

1 State of New Hampshire Banking Department

)Case No.: 08-077

2 In re the Matter of:

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3 State of New Hampshire Banking

)

)Order to Show Cause

4 Department,

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5 Petitioner,

)

)

6 and

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7 BSM Financial, L.P. (d/b/a

)

)

8 Brokersource, d/b/a BSM Financial,

)

)

9 Limited Partnership, d/b/a Banksorce

)

)

10 Mortgage), KJ Financial, LLC, Palm

)

)

11 Harbor Homes, Inc., Kurt W. Cummins,

)

)

12 and Mark D. Todd,

)

13 Respondents

14 NOTICE OF ORDER

15 This Order commences an adjudicative proceeding under the provisions
16 of RSA 397-A and RSA 541-A.

17 LEGAL AUTHORITY AND JURISDICTION

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

22 Pursuant to RSA 397-A:18, the Department has the authority to issue a
23 complaint setting forth charges whenever the Department is of the opinion
24 that the licensee or person over whom the Department has jurisdiction is
25 violating or has violated any provision of RSA Chapter 397-A, or any rule or

1 order thereunder.

2 Pursuant to RSA 397-A:20, the Commissioner may issue, amend, or
3 rescind such orders as are reasonably necessary to comply with the
4 provisions of the Chapter.

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

9 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct
10 that is or may be an unfair or deceptive act or practice under RSA 358-A and
11 exempt under RSA 358-A:3,I or that may violate any of the provisions of
12 Titles XXXV and XXXVI and administrative rules adopted thereunder. The
13 Commissioner may hold hearings relative to such conduct and may order
14 restitution for a person or persons adversely affected by such conduct. The
15 Commissioner may utilize all remedies available under the Consumer
16 Protection Act.

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

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

1 10 days of the Department's receipt of the request. If the Respondent fails
2 to appear at the hearing after being duly notified, such person shall be
3 deemed in default, and the proceeding may be determined against the Respondent
4 upon consideration of the Order to Show Cause, the allegations of which may be
5 deemed to be true.

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

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

13 The Staff Petition dated January 5, 2009 (a copy of which is attached
14 hereto) is incorporated by reference hereto.

15 **ORDER**

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

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

21 It is hereby ORDERED, that:

- 22 1. Respondent BSM Financial, L.P. (d/b/a Brokersource, d/b/a BSM
23 Financial, Limited Partnership, d/b/a Banksource
24 Mortgage) ("Respondent BSM Financial") shall show cause why
25 penalties in the amount of \$2,500.00 should not be imposed

1 against it;

2 2. Respondent KJ Financial, LLC ("Respondent KJ Financial")
3 shall show cause why penalties in the amount of \$2,500.00
4 should not be imposed against it;

5 3. Respondent Palm Harbor Homes, Inc. ("Respondent Palm Harbor")
6 shall show cause why penalties in the amount of \$2,500.00
7 should not be imposed against it;

8 4. Respondent Kurt W. Cummins ("Respondent Cummins") shall show
9 cause why penalties in the amount of \$5,000.00 should not be
10 imposed against him;

11 5. Respondent Mark D. Todd ("Respondent Todd") shall show cause
12 why penalties in the amount of \$5,000.00 should not be
13 imposed against him;

14 6. The above named Respondents shall show cause why, in addition
15 to the penalties listed in Paragraphs 1 through 5 above, the
16 \$5,215.00 examination fee should not be paid to the
17 Department;

18 7. Respondents shall be jointly and severally liable for the
19 above amounts alleged in Paragraphs 1 through 6 above;

20 8. The above named Respondents shall show cause why, in addition
21 to the penalties listed in Paragraphs 1 through 7 above,
22 Respondent BSM Financial's license should not be revoked.

23 It is hereby further ORDERED that:

24 9. Along with the administrative penalties listed for the above
25 named Respondents, the outstanding sum of \$5,215.00 shall be

1 immediately paid; and

2 10. Failure to request a hearing within 30 days of the date of
3 receipt or valid delivery of this Order shall result in a
4 default judgment being rendered and administrative penalties
5 imposed upon the defaulting Respondent(s).

6
7 SIGNED,

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9 Dated: 01/05/09

/s/

PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-077
3 State of New Hampshire Banking)
4 Department,) Staff Petition
5 Petitioner,) January 5, 2009
6 and)
7 BSM Financial, L.P. (d/b/a)
8 Brokersource, d/b/a BSM Financial,)
9 Limited Partnership, d/b/a Banksource)
10 Mortgage), KJ Financial, LLC, Palm)
11 Harbor Homes, Inc., Kurt W. Cummins,)
12 and Mark D. Todd,)
13 Respondents)

14 I. STATEMENT OF ALLEGATIONS

15 The Staff of the Banking Department, State of New Hampshire (hereinafter
16 "Department") alleges the following facts:

17 Facts Common on All Counts:

18 1. Respondent BSM Financial, L.P. (d/b/a Brokersource, d/b/a BSM
19 Financial, Limited Partnership, d/b/a Banksource Mortgage)
20 (hereinafter "Respondent BSM Financial") was licensed as a
21 Mortgage Banker from at least January 5, 2006 (with an amended
22 license date of May 7, 2007) until it surrendered its license on
23 October 15, 2007.

24 2. Respondent KJ Financial, LLC (hereinafter "Respondent KJ
25 Financial") was the 50% owner of Respondent BSM Financial, when

1 licensed by the Department.

2 3. Respondent Palm Harbor Homes, Inc. (hereinafter "Respondent Palm
3 Harbor") was the 50% owner of Respondent BSM Financial, when
4 licensed by the Department.

5 4. Respondent Kurt W. Cummins (hereinafter "Respondent Cummins")
6 was the President of Respondent BSM Financial, when licensed by
7 the Department.

8 5. Respondent Mark D. Todd (hereinafter "Respondent Todd") was the
9 Executive Vice President and Chief Operations Officer of
10 Respondent BSM Financial, when licensed by the Department.

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

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

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

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

16 7. The Department conducted an examination of Respondent BSM
17 Financial on December 26, 2006, while Respondent BSM Financial
18 was still licensed with the Department.

19 8. On September 26, 2007, the Department mailed the report of
20 examination and invoice for \$5,215.00 to Respondent BSM
21 Financial, via U.S. Certified Mail Return Receipt requested,
22 which Respondents received on October 1, 2007.

23 9. The above named Respondents failed to respond to the September 26,
24 2007 correspondence from the Department.

25 10. The Department mailed a second notice on November 1, 2007 and a

1 third notice on December 7, 2007.

2 11. The above named Respondents did not respond to any of the three
3 notices for payment of the \$5,215.00 invoice.

4 12. To date, the above named Respondents still owe the \$5,215.00
5 examination fee for the one day examination.

6 **II. ISSUES OF LAW**

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

8 1. The Department realleges the above stated facts in Paragraphs 1
9 through 12 as fully set forth herein.

10 2. The Department has jurisdiction over the licensing and regulation
11 of persons engaged in mortgage banker or broker activities
12 pursuant to NH RSA 397-A:2 and RSA 397-A:3.

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

18 4. RSA 397-A:13,VI provides that any officer, owner, manager or agent
19 of any licensee shall reply promptly in writing, or other
20 designated form, to any written inquiry from the Department.
21 Respondent Cummins and Respondent Todd each violated this
22 provision on at least one occasion as alleged above.

23 5. RSA 397-A:18,I provides that the Department may issue a complaint
24 setting forth charges whenever the Department is of the opinion
25 that the licensee or person over whom the Department has

1 jurisdiction, has violated any provision of RSA 397-A or orders
2 thereunder.

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

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

