

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 08-107  
 )  
 3 State of New Hampshire Banking )  
 )  
 4 Department, ) Order to Show Cause  
 )  
 5 Petitioner, )  
 )  
 6 and )  
 )  
 7 Deocap Corporation, Neill J. Sullivan, )  
 )  
 8 and William A. Raney, )  
 )  
 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 January 16, 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 Deocap Corporation ("Respondent Deocap") shall  
19 show cause why penalties in the amount of \$15,000.00 should  
20 not be imposed against it;
- 21 2. Respondent Neill J. Sullivan ("Respondent Sullivan") shall  
22 show cause why penalties in the amount of \$27,500.00 should  
23 not be imposed against him;
- 24 3. Respondent William A. Raney ("Respondent Raney") shall show  
25 cause why penalties in the amount of \$27,500.00 should not be

1 imposed against him;

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

5 5. The above named Respondents shall show cause why, in addition  
6 to the penalties listed in Paragraphs 1 through 4 above, the  
7 accrued fine of \$18,500.00 for failing to provide examination  
8 materials (and still accruing) should not be paid to the  
9 Department;

10 6. The above named Respondents shall show cause why, in addition  
11 to the penalties listed in Paragraphs 1 through 5 above,  
12 statutory penalties of \$2,500.00 should not be imposed for  
13 failing to file the 2007 Annual Report;

14 7. The above named Respondents shall be jointly and severally  
15 liable for the above amounts alleged in Paragraphs 1 through  
16 6 above;

17 8. The above named Respondents shall show cause why, in addition  
18 to the penalties listed in Paragraphs 1 through 7 above,  
19 Respondent Deocap's license should not be revoked.

20 It is hereby further ORDERED that:

21 9. Along with the administrative penalties listed for the above  
22 named Respondents, the outstanding sum of \$21,500.00 shall be  
23 immediately paid; and  
24  
25



1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 08-107  
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 5 Petitioner, ) January 16, 2009  
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 6 and )  
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 7 Deocap Corporation, Neill J. Sullivan, )  
 )  
 8 and William A. Raney, )  
 )  
 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 Deocap Corporation (hereinafter "Respondent Deocap")  
 15 was licensed as a Mortgage Banker from at least January 5, 2007  
 16 until its license expired on December 31, 2007.
- 17 2. Respondent Neill J. Sullivan (hereinafter "Respondent Sullivan")  
 18 was the 50% owner and President of Respondent Deocap, when  
 19 licensed by the Department.
- 20 3. Respondent William A. Raney (hereinafter "Respondent Raney") was  
 21 the 50% owner and Vice President of Respondent Deocap, when  
 22 licensed by the Department.

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

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

25 Files (1 Count):

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

2 Files (1 Count):

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

4 Department Inquiries (3 Counts):

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

7 5. The Department attempted to conduct an examination of Respondent  
8 Deocap on January 1, 2008, for activities that occurred while  
9 Respondent Deocap was licensed with the Department.

10 6. On December 17, 2007, the Department sent the notice of  
11 examination to Deocap via U.S. Certified Mail Return Receipt  
12 requested, which Respondents received on December 21, 2007 (while  
13 Respondent Deocap was still licensed with the Department).

14 7. The materials requested in the notice of examination were due on  
15 January 11, 2008, which is 21 days after the December 21, 2007  
16 delivery of the notice of examination.

17 8. With no response from the above named Respondents, the Department  
18 submitted a second notice via U.S. Certified Mail Return Receipt  
19 requested on March 4, 2008, which Respondents received on March  
20 10, 2008.

21 9. The Department also faxed the notice of examination to Respondent  
22 Deocap on April 16, 2008, which was transmitted successfully.

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

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

1 files. The current fine to date is \$18,500.00 (\$50.00 a day x  
2 370 days) and still accruing.

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

4 12. Paragraphs 1 through 11 are hereby realleged as fully set forth  
5 herein.

6 13. The Department conducted an examination of Respondent Deocap on  
7 January 7, 2008, for activities that occurred while Respondent  
8 Deocap was still licensed with the Department.

9 14. On May 7, 2008, the Department mailed the report of examination  
10 and invoice for \$500.00 to Respondent Deocap, via U.S. Certified  
11 Mail Return Receipt requested, the post office returned to the  
12 Department on June 2, 2008 as "unclaimed".

13 15. On May 7, 2008, the Department mailed the report of examination  
14 and invoice for \$500.00 to Respondent Deocap, via U.S. Certified  
15 Mail Return Receipt requested, which the post office returned to  
16 the Department on June 2, 2008 as "unclaimed".

17 16. The Department, via U.S. mail, mailed a second notice on June 24,  
18 2008 and a third notice on August 1, 2008.

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

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

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:13,VI Failure of Officer and Owner to Respond to  
5 Department Inquiries (2 Counts):

6 19. Paragraphs 1 through 18 are hereby realleged as fully set forth  
7 herein.

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

9 21. On January 4, 2008, the Department sent a certified letter  
10 advising the Respondents that Respondent Deocap's license had  
11 expired on December 31, 2007 and that Respondents had to file  
12 proper surrender forms and an annual report. The Respondents  
13 received the January 4, 2008 correspondence on January 14, 2008.

14 22. On February 5, 2008, the Department sent a certified letter that  
15 the annual report was due on February 1, 2008, which Respondents  
16 received on February 11, 2008.

17 23. On February 19, 2008, the Department sent a certified reminder  
18 letter that Respondents still needed to complete the surrender  
19 forms, the publication notice and provide the annual report.  
20 This letter was returned to the Department on March 20, 2008.

21 24. To date, the Department has not received copies of the publication  
22 notice nor the expiration paperwork nor the 2007 annual report.

23 25. To date, the accrued penalty for failure to file an annual report  
24 has reached the maximum cap of \$2,500.00.  
25



1 related material, and records of assets shall be subject to the  
2 Department's examination. Each of the above named Respondents  
3 violated this statute on at least one occasion as alleged above.

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

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

18 8. RSA 397-A:13,I provides that a licensee shall file its annual  
19 report on or before February 1 each year concerning operations  
20 for the preceding year or license period ending December 31.  
21 Each of the above named Respondents violated this provision on at  
22 least one occasion as alleged above.

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

1 penalty of \$25.00 per calendar day for each day the annual report  
2 is overdue, for a maximum of \$2,500.00. Each of the above named  
3 Respondents failed to file the annual report, which capped at the  
4 maximum of \$2,500.00.

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

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

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

25 13. RSA 397-A:21,IV provides that any person who, either knowingly or

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

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

                  01/16/09                    
Date