

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 07-291
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Arco Federal Mortgage, Inc., and Arnold)
)
 8 Silva,)
)
 9 Respondents)
)
 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.

24 Pursuant to RSA 397-A:20, 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 358-A and
8 exempt under RSA 358-A:3,I or that may violate any of the provisions of
9 Titles XXXV and XXXVI and administrative rules adopted thereunder. The
10 Commissioner may hold hearings relative to such conduct and may order
11 restitution for a person or persons adversely affected by such conduct. The
12 Commissioner may utilize all remedies available under the Consumer
13 Protection Act.

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

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

1 upon consideration of the Order to Show Cause, the allegations of which may be
2 deemed to be true.

3 If any of the above named Respondents fails to request a hearing within
4 30 calendar days of receipt of such order or reach formal settlement with the
5 Department within that time frame, then such person shall likewise be deemed
6 in default, and the orders shall, on the thirty-first day, become permanent,
7 and shall remain in full force and effect until and unless later modified or
8 vacated by the Commissioner, for good cause shown.

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

10 The Staff Petition dated January 16, 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 Arco Federal Mortgage, Inc. ("Respondent Arco
20 Federal") shall show cause why penalties in the amount of
21 \$7,500.00 should not be imposed against it;
- 22 2. Respondent Arnold Silva ("Respondent Silva") shall show cause
23 why penalties in the amount of \$10,000.00 should not be
24 imposed against him;
- 25 3. The above named Respondents shall show cause why, in addition

1 to the penalties listed in Paragraphs 1 through 2 above, the
2 \$500.00 examination fee should not be paid to the Department;

3 4. The above named Respondents shall show cause why, in addition
4 to the penalties listed in Paragraphs 1 through 3 above, the
5 fine for \$275.00 for the late filing of the financial
6 statement should not be paid to the Department;

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

11 6. The above named Respondents shall be jointly and severally
12 liable for the above amounts alleged in Paragraphs 1 through
13 5 above;

14 7. The above named Respondents shall show cause why, in addition
15 to the penalties listed in Paragraphs 1 through 6 above,
16 Respondent Arco Federal's license should not be revoked.

17 It is hereby further ORDERED that:

18 8. Along with the administrative penalties listed for the above
19 named Respondents, the outstanding sum of \$3,275.00 shall be
20 immediately paid; and
21
22
23
24
25

1 9. 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).

5
6 SIGNED,

7
8 Dated: 01/16/09

_____ /s/
PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 07-291
)
 3 State of New Hampshire Banking)
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 4 Department,) Staff Petition
)
 5 Petitioner,) January 16, 2009
)
 6 and)
)
 7 Arco Federal Mortgage, Inc., and Arnold)
)
 8 Silva,)
)
 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 Arco Federal Mortgage, Inc. (hereinafter "Respondent
16 Arco Federal") was licensed as a Mortgage Broker from at least
17 January 01, 2006 (with an amended license date of February 01,
18 2006) until it surrendered its license effective June 11, 2007.
- 19 2. Respondent Arnold Silva (hereinafter "Respondent Silva") was the
20 sole Manager, President, Treasurer and Secretary of Respondent
21 Arco Federal, when licensed by the Department.

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

23 Filing of Financial Statement(1 Count):

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

1 4. Respondent Arco Federal's financial statement was due on or before
2 April 2, 2007.

3 5. Respondent Arco Federal was still licensed at the time its
4 financial statement filing was due to the Department.

5 6. The Department sent Respondent Arco Federal a reminder letter
6 dated January 14, 2007.

7 7. The Department received Respondent Arco Federal's financial
8 statement on April 13, 2007 (11 days late), which generated a
9 fine of \$275.00 (\$25.00 a day x 11 days).

10 8. The Department sent invoices to Respondent Arco Federal in April,
11 June and August of 2007.

12 9. To date, Respondent Arco Federal has failed to pay the \$275.00
13 late filing of a financial statement fee.

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

15 10. Paragraphs 1 through 9 are hereby realleged as fully set forth
16 herein.

17 11. The 2007 Annual Report was due on or before February 1, 2008.

18 12. On February 5, 2008, the Department sent a certified reminder
19 letter that Respondent Arco Federal's 2007 Annual Report was due
20 on or before February 1, 2008. The letter was returned was
21 unclaimed without a change of address.

22 13. To date, the above named Respondents have failed to file the 2007
23 Annual Report with the Department.

24 14. To date, the accrued penalty for failure to file an annual report
25 has reached the maximum cap of \$2,500.00.

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

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

3 Department Inquiries (1 Count):

4 15. Paragraphs 1 through 14 are hereby realleged as fully set forth
5 herein.

6 16. The Department conducted an examination of Respondent Arco Federal
7 on February 20, 2007, while Respondent Arco Federal was still
8 licensed with the Department.

9 17. On May 14, 2007, the Department mailed the report of examination
10 and invoice for \$500.00 to Respondent Arco Federal, via U.S.
11 Certified Mail Return Receipt requested, which Respondents
12 received on May 16, 2007.

13 18. The above named Respondents failed to respond to the May 14, 2007
14 correspondence from the Department.

15 19. The Department, via U.S. mail, mailed a second notice on August
16 22, 2007 and a third notice on October 24, 2007.

17 20. The above named Respondents did not respond to any of the three
18 notices for payment of the \$500.00 invoice.

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

21 **II. ISSUES OF LAW**

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

23 1. The Department realleges the above stated facts in Paragraphs 1
24 through 21 as fully set forth herein.

25 2. The Department has jurisdiction over the licensing and regulation

1 of persons engaged in mortgage banker or broker activities
2 pursuant to NH RSA 397-A:2 and RSA 397-A:3.

3 3. 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 \$500.00 examination invoice.

8 4. 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 5. 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. Each of the above named Respondents violated
20 this provision on at least one occasion as alleged above. The
21 above named Respondents filed a financial statement, that was 11
22 days late, and incurred a penalty of \$275.00.

23 6. RSA 397-A:13,VI provides that any officer, owner, manager or agent
24 of any licensee shall reply promptly in writing, or other
25 designated form, to any written inquiry from the Department.

1 Respondent Silva violated this provision on at least one occasion
2 as alleged above.

3 7. RSA 397-A:17,I provides in part that the Commissioner may by
4 order, upon due notice and opportunity for hearing, asses
5 penalties or deny, suspend, or revoke a license or application if
6 it is in the public interest and the applicant, respondent, or
7 licensee, any partner, officer, member, or director, any person
8 occupying a similar status or performing similar functions, or
9 any person directly or indirectly controlling the applicant,
10 respondent, or licensee: (a) has violated any provision of RSA
11 Chapter 397-A or rules thereunder, or (b) has not met the
12 standards established in RSA Chapter 397-A.

13 8. 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 Chapter 397-A or
17 orders thereunder.

18 9. RSA 397-A:21,IV provides that any person who, either knowingly or
19 negligently, violates any provision of RSA Chapter 397-A, may
20 upon hearing, and in addition to any other penalty provided for
21 by 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 10. 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;

1 4. Assess fines and administrative penalties in accordance with RSA
2 397-A:21, for violations of Chapter 397-A, in the number and amount
3 equal to the violations set forth in section II of this Staff
4 Petition; and

5 5. Take such other administrative and legal actions as necessary for
6 enforcement of the New Hampshire Banking Laws, the protection of
7 New Hampshire citizens, and to provide other equitable relief.

8 **IV. RIGHT TO AMEND**

9 The Department reserves the right to amend this Staff Petition and to
10 request that the Commissioner take additional administrative action.
11 Nothing herein shall preclude the Department from bringing additional
12 enforcement action under RSA 397-A or the regulations thereunder.

13
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15 Respectfully submitted by:

16
17 /s/
18 Maryam Torben Desfosses
Hearings Examiner

17 01/16/09
Date