

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 358-A and
8 exempt under RSA 358-A:3,I or that may violate any of the provisions of
9 Titles XXXV and XXXVI and administrative rules adopted thereunder. The
10 Commissioner may hold hearings relative to such conduct and may order
11 restitution for a person or persons adversely affected by such conduct.

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

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

1 show cause why penalties in the amount of \$20,000.00 should
2 not be imposed against him;

3 4. The above named Respondents shall show cause why, in addition
4 to the penalties listed in Paragraphs 1 through 3 above, the
5 \$500.00 examination fee should not be paid to the Department;

6 5. The above named Respondents shall show cause why, in addition
7 to the penalties listed in Paragraphs 1 through 4 above, the
8 accrued fine of \$27,150.00 for the failure to file expanded
9 examination materials should not be paid to the Department;

10 6. The above named Respondents shall be jointly and severally
11 liable for the above amounts alleged in Paragraphs 1 through
12 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 Montgomery Mortgage's license should not be
16 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 \$27,650.00 shall be
20 immediately paid; and
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1 9. 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).
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9 SIGNED,

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11 Dated: 06/05/09

/s/

12 PETER C. HILDRETH
13 BANK COMMISSIONER
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1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-116
3 State of New Hampshire Banking)
4 Department,) Staff Petition
5 Petitioner,) June 5, 2009
6 and)
7 Montgomery Mortgage Capital)
8 Corporation, Alex E. Gemici, and Paul)
9 F. Loiacono,)
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 Montgomery Mortgage Capital Corporation (hereinafter
16 "Respondent Montgomery Mortgage") was licensed as a Mortgage
17 Banker from at least September 26, 2006 until it surrendered its
18 license effective December 24, 2007.
- 19 2. Respondent Alex E. Gemici (hereinafter "Respondent Gemici") was
20 a 50% owner and Chief Executive Officer of Respondent Montgomery
21 Mortgage, when licensed by the Department.
- 22 3. Respondent Paul F. Loiacono (hereinafter "Respondent Loiacono")
23 was a 50% owner and President of Respondent Montgomery Mortgage,
24 when licensed by the Department.

1 NOTICE OF EXPANDED EXAMINATION MATERIALS REQUEST

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

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

4 Files (1 Count):

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

6 Files (1 Count):

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

8 Department Inquiries (1 Count):

9 4. Paragraphs 1 through 3 are hereby realleged as fully set forth
10 herein.

11 5. The Department conducted an examination of Respondent Montgomery
12 Mortgage on September 17, 2007.

13 6. On August 22, 2007, the Department sent the August 22, 2007 Notice
14 of Examination to Respondent Montgomery Mortgage via U.S.
15 Certified Mail Return Receipt requested, which the Respondent
16 received on August 27, 2007.

17 7. The above named Respondents provided certain examination materials
18 to the Department but the Department requested certain loan
19 files, certain additional information, and an amended annual
20 report in its November 1, 2007 correspondence to Respondent
21 Montgomery Mortgage.

22 8. On November 14, 2007, the Department sent the November 1, 2007
23 correspondence and request, which Respondent Montgomery Mortgage
24 received at 12:38 p.m. on November 21, 2007.

25 9. With no response, the Department faxed a reminder letter to

1 Respondent Montgomery Mortgage dated April 9, 2008, requesting
2 the missing items.

3 10. Respondent Montgomery Mortgage's fax number came back as busy/no
4 response.

5 11. To date, the above named Respondents have failed to respond to
6 the November 1, 2007 Department correspondence.

7 12. To date, the above named Respondents have failed to file the
8 missing documents with the Department.

9 13. To date, the above named Respondents currently owe \$27,150.00
10 (\$50.00 a day x 543 days), and still accruing, for failing to
11 provide examination materials.

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

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

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

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

17 15. As stated above, the Department conducted an examination of
18 Respondent Montgomery Mortgage on September 17, 2007.

19 16. On April 10, 2008, the Department mailed the report of examination
20 and invoice for \$500.00 to Respondent Montgomery Mortgage, which
21 the Respondents received on April 21, 2008.

22 17. A second notice was submitted to Respondent Montgomery Mortgage on
23 June 24, 2008.

24 18. A third notice was submitted to the Respondents on August 21,
25 2008.

1 19. To date, the above named Respondents have failed to pay the
2 \$500.00 examination fee for the one day exam.

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 19 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 \$27,150.00. 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,III requires licensees to comply with examination
18 requests with or without prior notice. All books, papers, files,
19 related material, and records of assets shall be subject to the
20 Department's examination. Each of the above named Respondents
21 violated this statute on at least one occasion as alleged above.

22 5. RSA 397-A:12,V provides that the expense of such examination shall
23 be chargeable to and paid by the licensee. Each of the above
24 named Respondents violated this provision on at least one
25

1 occasion as alleged above. To date, the above named Respondents
2 have failed to pay the \$500.00 examination invoice.

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

12 7. RSA 397-A:13,VI provides that any officer, owner, manager or agent
13 of any licensee shall reply promptly in writing, or other
14 designated form, to any written inquiry from the Department.
15 Respondent Gemici and Respondent Loiacono violated this provision
16 on at least four occasions each as alleged above.

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

22 9. RSA 397-A:21,IV provides that any person who, either knowingly or
23 negligently, violates any provision of Chapter 397-A, may upon
24 hearing, and in addition to any other penalty provided for by
25 law, be subject to an administrative fine not to exceed

