

1 State of New Hampshire Banking Department

) Case No.: 07-254

2 In re the Matter of:

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3 State of New Hampshire Banking

)

) Order to Show Cause

4 Department,

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5 Petitioner,

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6 and

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7 Accountable Mortgage.com, Inc., and

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)

8 Kevin Leon Martin,

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9 Respondents

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)

10)

11 NOTICE OF ORDER

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

1 Pursuant to RSA 397-A:20, the Commissioner may issue, amend, or
2 rescind such orders as are reasonably necessary to comply with the
3 provisions of the Chapter.

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

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

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

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

1 to appear at the hearing after being duly notified, such person shall be
2 deemed in default, and the proceeding may be determined against the Respondent
3 upon consideration of the Order to Show Cause, the allegations of which may be
4 deemed to be true.

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

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

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

14 **ORDER**

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

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

20 It is hereby ORDERED, that:

- 21 1. Respondent Accountable Mortgage.com, Inc. ("Respondent
22 Accountable Mortgage") shall show cause why penalties in the
23 amount of \$15,000.00 should not be imposed against it;
- 24 2. Respondent Kevin Leon Martin ("Respondent Martin") shall show
25 cause why penalties in the amount of \$17,500.00 should not be

1 imposed against him;

2 3. The above named Respondents shall show cause why, in addition
3 to the penalties listed in Paragraphs 1 through 2 above, the
4 \$785.00 examination fee 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, the
7 accrued fine of \$3,450.00 for the late filing of and/or
8 failure to file examination materials should not be paid to
9 the Department;

10 5. The above named Respondents shall show cause why, in addition
11 to the penalties listed in Paragraphs 1 through 4 above, the
12 remaining unpaid portion of the fine for \$150.00 for the late
13 filing of the financial statement should not be paid to the
14 Department;

15 6. The above named Respondents shall be jointly and severally
16 liable for the above amounts alleged in Paragraphs 1 through
17 5 above;

18 7. The above named Respondents shall show cause why, in addition
19 to the penalties listed in Paragraphs 1 through 6 above,
20 Respondent Accountable Mortgage's license should not be
21 revoked.

22 It is hereby further ORDERED that:

23 8. Along with the administrative penalties listed for the above
24 named Respondents, the outstanding sum of \$4,385.00 shall be
25 immediately paid; and

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 07-254
3 State of New Hampshire Banking)
4 Department,) Staff Petition
5 Petitioner,) December 31, 2008
6 and)
7 Accountable Mortgage.com, Inc., and)
8 Kevin Leon Martin,)
9 Respondents)
10)

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 Accountable Mortgage.com, Inc. (hereinafter
16 "Respondent Accountable Mortgage") was licensed as a Mortgage
17 Broker from at least September 22, 2005 until its license
18 expired on December 31, 2006.
- 19 2. Respondent Kevin Leon Martin (hereinafter "Respondent Martin")
20 was the 100% owner and President of Respondent Accountable
21 Mortgage, when licensed by the Department.

1 ORIGINAL NOTICE OF EXAMINATION MATERIALS

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

3 Files in a Timely Manner (1 Count):

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

6 4. The Department conducted an examination of Respondent Accountable
7 Mortgage on August 21, 2006.

8 5. On July 13, 2006, the Department sent the July 13, 2006 notice of
9 examination to Respondent Accountable Mortgage via U.S. Certified
10 Mail Return Receipt requested. The U.S. Postal Service "Track
11 and Confirm" website indicated the letter was returned unclaimed
12 on August 3, 2006.

13 6. The Department actually received the July 13, 2006 notice of
14 examination on August 21, 2006.

15 7. On August 22, 2006, the Department submitted the notice of
16 examination via UPS Next Day Air®, which was delivered to the
17 front door of Respondent Accountable Mortgage at 10:03 a.m. on
18 August 23, 2006.

19 8. The materials requested in the notice of examination were due on
20 September 13, 2006, which is 21 days after the August 23, 2006
21 delivery of the notice of examination.

22 9. The examination materials arrived at the Department on September
23 26, 2006, which is 13 days late.

24 10. The total late statutory penalty due is \$650.00 (\$50.00 a day x 13
25 days), which to date has not been paid.

1 NOTICE OF EXPANDED EXAMINATION MATERIALS REQUEST

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

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

4 Files (1 Count):

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

6 Files (1 Count):

7 11. Paragraphs 1 through 10 are hereby realleged as fully set forth
8 herein.

9 12. On September 27, 2006, the Department mailed an expanded
10 examination request to Respondent Accountable Mortgage.

11 13. Respondent Accountable Mortgage received the September 27, 2006
12 expanded examination request on October 2, 2006.

13 14. The materials requested in the September 27, 2006 expanded
14 examination request were due on October 23, 2006.

15 15. The Department did not receive the expanded examination materials
16 requested on or by October 23, 2006.

17 16. On December 22, 2006, the Department submitted an email to
18 Respondent Martin of Respondent Accountable Mortgage, reminding
19 the above named Respondents they failed to submit the expanded
20 examination documents within 21 days of the October 2, 2006
21 receipt of the expanded examination request.

22 17. On December 28, 2006, Respondent Martin responded that he
23 submitted the materials to the Department by email on September
24 21, 2006, which cannot be the response to the Department's
25 September 27, 2006 expanded examination request.

1 18. On December 28, 2006, the Department responded to Respondent
2 Martin via email by clarifying that the Department requested the
3 completed officers' questionnaire, as well as the closed,
4 withdrawn and denied loan files, which weren't provided by email
5 on September 21, 2006, since the Department's letter wasn't
6 mailed out until after September 21, 2006.

7 19. On December 29, 2006, Respondent Martin replied to the Department
8 by email, acknowledging the \$50.00 a day fine.

9 20. Respondent Martin still did not provide the documentation
10 requested in the September 27, 2006 expanded examination request.

11 21. The total late statutory penalty due from the due date until the
12 bond cancellation date of December 31, 2006 is \$3,450.00 (\$50.00
13 a day x 69 days), which Respondents have not paid.

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

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

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

17 22. Paragraphs 1 through 21 are hereby realleged as fully set forth
18 herein.

19 23. As stated above, the Department conducted an examination of
20 Respondent Accountable Mortgage on August 21, 2006, while
21 Respondent Accountable Mortgage was still licensed with the
22 Department.

23 24. On May 14, 2007, the Department mailed the report of examination
24 and invoice for \$785.00 to Respondent Accountable Mortgage, via
25 U.S. Certified Mail Return Receipt requested, which was returned

1 to the Department on June 11, 2007.

2 25. On June 14, 2007, the Department mailed report of examination and
3 invoice for \$785.00 to Respondent Accountable Mortgage, via UPS,
4 which Respondents received on June 15, 2007.

5 26. The above named Respondents failed to respond to the June 14, 2007
6 correspondence from the Department.

7 27. The Department, via U.S. mail, mailed a second notice on June 28,
8 2007 (which was returned to the Department on July 9, 2007) and a
9 third notice on August 22, 2007.

10 28. The above named Respondents did not respond to any of the three
11 notices for payment of the \$785.00 invoice.

12 29. To date, the above named Respondents still owe the \$785.00
13 examination fee for the 1.57 day examination.

14 **Violation of RSA 397-A:13,IV Failure to Completely Pay Late Penalty Owed for**

15 **Late Filing of Financial Statement(1 Count):**

16 30. Paragraphs 1 through 29 are hereby realleged as fully set forth
17 herein.

18 31. On January 30, 2006, the Department submitted reminder letters
19 that financial statements were due no later than 90 days after a
20 licensee's fiscal year end of December 31, 2005. Consequently,
21 the financial statement would be due on or before Friday, March
22 31, 2006.

23 32. On April 20, 2006, the Department mailed a letter to Respondent
24 Accountable Mortgage, indicating the financial statement had not
25 been received and a \$25.00 a day fine was accruing.

1 33. On May 16, 2006, the Department received Respondent Accountable
2 Mortgage's financial statement, which generated an invoice for
3 \$950.00 (\$25.00 a day x 38 days).

4 34. On August 25, 2006, the Department received a check for \$500.00,
5 which left a balance of \$450.00.

6 35. On September 13, 2006, the Department sent an email to Respondent
7 Martin regarding the outstanding amount that was due.

8 36. On September 26, 2006, the Department received a check for
9 \$300.00, which left a balance of \$150.00.

10 37. To date, the Department has not received the final \$150.00 payment
11 owed for the late filing of a financial statement.

12 **II. ISSUES OF LAW**

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

14 1. The Department realleges the above stated facts in Paragraphs 1
15 through 37 as fully set forth herein.

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

19 3. RSA 397-A:11,II provides that requested files and business records
20 must be received by the Department within 21 calendar days of
21 request. The licensee will be subject to a \$50.00 a day fine
22 every day after the 21-day period the records are not produced.
23 Respondents currently owe \$4,100.00. Each of the above named
24 Respondents violated this statute on at least 2 occasions as
25 alleged above.

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

6 5. RSA 397-A:12,V provides that the expense of such examination shall
7 be chargeable to and paid by the licensee. Each of the above
8 named Respondents violated this provision on at least one
9 occasion as alleged above. To date, the above named Respondents
10 have failed to pay the \$785.00 examination invoice, of which
11 \$401.67 represents the portion accrued prior to Respondent
12 Accountable Mortgage's license expiration.

13 6. RSA 397-A:12,VII provides that every person being examined, and
14 all of the officers, directors, employees, agents, and
15 representatives of such person shall make freely available to the
16 Commissioner or his or her examiners, the accounts, records,
17 documents, files, information, assets, and matters in their
18 possession or control relating to the subject of the examination
19 and shall facilitate the examination. Each of the above named
20 Respondents violated this statute on at least one occasion as
21 alleged above.

22 7. RSA 397-A:13,IV provides that any mortgage banker or mortgage
23 broker failing to file either the annual report or the financial
24 statement required by RSA Chapter 397-A within the time
25 prescribed may be required to pay to the Department a penalty of

1 \$25.00 for each calendar day the annual report or financial
2 statement is overdue, up to a maximum penalty of \$2,500.00 per
3 report or statement. Each of the above named Respondents violated
4 this provision on at least one occasion as alleged above. The
5 above named Respondents filed a financial statement, that was
6 several days late, and incurred a penalty of \$950.00. Having
7 paid \$800.00, Respondents still owe \$150.00.

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

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

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

1 11. RSA 397-A:21,V provides that every person who directly or
2 indirectly controls a person liable under this section, every
3 partner, principal executive officer or director of such person,
4 every person occupying a similar status or performing a similar
5 function, every employee of such person who materially aids in the
6 act constituting the violation, and every licensee or person acting
7 as a common law agent who materially aids in the acts constituting
8 the violation, either knowingly or negligently, may, upon notice
9 and opportunity for hearing, and in addition to any other penalty
10 provided for by law, be subject to suspension, revocation, or
11 denial of any registration or license, including the forfeiture of
12 any application fee, or the imposition of an administrative fine
13 not to exceed \$2,500, or both. Each of the acts specified shall
14 constitute a separate violation, and such administrative action or
15 fine may be imposed in addition to any criminal or civil penalties
16 imposed.

17 **III. RELIEF REQUESTED**

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

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

