

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-096
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Smart Funding Corp. (d/b/a AMR)
)
 8 Fundings), Madhulika Baid, and Ratan L.)
)
 9 Baid,)
)
 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 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 and penalties for violations of New
18 Hampshire Banking laws should not be imposed.

19 Pursuant to RSA 397-A:17,II(e)(1) the Commissioner has the authority
20 to remove or ban from office or employment, including license revocation,
21 any person conducting business under RSA Chapter 397-A who violates RSA
22 Chapter 397-A.

23 Pursuant to RSA 397-A:17,VIII, in addition to any other penalty
24 provided for under RSA Chapter 397-A or RSA 383:10-d, after notice and
25 opportunity for hearing, the Commissioner may enter an order of rescission,

1 restitution, or disgorgement of profits directed to a person who has
2 violated RSA Chapter 397-A, or a rule or order thereunder.

3 Pursuant to RSA 397-A:17,IX, in addition to any other penalty
4 provided for under RSA Chapter 397-A, after notice and opportunity for
5 hearing, the Commissioner may assess fines and penalties against a mortgage
6 loan originator in an amount not to exceed \$25,000.00 if the Commissioner
7 finds the mortgage loan originator has violated or failed to comply with
8 the S.A.F.E. Mortgage Licensing Act of 2008, Public Law 110-289, Title V or
9 any regulation or order issued thereunder.

10 Pursuant to RSA 397-A:17,X, an action to enforce any provision of RSA
11 Chapter 397-A shall be commenced within 6 years after the date on which the
12 violation occurred.

13 Pursuant to RSA 397-A:18, the Department has the authority to issue a
14 complaint setting forth charges whenever the Department is of the opinion
15 that the licensee or person over whom the Department has jurisdiction is
16 violating or has violated any provision of RSA Chapter 397-A, or any rule or
17 order thereunder.

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

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

25 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct

1 that is or may be an unfair or deceptive act or practice under RSA Chapter
2 358-A and exempt under RSA 358-A:3,I or that may violate any of the
3 provisions of Titles XXXV and XXXVI and administrative rules adopted
4 thereunder. The Commissioner may hold hearings relative to such conduct and
5 may order restitution for a person or persons adversely affected by such
6 conduct.

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

8 The above named Respondents have the right to request a hearing on
9 this Order to Show Cause, as well as the right to be represented by counsel
10 at each Respondent's own expense. All hearings shall comply with RSA Chapter
11 541-A. Any such request for a hearing shall be in writing, and signed by the
12 Respondent or the duly authorized agent of the above named Respondent, and
13 shall be delivered either by hand or certified mail, return receipt
14 requested, to the Banking Department, State of New Hampshire, 53 Regional
15 Drive, Suite 200, Concord, NH 03301. Such hearings will be scheduled within
16 10 days of the Department's receipt of the request. If the Respondent fails
17 to appear at the hearing after being duly notified, such person shall be
18 deemed in default, and the proceeding may be determined against the Respondent
19 upon consideration of the Order to Show Cause, the allegations of which may be
20 deemed to be true.

21 If any of the above named Respondents fails to request a hearing within
22 30 calendar days of receipt of such order or reach a formal written and
23 executed settlement with the Department within that time frame, then such
24 person shall likewise be deemed in default, and the orders shall, on the
25 thirty-first day, become permanent, and shall remain in full force and effect

1 until and unless later modified or vacated by the Commissioner, for good cause
2 shown.

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

4 The Staff Petition dated October 29, 2009 (a copy of which is attached
5 hereto) is incorporated by reference hereto.

6 **ORDER**

7 WHEREAS, finding it necessary and appropriate and in the public
8 interest, and consistent with the intent and purposes of the New Hampshire
9 banking laws; and

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

12 It is hereby ORDERED, that:

- 13 1. Respondent Smart Funding Corp (d/b/a AMR
14 Fundings) ("Respondent Smart Funding") shall show cause why
15 penalties in the amount of \$5,000.00 should not be imposed
16 against it;
- 17 2. Respondent Madhulika Baid ("Respondent M. Baid") shall show
18 cause why penalties in the amount of \$5,000.00 should not be
19 imposed against him plus any additional penalty not to exceed
20 \$25,000.00 pursuant to RSA 397-A:17, IX;
- 21 3. Respondent Ratan L. Baid ("Respondent R. Baid") shall show
22 cause why penalties in the amount of \$5,000.00 should not be
23 imposed against him;
- 24 4. The above named Respondents shall show cause why, in addition
25 to the penalties listed in Paragraphs 1 through 3 above, the

1 accrued fine of \$5,250.00 for failing to provide examination
2 materials in a timely manner should not be paid to the
3 Department;

4 5. The above named Respondents shall show cause why, in addition
5 to the penalties listed in Paragraphs 1 through 4 above, the
6 accrued fine of \$6,900.00 for the late response to a consumer
7 complaint should not be paid to the Department;

8 6. The above named Respondents shall show cause why, in addition
9 to the penalties listed in Paragraphs 1 through 5 above,
10 rescission, restitution or the disgorgement of profits should
11 not be paid to the Department;

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

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

17 9. The above named Respondents shall show cause why, in addition
18 to the penalties listed in Paragraphs 1 through 8 above,
19 Respondent M. Baid's mortgage loan originator license should
20 not be revoked.

21 It is hereby further ORDERED that:

22 10. Along with the administrative penalties listed for the above
23 named Respondents, and in addition to any rescission,
24 restitution or disgorgement of profits, the outstanding sum
25 of \$12,150.00 shall be immediately paid; and

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

5
6 SIGNED,

7
8 Dated: 11/02/09

/s/

9 PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-096
3 State of New Hampshire Banking)
4 Department,) Staff Petition
5 Petitioner,) October 29, 2009
6 and)
7 Smart Funding Corp. (d/b/a AMR)
8 Fundings), Madhulika Baid, and Ratan L.)
9 Baid,)
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 Smart Funding Corp. (d/b/a AMR Fundings) (hereinafter
16 "Respondent Smart Funding") has been licensed as a Mortgage
17 Banker from at least April 2, 2007.
- 18 2. Respondent Madhulika Baid (hereinafter "Respondent M. Baid") is
19 the 100% owner and control person of Respondent Smart Funding.
- 20 3. Respondent Ratan L. Baid (hereinafter "Respondent R. Baid") is
21 the control person and Compliance Manager of Respondent Smart
22 Funding.

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

24 Files (1 Count):

- 25 4. Paragraphs 1 through 3 are hereby realleged as fully set forth

1 herein.

2 5. The Department conducted an examination of Respondent Smart
3 Funding on March 31, 2008.

4 6. On March 7, 2008, the Department sent the notice of examination to
5 Respondent Smart Funding via U.S. Certified Mail Return Receipt
6 requested, which Respondents received on March 13, 2008.

7 7. The materials requested in the notice of examination were due on
8 April 3, 2008, which is 21 days after the March 13, 2008 delivery
9 of the notice of examination.

10 8. The Department received the examination materials on July 17,
11 2008, which generated a fine of \$5,250.00 (105 days late x \$50.00
12 a day).

13 9. The Department has written correspondence by letter and email and
14 has conversed with Respondent R. Baid several times since July
15 17, 2008. Respondent R. Baid evades the issue and has promised
16 the Department he has proof he sent documents in early May but
17 has failed to provide proof.

18 10. To date, the above named Respondents have failed to provide proof
19 they sent in examination materials earlier than July 17, 2008 and
20 have failed to pay the \$5,250.00 examination fine.

21 **Violation of RSA 397-A:15-a, Consumer Complaints: Failure to Timely Respond**

22 **(1 Count):**

23 11. Paragraphs 1 through 10 are hereby realleged as fully set forth
24 herein.

25 12. A complaint by a consumer was filed with the Department on July

1 29, 2008.

2 13. The Department mailed the complaint, via U.S. Certified Mail
3 Return Receipt requested, to the above named Respondents, which
4 Respondents received on September 8, 2008.

5 14. A response was due by November 7, 2008 (within 60 days of
6 Respondents' September 8, 2008 receipt of the complaint.

7 15. The Department did not receive Respondents' response until March
8 25, 2009, which was 138 days late.

9 16. The Respondents have thus incurred a fine of \$6,900.00 for the
10 late response to the consumer complaint (\$50.00 per day x 138
11 days).

12 **II. ISSUES OF LAW**

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

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

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

19 3. RSA 397-A:5, IV-c(a) provides that the Commissioner shall not issue
20 a mortgage loan originator license unless the Commissioner makes
21 at a minimum a finding (among other findings) that the loan
22 originator has never had a mortgage loan originator license
23 revoked in any governmental jurisdiction.

24 4. RSA 397-A:11, II provides that requested files and business records
25 must be received by the Department within 21 calendar days of

1 request. The licensee will be subject to a \$50.00 a day fine
2 every day after the 21-day period the records are not produced.
3 Respondents currently owe \$5,250.00. Each of the above named
4 Respondents violated this statute on at least one occasion as
5 alleged above.

6 5. RSA 397-A:15-a provides that licensees shall, within 60 days of
7 receipt of a consumer complaint, conduct an investigation and
8 respond to the Department. Failure to do so within the time frame
9 prescribed will result in a \$50.00 a day fine for each day the
10 response is overdue. Each of the above named Respondents violated
11 this statute on at least one occasion as alleged above.
12 Respondents currently owe \$6,900.00.

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

23 7. RSA 397-A:17,II(e)(1) provides that the Commissioner may issue an
24 order or directive to remove or ban from office or employment,
25 including license revocation, any person conducting business under

1 RSA Chapter 397-A who violates RSA Chapter 397-A.

2 8. RSA 397-A:17,VIII provides that in addition to any other penalty
3 provided for under RSA Chapter 397-A or RSA 383:10-d, after notice
4 and opportunity for hearing, the Commissioner may enter an order
5 of rescission, restitution, or disgorgement of profits directed to
6 a person who has violated RSA Chapter 397-A, or a rule or order
7 thereunder.

8 9. RSA 397-A:17,IX provides that in addition to any other penalty
9 provided for under RSA Chapter 397-A, after notice and opportunity
10 for hearing, the Commissioner may assess fines and penalties
11 against a mortgage loan originator in an amount not to exceed
12 \$25,000.00 if the Commissioner finds the mortgage loan originator
13 has violated or failed to comply with the S.A.F.E. Mortgage
14 Licensing Act of 2008, Public Law 110-289, Title V or any
15 regulation or order issued thereunder.

16 10. RSA 397-A:17,X provides an action to enforce any provision of RSA
17 Chapter 397-A shall be commenced within 6 years after the date on
18 which the violation occurred.

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

24 12. RSA 397-A:21,IV provides that any person who, either knowingly or
25 negligently, violates any provision of RSA Chapter 397-A, may

1 upon hearing, and in addition to any other penalty provided for
2 by law, be subject to an administrative fine not to exceed
3 \$2,500.00, or both. Each of the acts specified shall constitute
4 a separate violation, and such administrative action or fine may
5 be imposed in addition to any criminal penalties or civil
6 liabilities imposed by New Hampshire Banking laws.

7 13. RSA 397-A:21,V provides that every person who directly or
8 indirectly controls a person liable under this section, every
9 partner, principal executive officer or director of such person,
10 every person occupying a similar status or performing a similar
11 function, every employee of such person who materially aids in the
12 act constituting the violation, and every licensee or person acting
13 as a common law agent who materially aids in the acts constituting
14 the violation, either knowingly or negligently, may, upon notice
15 and opportunity for hearing, and in addition to any other penalty
16 provided for by law, be subject to suspension, revocation, or
17 denial of any registration or license, including the forfeiture of
18 any application fee, or the imposition of an administrative fine
19 not to exceed \$2,500, or both. Each of the acts specified shall
20 constitute a separate violation, and such administrative action or
21 fine may be imposed in addition to any criminal or civil penalties
22 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. Pursuant to RSA 397-A:17, order Respondent M. Baid to show cause
11 why his mortgage loan originator license should not be revoked;
- 12 5. Pursuant to RSA 397-A:17,VIII, order Respondents to rescind, give
13 restitution, or disgorge profits;
- 14 6. Pursuant to RSA 397-A:17,IX, order Respondent M. Baid to show
15 cause why he should not be assessed an additional penalty not to
16 exceed \$25,000.00.
- 17 7. Assess fines and administrative penalties in accordance with RSA
18 397-A:21, for violations of RSA Chapter 397-A, in the number and
19 amount equal to the violations set forth in section II of this
20 Staff Petition; and
- 21 8. Take such other administrative and legal actions as necessary for
22 enforcement of the New Hampshire Banking Laws, the protection of
23 New Hampshire citizens, and to provide other equitable relief.
- 24
25

1 IV. RIGHT TO AMEND

2 The Department reserves the right to amend this Staff Petition and to
3 request that the Commissioner take additional administrative action.
4 Nothing herein shall preclude the Department from bringing additional
5 enforcement action under RSA Chapter 397-A or the regulations thereunder.

6
7 Respectfully submitted by:

8 /s/
9 Maryam Torben Desfosses
Hearings Examiner

 10/29/09
Date