials.

9 13. To date, fines have accrued for failing to provide the requested
10 files. The current fine to date is \$40,650.00 (\$50.00 a day x
11 813 days) and still accruing.

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

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

14 **Department Inquiries (1 Count):**

15 14. Paragraphs 1 through 13 are hereby realleged as fully set forth
16 herein.

17 15. The Department conducted an examination of Respondent Patriot
18 Financial on February 5, 2007, while Respondent Patriot Financial
19 was still licensed with the Department.

20 16. On February 12, 2008, the Department mailed the invoice for
21 \$500.00 to Respondent Patriot Financial, via U.S. Certified Mail
22 Return Receipt requested, which Respondents received on February
23 19, 2008.

24 17. The Respondents failed to respond to the February 12, 2008
25 Department correspondence.

1 18. The Department, via U.S. mail, mailed a second notice on March 14,
2 2008 and a third notice on April 16, 2008.

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

5 20. To date, the above named Respondents still owe the \$500.00
6 examination fee for the one day examination.

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

8 21. Paragraphs 1 through 20 are hereby realleged as fully set forth
9 herein.

10 22. The 2007 Annual Report was due on or before February 1, 2008.

11 23. On January 8, 2008, the Department sent an email advising that
12 Respondent Patriot Financial will owe the 2007 Annual Report due
13 on or before February 1, 2008.

14 24. With no response, a written reminder was sent on February 5, 2008
15 and on February 19, 2008. Both were returned to the Department
16 with no forwarding address.

17 25. To date, the Department has not received the 2007 annual report.

18 26. To date, the accrued penalty for failure to file an annual report
19 has reached the maximum cap of \$2,500.00 (\$25.00 per day).

20 **II. ISSUES OF LAW**

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

22 1. The Department realleges the above stated facts in Paragraphs 1
23 through 26 as fully set forth herein.

24 2. The Department has jurisdiction over the licensing and regulation
25 of persons engaged in mortgage banker or broker activities

1 pursuant to NH RSA 397-A:2 and RSA 397-A:3.

2 3. RSA 397-A:11,II provides that requested files and business records
3 must be received by the Department within 21 calendar days of
4 request. The licensee will be subject to a \$50.00 a day fine
5 every day after the 21-day period the records are not produced.
6 Respondents currently owe \$40,650.00 (and still accruing). Each
7 of the above named Respondents violated this statute on at least
8 one occasion as alleged above.

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

14 5. 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 6. RSA 397-A:12,VII provides that every person being examined, and
20 all of the officers, directors, employees, agents, and
21 representatives of such person shall make freely available to the
22 Commissioner or his or her examiners, the accounts, records,
23 documents, files, information, assets, and matters in their
24 possession or control relating to the subject of the examination
25 and shall facilitate the examination. Each of the above named

1 Respondents violated this statute on at least one occasion as
2 alleged above.

3 7. RSA 397-A:13,I provides that a licensee shall file its annual
4 report on or before February 1 each year concerning operations
5 for the preceding year or license period ending December 31.
6 Each of the above named Respondents violated this provision on at
7 least one occasion as alleged above. The maximum for failure to
8 file the annual report capped at \$2,500.00, as calculated by RSA
9 397-A:13,IV below.

10 8. RSA 397-A:13,IV provides that any mortgage banker or broker
11 failing to file the annual report or financial statement within
12 the time prescribed may be required to pay to the Department a
13 penalty of \$25.00 per calendar day for each day the annual report
14 is overdue, for a maximum of \$2,500.00. Each of the above named
15 Respondents failed to file the annual report, which capped at the
16 maximum of \$2,500.00.

17 9. RSA 397-A:13,VI provides that any officer, owner, manager or agent
18 of any licensee shall reply promptly in writing, or other
19 designated form, to any written inquiry from the Department.
20 Respondent Foote and Respondent Southall each violated this
21 provision on at least three occasions as alleged above.

22 10. RSA 397-A:17,I provides in part that the Commissioner may by
23 order, upon due notice and opportunity for hearing, assess
24 penalties or deny, suspend, or revoke a license or application if
25 it is in the public interest and the applicant, respondent, or

1 licensee, any partner, officer, member, or director, any person
2 occupying a similar status or performing similar functions, or
3 any person directly or indirectly controlling the applicant,
4 respondent, or licensee: (a) has violated any provision of RSA
5 Chapter 397-A or rules thereunder, or (b) has not met the
6 standards established in RSA Chapter 397-A.

7 11. RSA 397-A:18,I provides that the Department may issue a complaint
8 setting forth charges whenever the Department is of the opinion
9 that the licensee or person over whom the Department has
10 jurisdiction, has violated any provision of RSA Chapter 397-A or
11 orders thereunder.

12 12. RSA 397-A:21,IV provides that any person who, either knowingly or
13 negligently, violates any provision of RSA 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 \$2,500.00, or both. Each of the acts specified shall constitute
17 a 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 13. RSA 397-A:21,V provides that every person who directly or
21 indirectly controls a person liable under this section, every
22 partner, principal executive officer or director of such person,
23 every person occupying a similar status or performing a similar
24 function, every employee of such person who materially aids in the
25 act constituting the violation, and every licensee or person acting

1 as a common law agent who materially aids in the acts constituting
2 the violation, either knowingly or negligently, may, upon notice
3 and opportunity for hearing, and in addition to any other penalty
4 provided for by law, be subject to suspension, revocation, or
5 denial of any registration or license, including the forfeiture of
6 any application fee, or the imposition of an administrative fine
7 not to exceed \$2,500, or both. Each of the acts specified shall
8 constitute a separate violation, and such administrative action or
9 fine may be imposed in addition to any criminal or civil penalties
10 imposed.

11 **III. RELIEF REQUESTED**

12 The staff of the Department requests the Commissioner take the following
13 action:

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

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New Hampshire citizens, and to provide other equitable relief.

IV. RIGHT TO AMEND

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/
Maryam Torben Desfosses
Hearings Examiner

 06/16/09
Date