

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-061
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Firststar Home Equity, LLC (d/b/a FSHE)
)
 8 OF INDIANA), and Richard J. Hocker,)
)
 9 Respondents)

10 NOTICE OF ORDER

11 This Order commences an adjudicative proceeding under the provisions
12 of RSA Chapter 397-A and RSA Chapter 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,IV 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 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 own 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 the Respondent fails
22 to appear at the hearing after being duly notified, such person shall be
23 deemed in default, and the proceeding may be determined against the Respondent
24 upon consideration of the Order to Show Cause, the allegations of which may be
25 deemed to be true.

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-061
3 State of New Hampshire Banking)
4 Department,) Staff Petition
5 Petitioner,) July 9, 2009
6 and)
7 Firststar Home Equity, LLC (d/b/a FSHE)
8 OF INDIANA), and Richard J. Hocker,)
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 Firststar Home Equity, LLC (d/b/a FSHE OF INDIANA)
15 (hereinafter "Respondent Firststar") was licensed as a Mortgage
16 Banker from at least August 12, 2005 until its license expired on
17 December 31, 2007.
- 18 2. Respondent Richard J. Hocker (hereinafter "Respondent Hocker")
19 was the President of Respondent Firststar, when licensed by the
20 Department.

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22
23 [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
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25

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

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

4 Violation of RSA 397-A:10,IV Failure to Update Information on File with
5 Commissioner (1 Count):

6 3. Paragraphs 1 through 2 are hereby realleged as fully set forth
7 herein.

8 4. The 2007 Annual Report was due on or before February 1, 2008.

9 5. On February 5, 2008, the Department sent correspondence, via U.S.
10 Certified Mail Return Receipt requested, advising the above named
11 Respondents to submit annual report. The U.S. Postal Service
12 returned the letter to the Department as "not deliverable" and
13 "unable to forward".

14 6. On March 17, 2008, the Department mailed a reminder letter (via
15 U.S. Certified Mail Return Receipt requested) that Respondents'
16 license had expired on December 31, 2007 and directed the
17 Respondents to the Department's website to obtain
18 surrender/expiration forms and the procedure to follow for an
19 expired license. The post office returned this letter to the
20 Department on March 31, 2008 as "not deliverable as addressed"
21 and "unable to forward".

22 7. To date, the accrued penalty for failure to file an annual report
23 has reached the maximum cap of \$2,500.00.

1 **II. ISSUES OF LAW**

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

- 3 1. The Department realleges the above stated facts in Paragraphs 1
4 through 7 as fully set forth herein.
- 5 2. The Department has jurisdiction over the licensing and regulation
6 of persons engaged in mortgage banker or broker activities
7 pursuant to NH RSA 397-A:2 and RSA 397-A:3.
- 8 3. RSA 397-A:10,IV provides that persons licensed under RSA Chapter
9 397-A are under a continuing obligation to update information on
10 file with the Commissioner. Each of the above named Respondents
11 failed to update the Commissioner on at least one occasion as
12 alleged above.
- 13 4. RSA 397-A:10-a, I (a) provides that a licensee who ceases to
14 engage in the business of a mortgage banker or mortgage broker at
15 any time during a license year for any cause shall surrender such
16 license in person or by registered or certified mail to the
17 Commissioner within 15 calendar days of such cessation, and shall
18 cause to be published in a newspaper of general circulation in the
19 licensee's market area a notice to such effect. Each of the above
20 named Respondents violated this statute on at least one occasion
21 as alleged above.
- 22 5. RSA 397-A:13,I provides that a licensee shall file its annual
23 report on or before February 1 each year concerning operations for
24 the preceding year or license period ending December 31. Each of
25 the above named Respondents violated this provision on at least

1 one occasion as alleged above. The maximum fine for this specific
2 violation has reached \$2,500.00 (\$25.00 per day; maximum
3 \$2,500.00) since no annual report was filed for 2007.

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

14 7. RSA 397-A:18,I provides that the Department may issue a complaint
15 setting forth charges whenever the Department is of the opinion
16 that the licensee or person over whom the Department has
17 jurisdiction, has violated any provision of RSA 397-A or orders
18 thereunder.

19 8. RSA 397-A:21,IV provides that any person who, either knowingly or
20 negligently, violates any provision of Chapter 397-A, may upon
21 hearing, and in addition to any other penalty provided for by law,
22 be subject to an administrative fine not to exceed \$2,500.00, or
23 both. Each of the acts specified shall constitute a separate
24 violation, and such administrative action or fine may be imposed
25 in addition to any criminal penalties or civil liabilities imposed

1 by New Hampshire Banking laws.

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

18 **III. RELIEF REQUESTED**

19 The staff of the Department requests the Commissioner take the following
20 action:

- 21 1. Find as fact the allegations contained in section I of this Staff
22 Petition;
- 23 2. Make conclusions of law relative to the allegations contained in
24 section II of this Staff Petition;
- 25 3. Pursuant to RSA 397-A:17, order each of the above named

