

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 07-288
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Sunset Mortgage Company, Limited)
)
 8 Partnership, and Samuel B. Morelli,)
)
 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 January 15, 2009 (a copy of which is attached
10 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 Sunset Mortgage Company, Limited Partnership
19 ("Respondent Sunset Mortgage") shall show cause why penalties
20 in the amount of \$7,500.00 should not be imposed against it;
- 21 2. Respondent Samuel B. Morelli ("Respondent Morelli") shall
22 show cause why penalties in the amount of \$10,000.00 should
23 not be imposed against him;
- 24 3. The above named Respondents shall show cause why, in addition
25 to the penalties listed in Paragraphs 1 through 2 above, the

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 07-288
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 7 Sunset Mortgage Company, Limited)
)
 8 Partnership, and Samuel B. Morelli,)
)
 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 Sunset Mortgage Company, Limited Partnership
 15 (hereinafter "Respondent Sunset Mortgage") was licensed as a
 16 Mortgage Banker from at least March 29, 2004 until it
 17 surrendered its license July 12, 2007.
- 18 2. Respondent Samuel B. Morelli (hereinafter "Respondent Morelli")
 19 was the President of Respondent Sunset Mortgage, when licensed
 20 by the Department.

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

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

- 24 3. Paragraphs 1 through 2 are hereby realleged as fully set forth
25 herein.

1 4. On July 12, 2007, the Department received the original license
2 and letter stating Respondent Sunset Mortgage was surrendering
3 its license to be effective on July 31, 2007.

4 5. On July 12, 2007, the Department requested surrender forms,
5 annual report and publication notice from Respondent Sunset
6 Mortgage.

7 6. On August 30, 2007, the Department again requested surrender
8 forms, the annual report, and publication notice.

9 7. To date, Respondent Sunset Mortgage has failed to properly
10 surrender its license.

11 8. On February 5, 2008, the Department sent a certified reminder
12 letter that the annual report was due on February 1, 2008.

13 9. To date, Respondent Sunset Mortgage has failed to file the 2007
14 annual report.

15 10. To date, the penalty for failing to file an annual report has
16 accrued to the cap of \$2,500.00.

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

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

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

20 11. Paragraphs 1 through 10 are hereby realleged as fully set forth
21 herein.

22 12. The Department conducted an examination of Respondent Sunset
23 Mortgage on November 13, 2006, while Respondent Sunset Mortgage
24 was still licensed with the Department.

25 13. On September 5, 2007, the Department mailed the report of

1 examination and invoice for \$4,215.00 to Respondent Sunset
2 Mortgage, via U.S. Certified Mail Return Receipt requested, which
3 Respondents received on September 10, 2007.

4 14. The above named Respondents failed to respond to the September 5,
5 2007 correspondence from the Department.

6 15. The Department, via U.S. mail, mailed a second notice on November
7 1, 2007 and a third notice on December 7, 2007.

8 16. The above named Respondents did not respond to any of the three
9 notices for payment of the \$4,215.00 invoice.

10 17. To date, the above named Respondents still owe the \$4,215.00
11 examination fee for the 8.43 day examination.

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 17 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:10-a,I(a) provides that a licensee who ceases to engage
20 in the business of a mortgage banker or mortgage broker at any
21 time during a license year for any cause shall surrender such
22 license in person or by registered or certified mail to the
23 Commissioner within 15 calendar days of such cessation, and shall
24 cause to be published in a newspaper of general circulation in the
25 licensee's market area a notice to such effect. Each of the above

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

3 4. RSA 397-A:12,V provides that the expense of such examination shall
4 be chargeable to and paid by the licensee. Each of the above
5 named Respondents violated this provision on at least one
6 occasion as alleged above. To date, the above named Respondents
7 have failed to pay the \$4,215.00 examination invoice.

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

13 6. RSA 397-A:13,IV provides that any mortgage banker or mortgage
14 broker failing to file either the annual report or the financial
15 statement required by RSA Chapter 397-A within the time
16 prescribed may be required to pay to the Department a penalty of
17 \$25.00 for each calendar day the annual report or financial
18 statement is overdue, up to a maximum penalty of \$2,500.00 per
19 report or statement. The above named Respondents failed to file
20 an annual report and incurred a penalty of \$2,500.00.

21 7. RSA 397-A:13,VI provides that any officer, owner, manager or agent
22 of any licensee shall reply promptly in writing, or other
23 designated form, to any written inquiry from the Department.
24 Respondent Morelli violated this provision on at least one
25 occasion as alleged above.

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

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

14 10. RSA 397-A:21,V provides that every person who directly or
15 indirectly controls a person liable under this section, every
16 partner, principal executive officer or director of such person,
17 every person occupying a similar status or performing a similar
18 function, every employee of such person who materially aids in the
19 act constituting the violation, and every licensee or person acting
20 as a common law agent who materially aids in the acts constituting
21 the violation, either knowingly or negligently, may, upon notice
22 and opportunity for hearing, and in addition to any other penalty
23 provided for by law, be subject to suspension, revocation, or
24 denial of any registration or license, including the forfeiture of
25 any application fee, or the imposition of an administrative fine

1 not to exceed \$2,500, or both. Each of the acts specified shall
2 constitute a separate violation, and such administrative action or
3 fine may be imposed in addition to any criminal or civil penalties
4 imposed.

5 **III. RELIEF REQUESTED**

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

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

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23 [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
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