

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-114
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Liberty Financial Mortgage Corporation)
)
 8 (d/b/a LF Mortgage of Massachusetts),)
)
 9 and Michael Upton,)
)
 10 Respondents)

11 NOTICE OF ORDER TO SHOW CAUSE

12 This Order to Show Cause commences an adjudicative proceeding under
13 the provisions of RSA 397-A and RSA 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 March 1, 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 Liberty Financial Mortgage Corporation (d/b/a LF
20 Mortgage of Massachusetts) ("Respondent LF Mortgage") shall
21 show cause why penalties in the amount of \$5,000.00 should
22 not be imposed against it;
- 23 2. Respondent Michael Upton ("Respondent Upton") shall show
24 cause why penalties in the amount of \$5,000.00 should not be
25 imposed against him;

1 3. The above named Respondents shall show cause why, in addition
2 to the penalties listed in Paragraphs 1 through 2 above, the
3 \$1,700.00 examination fee should not be paid to the
4 Department;

5 4. The above named Respondents shall show cause why, in addition
6 to the penalties listed in Paragraphs 1 through 3 above, the
7 accrued fine of \$350.00 for the late filing of examination
8 materials should not be paid to the Department;

9 5. The above named Respondents shall be jointly and severally
10 liable for the above amounts alleged in Paragraphs 1 through
11 4 above;

12 6. The above named Respondents shall show cause why, in addition
13 to the penalties listed in Paragraphs 1 through 5 above,
14 Respondent LF Mortgage's license should not be revoked.

15 It is hereby further ORDERED that:

16 7. Along with the administrative penalties listed for the above
17 named Respondents, the outstanding sum of \$2,050.00 shall be
18 immediately paid; and

19
20
21
22 [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
23
24
25

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

6
7 SIGNED,

8
9 Dated: 03/11/10

/s/

PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-114
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) March 1, 2010
)
 6 and)
)
 7 Liberty Financial Mortgage Corporation)
)
 8 (d/b/a LF Mortgage of Massachusetts),)
)
 9 and Michael Upton,)
)
 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 Liberty Financial Mortgage Corporation (d/b/a LF
16 Mortgage of Massachusetts) (hereinafter "Respondent LF Mortgage")
17 was licensed as a Mortgage Broker from at least May 30, 2006
18 (with an amended license date of March 6, 2007) until its license
19 expired on December 31, 2007.
- 20 2. Respondent Michael Upton (hereinafter "Respondent Upton") was the
21 owner and President of Respondent LF Mortgage, when licensed by
22 the Department.

1 Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested
2 Files in a Timely Manner (1 Count):

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

8 4. The Department conducted an examination of Respondent LF Mortgage
9 on June 4, 2007.

10 5. The Department received examination materials on August 21, 2007,
11 which was 7 days late.

12 6. Respondent LF Mortgage's late submittal of examination materials
13 generated a fine of \$350.00 (\$50.00 per day x 7 days).

14 7. On November 28, 2007, the Department sent Respondent LF Mortgage
15 the invoice for the late filing of examination materials, to
16 which the above named Respondents failed to respond.

17 8. To date, the above named Respondents have failed to pay the
18 \$350.00 invoice.

19 9. On January 4, 2008, the Department sent the report of examination
20 and examination invoice for \$1,700.00 to Respondent LF Mortgage
21 via U.S. Certified Mail Return Receipt requested, which
22 Respondent LF Mortgage received on January 7, 2008.

23 10. A second notice was submitted to Respondent LF Mortgage on
24 February 5, 2008 and a third notice was submitted to Respondent
25 LF Mortgage on March 14, 2008.

1 11. To date, the above named Respondents have failed to pay the
2 \$1,700.00 examination fee.

3 **II. ISSUES OF LAW**

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

5 1. The Department realleges the above stated facts in Paragraphs 1
6 through 11 as fully set forth herein.

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

10 3. RSA 397-A:11,II provides that requested files and business records
11 must be received by the Department within 21 calendar days of
12 request. The licensee will be subject to a \$50.00 a day fine
13 every day after the 21-day period the records are not produced.
14 Respondents currently owe \$350.00. Each of the above named
15 Respondents violated this statute on at least one occasion as
16 alleged above.

17 4. RSA 397-A:12,V provides that the expense of such examination shall
18 be chargeable to and paid by the licensee. Each of the above
19 named Respondents violated this provision on at least one occasion
20 as alleged above. To date, the above named Respondents have
21 failed to pay the \$1,700.00 examination invoice.

22 5. RSA 397-A:13,VI provides that any officer, owner, manager or agent
23 of any licensee shall reply promptly in writing, or other
24 designated form, to any written inquiry from the Department.
25

1 Respondent Upton violated this provision on at least one occasion
2 as alleged above.

3 6. RSA 397-A:18,I provides that the Department may issue a complaint
4 setting forth charges whenever the Department is of the opinion
5 that the licensee or person over whom the Department has
6 jurisdiction, has violated any provision of RSA Chapter 397-A or
7 orders thereunder.

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

16 8. RSA 397-A:21,V provides that every person who directly or
17 indirectly controls a person liable under this section, every
18 partner, principal executive officer or director of such person,
19 every person occupying a similar status or performing a similar
20 function, every employee of such person who materially aids in the
21 act constituting the violation, and every licensee or person acting
22 as a common law agent who materially aids in the acts constituting
23 the violation, either knowingly or negligently, may, upon notice
24 and opportunity for hearing, and in addition to any other penalty
25 provided for by law, be subject to suspension, revocation, or

1 denial of any registration or license, including the forfeiture of
2 any application fee, or the imposition of an administrative fine
3 not to exceed \$2,500, or both. Each of the acts specified shall
4 constitute a separate violation, and such administrative action or
5 fine may be imposed in addition to any criminal or civil penalties
6 imposed.

7 **III. RELIEF REQUESTED**

8 The staff of the Department requests the Commissioner take the following
9 action:

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

