

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-032
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Courier Mortgage, LLC, and Courie)
)
 8 Gayle,)
)
 9 Respondents)

10 NOTICE OF ORDER

11 This Order to Show Cause commences an adjudicative proceeding under
12 the provisions of RSA Chapter 397-A and RSA Chapter 541-A.

13 LEGAL AUTHORITY AND JURISDICTION

14 Pursuant to RSA 397-A:17, the Commissioner of the New Hampshire
15 Banking Department (hereinafter "Department") has the authority to issue an
16 order to show cause why license revocation and penalties for violations of
17 New Hampshire Banking laws should not be imposed.

18 Pursuant to RSA 397-A:18, I 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, IV the Commissioner may issue, amend, or
24 rescind such orders as are reasonably necessary to comply with the
25 provisions of RSA Chapter 397-A.

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 Chapter
7 358-A and exempt under RSA 358-A:3,I or that may violate any of the
8 provisions of Titles XXXV and XXXVI and administrative rules adopted
9 thereunder. The Commissioner may hold hearings relative to such conduct and
10 may order restitution for a person or persons adversely affected by such
11 conduct.

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

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

1 \$2,785.00 examination fee should not be paid to the
2 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 \$2,400.00 for the late filing of the financial
6 statement should not be paid to the Department;

7 5. Respondents shall show cause why, in addition to the
8 penalties listed in Paragraphs 1 through 4 above, penalties
9 in the amount of \$28,150.00 (and still accruing) should not
10 be imposed for failing to respond to the Consumer A
11 complaint;

12 6. Nothing in this Order to Show Cause shall prevent the
13 Department from taking any further administrative action
14 under New Hampshire law;

15 7. The above named Respondents shall be jointly and severally
16 liable for the above amounts alleged in Paragraphs 1 through
17 7 above.

18 8. The above named Respondent shall show cause why, in addition
19 to the penalties listed in Paragraphs 1 through 8 above,
20 Respondent Courier Mortgage's license should not be revoked;

21 It is hereby further ORDERED that:

22 9. Along with the administrative penalties listed for the above
23 named Respondent, the outstanding sum of \$33,335.00 shall be
24 paid; and

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-032
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) January 19, 2010
)
 6 and)
)
 7 Courier Mortgage, LLC, and Courie)
)
 8 Gayle,)
)
 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 Courier Mortgage, LLC (hereinafter "Respondent Courier
15 Mortgage") was licensed as a Mortgage Broker from June 6, 2005
16 (with an amended license date of April 24, 2008) until its
17 license expired on December 31, 2008.

18 2. Respondent Courie Gayle (hereinafter "Respondent Gayle") was the
19 100% owner and Manager of Respondent Courier Mortgage, when
20 licensed by the Department.

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

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

23 Department Inquiries (1 Count):

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

1 4. The Department conducted an examination of Courier Mortgage on
2 January 14, 2008, while Respondent Courier Mortgage was still
3 licensed with the Department.

4 5. The Department sent Respondents the report of examination and
5 examination invoice for \$2,785.00 via U.S. Certified Mail Return
6 Receipt requested on June 25, 2008, which Respondents received
7 July 5, 2008.

8 6. The above named Respondents failed to respond to the June 25, 2008
9 correspondence from the Department.

10 7. The Department, via U.S. mail, mailed Respondents a second notice
11 on November 5, 2008.

12 8. The above named Respondents did not respond to any of the notices
13 for payment of the \$2,785.00 invoice.

14 9. To date, the above named Respondents still owe the \$2,785.00
15 examination fee for the 5.57 day examination.

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

17 **Filing of Financial Statement(1 Count):**

18 10. Paragraphs 1 through 9 are hereby realleged as fully set forth
19 herein.

20 11. Respondent Courier Mortgage's financial statement was due on or
21 before April 2, 2007.

22 12. Respondent Courier Mortgage was still licensed at the time its
23 financial statement filing was due to the Department.

24 13. The Department received Respondent Courier Mortgage's financial
25 statement on July 25, 2007 (114 days late), which generated a

1 fine of \$2,500.00 (\$25.00 a day x 114 days; maximum \$2,500.00).

2 14. On September 11, 2007, the above named Respondents mailed a check
3 to the Department for \$100.00, which leaves a current balance due
4 of \$2,400.00.

5 15. To date, the outstanding unpaid fine of \$2,400.00 is still unpaid.

6 **Violation of RSA 397-A:15-a, I Failure to Properly and Timely Respond to a**

7 **Consumer Complaint (1 Count):**

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

10 17. Consumer A initially filed a complaint with the Department on or
11 about April 30, 2008.

12 18. The Department mailed, via U.S. Certified Mail Return Receipt
13 requested, the complaint to Respondents, which the Respondent
14 received on May 6, 2008.

15 19. Respondents had 30 days from May 6, 2008 to acknowledge the April
16 30, 2008 complaint and 60 days total from May 6, 2008 to respond
17 to the Department.

18 20. Respondents failed to acknowledge the complaint by June 5, 2008
19 (within 30 days from Respondents' May 6, 2008 receipt of the
20 initial complaint) and failed to respond by the July 5, 2008 due
21 date (60 days from Respondents' May 6, 2008 receipt of the
22 initial complaint).

23 21. Respondents acknowledged the complaint by June 16, 2008 (eleven
24 days late) but have failed to respond substantively to the
25 complaint.

1 22. Respondents incur a daily fine of \$50.00 until the Department
2 receives the response. As of the date of this petition, the
3 response is 563 days past due, which means Respondents have
4 incurred a fine of \$28,150.00 (563 days x \$50.00 per day).

5 23. On August 8, 2008, the Department mailed, via U.S. Certified Mail
6 Return Receipt requested, a past-due letter, which the post
7 office returned to the Department on August 20, 2008 as
8 "returned, moved no forwarding address".

9 **II. ISSUES OF LAW**

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

- 11 1. The Department realleges the above stated facts in Paragraphs 1
12 through 23as fully set forth herein.
- 13 2. The Department has jurisdiction over the licensing and regulation
14 of persons engaged in mortgage banker or broker activities
15 pursuant to NH RSA 397-A:2 and RSA 397-A:3.
- 16 3. RSA 397-A:12,V provides that the expense of such examination shall
17 be chargeable to and paid by the licensee. Each of the above
18 named Respondents violated this provision on at least one occasion
19 as alleged above. To date, the above named Respondents have
20 failed to pay the \$2,785.00 examination invoice.
- 21 4. RSA 397-A:13,IV provides that any mortgage banker or mortgage
22 broker failing to file either the annual report or the financial
23 statement required by RSA Chapter 397-A within the time prescribed
24 may be required to pay to the Department a penalty of \$25.00 for
25 each calendar day the annual report or financial statement is

1 overdue, up to a maximum penalty of \$2,500.00 per report or
2 statement. Respondents filed the financial statement 114 days late
3 and paid \$100.00 towards the fine, which generated a remaining
4 fine of \$2,400.00. Each of the above named Respondents violated
5 this provision on at least one occasion as alleged above.

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

11 6. RSA 397-A:15-A,I provides that RSA Chapter 397-A licensees shall,
12 within 30 days after receipt of a complaint, send a written
13 acknowledgment thereof to the consumer and the Department. Not
14 later than 60 days following receipt of such complaint, the same
15 licensees shall conduct an investigation of the complaint and
16 either (a) make appropriate corrections in consumer's account and
17 notify both the consumer and the Department with documentation or
18 (b) submit a written explanation or clarification to the consumer
19 and Department, setting forth reasons why the licensee believes
20 its actions are correct, including copies of documentary evidence
21 thereof. Each of the above named Respondents violated this
22 provision on at least one occasion as alleged above. The fines
23 are calculated according to RSA 397-A:15-a,II below.

24 7. RSA 397-A:15-a,II provides the licensee who fails to respond to
25 the consumer complaint as required by RSA 397-A:15-a shall pay to

1 the Commissioner the sum of \$50.00 for each day such response is
2 overdue. Respondents owe \$28,150.00 regarding Consumer A's
3 complaint.

4 8. RSA 397-A:17 provides the Commmsioner has the authority to issue
5 an order to show cause why license revocation and penalties for
6 violations of New Hampshire Banking laws should not be imposed.

7 9. RSA 397-A:17,X provides an action to enforce any provision of RSA
8 Chapter 397-A shall be commenced within 6 years after the date on
9 which the violation occurred.

10 10. Pursuant to RSA 397-A:18,I the Department has the authority to
11 issue a complaint setting forth charges whenever the Department
12 is of the opinion that the licensee or person over whom the
13 Department has jurisdiction is violating or has violated any
14 provision of RSA Chapter 397-A, or any rule or order thereunder.

15 11. RSA 397-A:20,IV provides that the Commissioner may issue, amend,
16 or rescind such orders as are reasonably necessary to comply with
17 the provisions of RSA Chapter 397-A.

18 12. 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 13. 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;

