

1 State of New Hampshire Banking Department

)Case No.: 08-079

2 In re the Matter of:)

3 State of New Hampshire Banking)

4 Department,)

5 Petitioner,)

6 and)

7 Wholesale America Mortgage, Inc. (d/b/a))

8 WAM Mortgage Group, Lily T. Nguyen, and))

9 Ronald Perkins,)

10 Respondents)

11 NOTICE OF ORDER

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

14 LEGAL AUTHORITY AND JURISDICTION

15 Pursuant to RSA 397-A:17, the Commissioner of the New Hampshire
16 Banking Department (hereinafter the "Department") has the authority to issue
17 an order to show cause why license revocation and penalties for violations
18 of New 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,IV, 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 Chapter
8 358-A and exempt under RSA 358-A:3,I or that may violate any of the
9 provisions of Titles XXXV and XXXVI and administrative rules adopted
10 thereunder. The Commissioner may hold hearings relative to such conduct and
11 may order restitution for a person or persons adversely affected by such
12 conduct.

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

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

1 deemed to be true.

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

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

10 The Staff Petition dated July 2, 2010 (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 Wholesale America Mortgage, Inc. (d/b/a WAM
20 Mortgage Group) ("Respondent Wholesale America") shall show
21 cause why penalties in the amount of \$5,000.00 should not be
22 imposed against it;
- 23 2. Respondent Lily T. Nguyen ("Respondent Nguyen") shall show
24 cause why penalties in the amount of \$10,000.00 should not be
25 imposed against her;

1 3. Respondent Ronald Perkins ("Respondent Perkins") shall show
2 cause why penalties in the amount of \$15,000.00 should not be
3 imposed against him;

4 4. The above named Respondents shall show cause why, in addition
5 to the penalties listed in Paragraphs 1 through 3 above, the
6 \$500.00 examination fee 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 6 above, the
9 fine for \$2,500.00 for the failure to file the 2007 financial
10 statement should not be paid to the Department;

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

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

16 It is hereby further ORDERED that:

17 8. Along with the administrative penalties listed for the above
18 named Respondents, the outstanding sum of \$3,000.00 shall be
19 immediately paid; and

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1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-079
3 State of New Hampshire Banking)
4 Department,) Staff Petition
5 Petitioner,) July 2, 2010
6 and)
7 Wholesale America Mortgage, Inc. (d/b/a)
8 WAM Mortgage Group, Lily T. Nguyen, and)
9 Ronald Perkins,)
10 Respondents)

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 Wholesale America Mortgage, Inc. (d/b/a WAM Mortgage
16 Group) (hereinafter "Respondent Wholesale America") was licensed
17 as a Mortgage Banker from at least February 23, 2007 until its
18 license expired on December 31, 2008.
- 19 2. Respondent Lily T. Nguyen (hereinafter "Respondent Nguyen") was
20 the Controller of Respondent Wholesale America, when licensed by
21 the Department.
- 22 3. Respondent Ronald Perkins (hereinafter "Respondent Perkins") was
23 the President of Respondent Wholesale America, when licensed by
24 the Department.

1 Violation of RSA 397-A:13,II Failure to File Financial Statement (1 Count):

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

3 Department Inquiries (2 Counts for Respondent Perkins; 1 Count for

4 Respondent Nguyen) :

5 4. Paragraphs 1 through 3 are hereby realleged as fully set forth
6 herein.

7 5. The Respondents' fiscal year end was December 31, 2007 and the
8 financial statement was due on or before March 31, 2008.

9 6. Respondent Wholesale America was licensed on the date the
10 financial statement filing was due the Department.

11 7. The Department sent Respondent Wholesale America a reminder letter
12 on January 24, 2008, via U.S. mail, notifying the Respondents of
13 the upcoming filing requirement and giving instructions if
14 financial statements were not available from the licensee's
15 accountants and a \$25.00 per day fine would accrue for failure to
16 file the financial statement.

17 8. On April 9, 2008, the Department sent another reminder letter to
18 Respondent Wholesale America, advising such licensees the fine
19 had begun to accrue and reiterated the financial instructions.

20 9. On May 8, 2008, via U.S. Certified Mail Return Receipt requested,
21 the Licensing Division of the Department sent Respondent
22 Wholesale America a final notice advising the company that the
23 financial statement had not been received by the Department,
24 which the Respondents received on May 16, 2008.

25 10. The Examinations Division telephoned and emailed Respondent

1 Perkins on October 13, 2008 regarding the financial statement and
2 examination fee. To date, Respondent Perkins has failed to
3 respond to that correspondence.

4 11. The above named Respondents neither responded to the reminder
5 letters nor submitted the 2007 financial statement.

6 12. To date, the accrued penalty for failure to file a financial
7 statement has reached the maximum cap of \$2,500.00 (\$25.00 a day,
8 maximum \$2,500.00).

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

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

11 **Department Inquiries (2 Counts for Respondent Perkins; 1 Count for**

12 **Respondent Nguyen):**

13 13. Paragraphs 1 through 12 are hereby realleged as fully set forth
14 herein.

15 14. The Department conducted an examination of Respondent Wholesale
16 America on February 25, 2008, while Respondent Wholesale America
17 was still licensed with the Department.

18 15. On July 22, 2008, the Department mailed the report of examination
19 and invoice for \$500.00 to Respondent Wholesale America, via U.S.
20 Certified Mail Return Receipt requested, which Respondents
21 received on July 28, 2008.

22 16. The above named Respondents failed to respond to the July 22, 2008
23 correspondence from the Department.

24 17. The Examinations Division telephoned and emailed Respondent
25 Perkins on October 13, 2008 regarding the financial statement and

1 examination fee. To date, Respondent Perkins has failed to
2 respond to that correspondence.

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

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

7 **II. ISSUES OF LAW**

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

9 1. The Department realleges the above stated facts in Paragraphs 1
10 through 19 as fully set forth herein.

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

14 3. RSA 397-A:12,V provides that the expense of such examination shall
15 be chargeable to and paid by the licensee. Each of the above
16 named Respondents violated this provision on at least one occasion
17 as alleged above. To date, the above named Respondents have
18 failed to pay the \$500.00 examination invoice.

19 4. RSA 397-A:13,II provides that each licensee shall file a financial
20 statement within 90 days from the date of its fiscal year end.
21 Each of the above named Respondents violated this statute on at
22 least one occasion as alleged above. The maximum fine has accrued
23 to \$2,500.00 as calculated by RSA 397-A:13,IV below.

24 5. RSA 397-A:13,IV provides that any mortgage banker or mortgage
25 broker failing to file either the annual report or the financial

1 statement required by RSA Chapter 397-A within the time prescribed
2 may be required to pay to the Department a penalty of \$25.00 for
3 each calendar day the annual report or financial statement is
4 overdue, up to a maximum penalty of \$2,500.00 per report or
5 statement.

6 6. 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 Respondent Perkins violated this provision on at least 4 occasions
10 as alleged above. Respondent Nguyen violated this provision on at
11 least two occasions as alleged above.

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

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

1 orders thereunder.

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

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

