

1 State of New Hampshire Banking Department

2	In re the Matter of:	)	Case No.: 08-095
		)	
3	State of New Hampshire Banking	)	
4	Department,	)	Order to Show Cause
		)	
5	Petitioner,	)	
		)	
6	and	)	
		)	
7	United Mortgage Brokerage Inc, and	)	
		)	
8	Andrew Datlo,	)	
		)	
9	Respondents	)	

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10 NOTICE OF ORDER

11 This Order commences an adjudicative proceeding under the provisions  
12 of RSA 397-A and RSA 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, 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 358-A and  
7 exempt under RSA 358-A:3,I or that may violate any of the provisions of  
8 Titles XXXV and XXXVI and administrative rules adopted thereunder. The  
9 Commissioner may hold hearings relative to such conduct and may order  
10 restitution for a person or persons adversely affected by such conduct. The  
11 Commissioner may utilize all remedies available under the Consumer  
12 Protection Act.

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 541-A.  
17 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 the Respondent fails  
23 to appear at the hearing after being duly notified, such person shall be  
24 deemed in default, and the proceeding may be determined against the Respondent  
25 upon consideration of the 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 formal settlement with the  
4 Department within that time frame, then such person shall likewise be deemed  
5 in default, and the orders shall, on the thirty-first day, become permanent,  
6 and shall remain in full force and effect until and unless later modified or  
7 vacated by the Commissioner, for good cause shown.

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

9 The Staff Petition dated February 5, 2009 (a copy of which is attached  
10 hereto) is incorporated by reference hereto.

11 **ORDER**

12 WHEREAS, finding it necessary and appropriate and in the public  
13 interest, and consistent with the intent and purposes of the New Hampshire  
14 banking laws, and

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

17 It is hereby ORDERED, that:

- 18 1. Respondent United Mortgage Brokerage Inc ("Respondent United  
19 Mortgage") shall show cause why penalties in the amount of  
20 \$15,000.00 should not be imposed against it;
- 21 2. Respondent Andrew Datlo ("Respondent Datlo") shall show cause  
22 why penalties in the amount of \$27,500.00 should not be  
23 imposed against him;
- 24 3. The above named Respondents shall show cause why, in addition  
25 to the penalties listed in Paragraphs 1 through 2 above, the

1           \$500.00 examination fee should not be paid to the Department;

2           4. The above named Respondents shall show cause why, in addition  
3           to the penalties listed in Paragraphs 1 through 3 above, the  
4           accrued fine of \$23,700.00 for failing to provide examination  
5           materials (and still accruing) should not be paid to the  
6           Department;

7           5. The above named Respondents shall show cause why, in addition  
8           to the penalties listed in Paragraphs 1 through 4 above, the  
9           fine for \$425.00 for the late filing of the financial  
10          statement should not be paid to the Department;

11          6. The above named Respondents shall be jointly and severally  
12          liable for the above amounts alleged in Paragraphs 1 through  
13          5 above;

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

17          It is hereby further ORDERED that:

18          8. Along with the administrative penalties listed for the above  
19          named Respondents, the outstanding sum of \$24,625.00 shall be  
20          immediately paid; and



1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 08-095  
 )  
 3 State of New Hampshire Banking )  
 )  
 4 Department, ) Staff Petition  
 )  
 5 Petitioner, ) February 5, 2009  
 )  
 6 and )  
 )  
 7 United Mortgage Brokerage Inc, and )  
 )  
 8 Andrew Datlo, )  
 )  
 9 Respondents )

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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 United Mortgage Brokerage Inc (hereinafter  
15 "Respondent United Mortgage") was licensed as a Mortgage Banker  
16 from at least August 8, 2004 (with an amended license date of  
17 October 10, 2006) until it surrendered its license on November  
18 3, 2008.

19 2. Respondent Andrew Datlo (hereinafter "Respondent Datlo") was the  
20 100% owner and President of Respondent United Mortgage, when  
21 licensed by the Department.

22 Violation of RSA 397-A:12,VII Failure to Facilitate Exam (1 Count):

23 Violation of RSA 397-A:12,III Examinations: Failure to Provide Requested

24 Files (1 Count):

25 Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested

1 **Files (1 Count):**

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

3 **Department Inquiries (2 Counts):**

4 3. Paragraphs 1 through 2 are hereby realleged as fully set forth  
5 herein.

6 4. The Department attempted to conduct an examination of Respondent  
7 United Mortgage on October 22, 2007, while Respondent United  
8 Mortgage was still licensed with the Department.

9 5. On September 24, 2007, the Department sent the notice of  
10 examination to United Mortgage via U.S. Certified Mail Return  
11 Receipt requested, which Respondents received on September 27,  
12 2007.

13 6. The materials requested in the notice of examination were due on  
14 October 18, 2007, which is 21 days after the September 27, 2007  
15 delivery of the notice of examination.

16 7. With no response from the above named Respondents, the Department  
17 submitted a second notice via U.S. Certified Mail Return Receipt  
18 requested on January 30, 2008, which Respondents received on  
19 February 4, 2008.

20 8. The Department also faxed and emailed the notice of examination to  
21 Respondent United Mortgage on April 29, 2008, both of which were  
22 transmitted unsuccessfully.

23 9. To date, the Department has not received an acknowledgment nor the  
24 examination materials.

25 10. To date, fines have accrued for failing to provide the requested

1 files. The current fine to date is \$23,700.00 (\$50.00 a day x  
2 474 days) and still accruing.

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

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

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

6 11. Paragraphs 1 through 10 are hereby realleged as fully set forth  
7 herein.

8 12. The Department conducted an examination of Respondent United  
9 Mortgage on October 22, 2007, while Respondent United Mortgage  
10 was still licensed with the Department.

11 13. On July 22, 2008, the Department mailed the invoice for \$500.00 to  
12 Respondent United Mortgage, via U.S. Certified Mail Return  
13 Receipt requested, which Respondents received on July 25, 2008.

14 14. The Respondents failed to respond to the July 22, 2008 Department  
15 correspondence.

16 15. The Department, via U.S. mail, mailed a second notice on August  
17 26, 2008 and a third notice on October 9, 2008.

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

20 17. To date, the above named Respondents still owe the \$500.00  
21 examination fee for the one day examination.

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

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

24 18. Paragraphs 1 through 17 are hereby realleged as fully set forth  
25 herein.

1 19. Respondent United Mortgage's financial statement was due on or  
2 before March 31, 2008 based on its fiscal year end of December  
3 31, 2007.

4 20. Respondent United Mortgage was still licensed at the time its  
5 financial statement filing was due to the Department.

6 21. The Department received Respondent United Mortgage's financial  
7 statement on April 17, 2008 (17 days late), which generated a  
8 fine of \$425.00 (\$25.00 a day x 17 days).

9 22. The Department sent invoices to Respondent United Mortgage in  
10 April, June and August of 2008.

11 23. To date, Respondent United Mortgage has failed to pay the \$425.00  
12 late filing of a financial statement fee.

13 **II. ISSUES OF LAW**

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

15 1. The Department realleges the above stated facts in Paragraphs 1  
16 through 23 as fully set forth herein.

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

20 3. RSA 397-A:11,II provides that requested files and business records  
21 must be received by the Department within 21 calendar days of  
22 request. The licensee will be subject to a \$50.00 a day fine  
23 every day after the 21-day period the records are not produced.  
24 Respondents currently owe \$23,700.00 (and still accruing). Each  
25

1 of the above named Respondents violated this statute on at least  
2 one occasion as alleged above.

3 4. RSA 397-A:12,III requires licensees to comply with examination  
4 requests with or without prior notice. All books, papers, files,  
5 related material, and records of assets shall be subject to the  
6 Department's examination. Each of the above named Respondents  
7 violated this statute on at least one occasion as alleged above.

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

13 6. RSA 397-A:12,VII provides that every person being examined, and  
14 all of the officers, directors, employees, agents, and  
15 representatives of such person shall make freely available to the  
16 Commissioner or his or her examiners, the accounts, records,  
17 documents, files, information, assets, and matters in their  
18 possession or control relating to the subject of the examination  
19 and shall facilitate the examination. Each of the above named  
20 Respondents violated this statute on at least one occasion as  
21 alleged above.

22 7. RSA 397-A:13,IV provides that any mortgage banker or mortgage  
23 broker failing to file either the annual report or the financial  
24 statement required by RSA Chapter 397-A within the time  
25 prescribed may be required to pay to the Department a penalty of

1           \$25.00 for each calendar day the annual report or financial  
2           statement is overdue, up to a maximum penalty of \$2,500.00 per  
3           report or statement. Each of the above named Respondents violated  
4           this provision on at least one occasion as alleged above. The  
5           above named Respondents filed a financial statement that was 17  
6           days late, and incurred a penalty of \$425.00.

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

12          9. 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  
18          any 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          10. 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 11. RSA 397-A:21,IV provides that any person who, either knowingly or  
3 negligently, violates any provision of RSA Chapter 397-A, may  
4 upon hearing, and in addition to any other penalty provided for  
5 by law, be subject to an administrative fine not to exceed  
6 \$2,500.00, or both. Each of the acts specified shall constitute  
7 a separate violation, and such administrative action or fine may  
8 be imposed in addition to any criminal penalties or civil  
9 liabilities imposed by New Hampshire Banking laws.

10 12. 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.

1 **III. RELIEF REQUESTED**

2 The staff of the Department requests the Commissioner take the following  
3 action:

- 4 1. Find as fact the allegations contained in section I of this Staff  
5 Petition;
- 6 2. Make conclusions of law relative to the allegations contained in  
7 section II of this Staff Petition;
- 8 3. Pursuant to RSA 397-A:17, order each of the above named  
9 Respondents to show cause why their license should not be revoked;
- 10 4. Assess fines and administrative penalties in accordance with RSA  
11 397-A:21, for violations of Chapter 397-A, in the number and amount  
12 equal to the violations set forth in section II of this Staff  
13 Petition; and
- 14 5. Take such other administrative and legal actions as necessary for  
15 enforcement of the New Hampshire Banking Laws, the protection of  
16 New Hampshire citizens, and to provide other equitable relief.

17 **IV. RIGHT TO AMEND**

18 The Department reserves the right to amend this Staff Petition and to  
19 request that the Commissioner take additional administrative action.  
20 Nothing herein shall preclude the Department from bringing additional  
21 enforcement action under RSA 397-A or the regulations thereunder.

22 Respectfully submitted by:

23                   /s/                    
24 Maryam Torben Desfosses  
Hearings Examiner

                  02/05/09                    
Date