

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 07-283  
 )  
 3 State of New Hampshire Banking ) Order to Show Cause  
 )  
 4 Department, ) with Immediate Suspension  
 )  
 5 Petitioner, )  
 )  
 6 and )  
 )  
 7 Elliot A. Willard d/b/a Family )  
 )  
 8 Mortgage Company, Elliot A. Willard )  
 )  
 9 and Gilbert W. Cox,  
 )  
 10 Respondents

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11  
12 NOTICE OF ORDER

13 This Order commences an adjudicative proceeding under the provisions of  
14 RSA 397-A:17, RSA 541-A and BAN 200.

15 LEGAL AUTHORITY AND JURISDICTION

16 Pursuant to RSA 397-A:17, the Commissioner of the New Hampshire Banking  
17 Department (hereinafter "the Department") may issue an Order to Show Cause  
18 why a license should not be revoked. RSA 397-A:17 states that the  
19 Department may issue such Order when a licensee violates any provision of the  
20 Chapter, fails to meet the standards espoused in the Chapter, or for other  
21 reasons. RSA 397-A:21 states the Commissioner may impose penalties of up to

22 Pursuant to RSA 397-A:17 and RSA 541-A:30 the Commissioner may by order  
23 summarily postpone or suspend any license or application pending final  
24 determination of any order to show cause, or other order, or of any other  
25 proceeding under this section, provided the commissioner finds that the public  
interest would be irreparably harmed by delay in issuing such order

1 Pursuant to RSA 397-A:20, the Commissioner may issue, amend, or rescind  
2 such orders as are reasonably necessary to comply with the provisions of the  
3 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 of  
6 up to \$2,500.00 for each violation of New Hampshire banking law and rules.

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

8 The above named respondents have the right to request a hearing on this  
9 Order to Show Cause, as well as the right to be represented by counsel. In  
10 accordance with RSA 541-A a hearing shall be held not more than ten days from  
11 the signing of this Order.

12 After said hearing and within 20 days of the date of the hearing the  
13 commissioner shall issue a further order vacating the Order to Show Cause or  
14 making it permanent as the facts require and making such findings as are  
15 necessary on the Show Cause order. All hearings shall comply with 541-A. If  
16 the person to whom an order is issued fails to appear at the hearing after  
17 being duly notified, such person shall be deemed in default, and the proceeding  
18 may be determined against him or her upon consideration of the Order to Show  
19 Cause, the allegations of which may be deemed to be true.

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

21 The Staff Petition dated October 30, 2007 (a copy of which is attached  
22 hereto) is incorporated by reference hereto.

23 **ORDER**

24 WHEREAS, finding it necessary and appropriate and in the public  
25 interest, and consistent with the intent and purposes of the New Hampshire  
26 banking laws, and

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

1 It is hereby ORDERED, that the Respondent shall show cause why:

- 2 1. Administrative penalties of \$7,500.00 should not be imposed
- 3 against Respondent Family; and
- 4 2. Administrative penalties of \$7,500.00 should not be imposed
- 5 against Respondent Willard; and
- 6 3. Administrative penalties of \$10,000.00 should not be imposed
- 7 against Respondent Cox; and
- 8 4. Respondents license should not be revoked; and

9 FINDING a substantial likelihood that delay will cause harm to the public  
10 health, safety or welfare, requiring emergency action it is hereby further  
11 ORDERED:

- 11 5. Respondent's license is immediately suspended; and
- 12 6. A hearing on the immediate suspension will be scheduled to
- 13 occur in the next ten days pursuant to RSA 541-A:30, III.

14 SIGNED,

15  
16 Dated: 10/30/07

/SRAF/

17 PETER C. HILDRETH  
18 BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 07-283  
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 3 State of New Hampshire Banking ) Staff Petition  
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 4 Department, )  
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 5 Petitioner, ) October 30, 2007  
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 6 and )  
 )  
 7 Elliot A. Willard d/b/a Family )  
 )  
 8 Mortgage Company, Elliot A. Willard )  
 )  
 9 and Gilbert W. Cox,

10 Respondents

11  
12 STATEMENT OF ALLEGATIONS

13 I. The Staff of the Banking Department, State of New Hampshire  
14 (hereinafter referred to as the "Department) alleges the following  
15 facts:

- 16 1. Elliot A. Willard d/b/a Family Mortgage Company (hereinafter,  
17 "Respondent Family" or "Family" or "licensee") is currently licensed  
18 as a Mortgage Broker.
- 19 2. Respondent's principal place of business is North Andover,  
20 Massachusetts.
- 21 3. Respondent Family is owned 100% by Respondent Elliot A. Willard  
22 (hereinafter "Respondent Willard" or "Willard").
- 23 4. Respondent Family has a branch office located at 410 South Main  
24 Street, Concord, New Hampshire, managed by Respondent Gilbert W. Cox  
25 (hereinafter "Respondent Cox" or "Cox").
- 5. Respondent Family also has a branch office in Atkinson, NH.

- 1 6. On or about October 29, 2007 the Department began conducting an  
2 examination of the licensee at the Concord branch office.
- 3 7. The Examiner in Charge (hereinafter "EIC") became aware that the  
4 expenses of the branch office were being paid from a certain account  
5 which upon information and belief bears the name 1House.com LLC.
- 6 8. The EIC requested that Respondent Cox provide the Department with  
7 the records for the account. Respondent Cox refused to provide any  
8 records for this account despite numerous requests.
- 9 9. The Department is in possession of information which indicates that  
10 mortgage applications are being taken at the branch location under  
11 the name 1House.com LLC.
- 12 10. Respondent Cox admitted that he pays expenses of the branch from the  
13 1House.com LLC account.
- 14 11. On October 29, 2007 the Department attempted to examine the branch  
15 records of the Atkinson branch. The examiners were refused access  
16 to any branch records on that date. The branch manager further  
17 refused to meet with the examiners to answer questions related to  
18 branch activities despite his presence at the branch office.
- 19 12. On October 29, 2007 Respondent Family, through Counsel, assured  
20 Petitioner that refusal to provide bank account information at the  
21 Concord branch was a miscommunication issue and that examiners would  
22 be granted access to all branch related information for either  
23 branch that day or the following day.
- 24 13. On or about October 30, 2007 Respondents Cox notified the EIC that  
25 the account records would not be provided.

**ISSUES OF LAW**

1       II.    The staff of the Department, alleges the following issues of law:

2           1.   The Department realleges the above stated facts in paragraphs 1  
3           through 13.

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

7           3.   Pursuant to RSA 397-A:12 I the Department may examine the  
8           business affairs of any licensee as it deems necessary to  
9           determine compliance with the chapter and the rules adopted  
10          thereunder.  In determining compliance the Department may  
11          examine the books, accounts, records, files, and any other  
12          documents or matters of any licensee or person.  The Respondents  
13          violated this provision by failing to provide records of an  
14          account after they were requested by the EIC.

15          4.   Pursuant to RSA 397-A:12 II the Department may examine the  
16          records of any licensee and of any person by whom any such loan  
17          is made, whether such person shall be licensed to act, or claim  
18          to act, as principal, agent or other representative.  The  
19          Department shall have access to the books, papers, records files  
20          and vaults of all such persons.  Respondent Cox violated this  
21          provision by failing to provide records of an account after they  
22          were requested by the EIC.

23          5.   Pursuant to RSA 397-A:12 III all books, papers, files, related  
24          material, and records of assets of the licensee shall be subject  
25          to the banking department's examination.  The Respondents

1 violated this provision by failing to provide records of an  
2 account after they were requested by the EIC.

3 6. Pursuant to RSA 397-A:12 VII every person being examined, and  
4 all of the officers, directors, employees, agents, and  
5 representatives of such person shall make freely available to  
6 the commissioner of his examiners, the accounts, records,  
7 documents, files, information, assets and matters in their  
8 possession or control relating to the subject of the examination  
9 and shall facilitate the examination. The Respondents violated  
10 this provision by failing to provide records of an account after  
11 they were requested by the EIC.

12 7. Pursuant to RSA 397-A:17 the Commissioner may issue an order  
13 requiring a person to whom any license has been granted or any  
14 person under the commissioner's jurisdiction to show cause why  
15 the license should not be revoked, suspended, or penalties  
16 imposed, or both, for violations of this chapter.

17 8. Pursuant to RSA 397-A:20 the Commissioner may issue such orders  
18 as are reasonably necessary to carry out the provisions of the  
19 Chapter.

20 9. RSA 397-A:21 IV provides that any person who, either knowingly  
21 or negligently, violates any provision of Chapter 397-A, may  
22 upon hearing, and in addition to any other penalty provided for  
23 by law, be subject to suspension, revocation or denial of any  
24 registration or license, including the forfeiture of any  
25 application fee, or the imposition of an administrative fine not  
to exceed \$2,500, or both. Each of the acts specified shall

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

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

20 **RELIEF REQUESTED**

21 III. The staff of the Department requests the Commissioner take the  
22 following Action:

- 23 1. Find as fact the allegations contained in section I of this  
24 petition;
- 25 2. Make conclusions of law relative to the allegations contained  
in section II of this petition;



- 1           3. Assess fines and administrative penalties in accordance with  
2           RSA 397-A:21, for violations of Chapter 397-A, in the number  
3           and amount equal to the violations set forth in section II of  
4           this petition against each of the named Respondents; and  
5           4. FIND that licensee's refusal to submit business records for  
6           inspection constitutes a danger to public health, safety or  
7           welfare requiring emergency action; and  
8           5. Order an immediate suspension of their New Hampshire mortgage  
9           broker license; and  
10          6. Order Respondents to show cause why their license should not be  
11          revoked; and  
12          7. In accordance with RSA 397-A:20, Order the Respondent to  
13          immediately cease taking mortgage applications; and  
14          8. Take such other administrative and legal actions as necessary  
15          for enforcement of the New Hampshire Banking Laws, the  
16          protection of New Hampshire citizens, and to provide other  
17          equitable relief.

18                               RIGHT TO AMEND

19       IV. The Department reserves the right to amend this Staff Petition and  
20       to request that the Commissioner take additional administrative  
21       action. Nothing herein shall preclude the Department from bringing  
22       additional enforcement action under RSA 397-A or the regulations  
23       thereunder.

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25       Respectfully submitted by:

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    /S/      
James Shepard  
Staff Attorney

10/30/07  
Date