

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-049
))
3 State of New Hampshire Banking) Order to Show Cause
))
4 Department,)
))
5 Petitioner,)
))
6 and)
))
7 Madison First Financial Inc., James)
))
8 C. Covis, and Timothy Clark,)
))
9 Respondents

10
11 NOTICE OF ORDER

12 This Order commences an adjudicative proceeding under the provisions of
13 RSA 397-A:17, RSA 541-A, BAN 200 and JUS 800.

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 penalties for violations of New
18 Hampshire Banking laws should not be imposed.

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

22 NOTICE OF RIGHT TO REQUEST A HEARING

23 The above named respondents have the right to request a hearing on this
24 Order to Show Cause, as well as the right to be represented by counsel at
25 each Respondent's own expense. All hearings shall comply with RSA 541-A. Any
such request for a hearing shall be in writing, and signed by the respondents
or the duly authorized agent of the above named respondents, and shall be

1 delivered either by hand or certified mail, return receipt requested, to the
2 Banking Department, State of New Hampshire, 64B Old Suncook Road, Concord, NH
3 03301. Such hearings will be scheduled within 10 days of the request. If the
4 Respondents fail to appear at the hearing after being duly notified, such
5 person shall be deemed in default, and the proceeding may be determined against
6 the Respondents upon consideration of the Order to Show Cause, the allegations
7 of which may be deemed to be true.

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

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

15 The Staff Petition dated February 14, 2008 (a copy of which is attached
16 hereto) is incorporated by reference hereto.

17 **ORDER**

18 WHEREAS, finding it necessary and appropriate and in the public
19 interest, and consistent with the intent and purposes of the New Hampshire
20 banking laws, and

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

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

- 24 1. Administrative penalties of \$2,500.00 should not be imposed
25 against each named Respondent; and
2. Statutory penalties of \$8,900.00 should not be imposed against
Respondent Madison pursuant to RSA 397-A:11; and
3. Respondent Madison's license should not be revoked; and

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-049
)
 3 State of New Hampshire Banking) Staff Petition
)
 4 Department,)
)
 5 Petitioner,) February 14, 2008
)
 6 and)
)
 7 Madison First Financial Inc., James)
)
 8 C. Covis, and Timothy Clark,)
)
 9 Respondent

10
11 STATEMENT OF ALLEGATIONS

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

- 14 1. On or about August 20, 2007, the Department was scheduled to
 15 begin an examination of Madison First Financial Inc (hereinafter
 16 "Respondent Madison").
- 17 2. Respondent James C. Covis is, or was at all relevant times, Vice-
 18 President and Owner of Respondent Madison.
- 19 3. Respondent Timothy A. Clark is, or was at all relevant times,
 20 President of Respondent Madison.
- 21 4. Respondent was licensed as a Mortgage Banker and at all times
 22 relevant to this action held a Department license since at least
 23 2003.
- 24 5. The Department sent a notice of an upcoming examination to the
 25 Respondent via US Certified Mail on July 25, 2007 (mail piece
 number 7006 3450 0000 0611 9596). The Respondent received and

1 signed for the notice on or about July 30, 2007.

2 6. The Respondent submitted some of the requested examination
3 material on August 10, 2007.

4 7. On or about September 19, 2007 the Examiner in Charge
5 (hereinafter "EIC") notified Respondent Madison via US Certified
6 Mail (mail piece number 7006 2760 0002 2476 6814) that the
7 Officer Questionnaire and loan files had not been received by the
8 Department. The Respondent received and signed for the notice on
9 or about September 25, 2007.

10 8. To date the Respondent has failed to facilitate the examination.

11 9. August 20, 2007 was the end of the 21-day grace period.

12 10. It has been 178 days since August 20th without any further
13 production of documents.

14 11. The Department sent an invoice in the amount of \$600.00 for the
15 cost of the exam to Respondent Madison on November 20, 2007. To
16 date the invoice remains unpaid.

17
18 **ISSUES OF LAW**

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

20 1. The Department realleges the above stated facts in paragraphs 1
21 through 10.

22 2. The Department has jurisdiction over the licensing and
23 regulation of persons engaged in mortgage banker activities
24 pursuant to NH RSA 397-A:3.

25 3. Pursuant to New Hampshire Banking law, RSA 397-A:12 the
Department may examine the business affairs of any licensee or

1 any other person, whether licensed or not, as it deems necessary
2 to determine compliance with this Chapter and the rules adopted
3 pursuant to it and with the Consumer Credit Protection Act, as
4 amended (15 U.S.C. 1601 et seq.). In determining compliance,
5 the Department may examine the books, accounts, records, files,
6 and other documents or matters of any licensee or person. RSA
7 397-A:12 further requires every person being examined, and all
8 of the officers, directors, employees, agents, and
9 representatives of such person shall make freely available to
10 the commissioner or his examiners, the accounts, records,
11 documents, files, information, assets, and matters in their
12 possession or control relating to the subject of the examination
13 and shall facilitate the examination. The Respondent violated
14 this provision by failing to facilitate the examination.

15 4. RSA 397-A:11 provides for a fine of \$50 per day for every day
16 that records are not produced after 21 days.

17 5. RSA 397-A:12 provides that the expense of such examination shall
18 be chargeable to and paid by the licensee.

19 6. RSA 383:11 I provides that no institution shall be charged or
20 pay less than one full day for the cost of the examination.

21 7. RSA 383:11 III provides that payments of the charges for the
22 cost of the examination be made within 60 days of receipt of the
23 notice.

24 8. RSA 397-A:21 IV provides that any person who, either knowingly
25 or negligently, violates any provision of Chapter 397-A, may
upon hearing, and in addition to any other penalty provided for

1 by law, be subject to an administrative fine not to exceed
2 \$2,500, or both. Each of the acts specified shall constitute a
3 separate violation, and such administrative action or fine may
4 be imposed in addition to any criminal penalties or civil
5 liabilities imposed by New Hampshire Banking laws.

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

22 **RELIEF REQUESTED**

23 The staff of the Department requests the Commissioner take the following

24 Action:

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

