

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-159
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Granger Mortgage Corporation (d/b/a)
)
 8 LowRatesToYou.com), William W. Granger,)
)
 9 and Philip M. Smoak,)
)
 10 Respondents)

11 NOTICE OF ORDER

12 This Order commences an adjudicative proceeding under the provisions
13 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: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 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 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 July 8, 2009 (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 Granger Mortgage Corporation (d/b/a
20 LowRatesToYou.com) ("Respondent Granger Mortgage") shall show
21 cause why penalties in the amount of \$7,500.00 should not be
22 imposed against it;
- 23 2. Respondent William W. Granger ("Respondent Granger") shall
24 show cause why penalties in the amount of \$10,000.00 should
25 not be imposed against him;

1 3. Respondent Philip M. Smoak ("Respondent Smoak") shall show
2 cause why penalties in the amount of \$10,000.00 should not be
3 imposed against him;

4 4. The above named Respondents shall show cause why, in addition
5 to the penalties listed in Paragraphs 1 through 3 above, the
6 \$500.00 examination fee should not be paid to the 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 \$2,500.00 for the failure to file the financial
10 statement should not be paid to the Department;

11 6. The above named Respondents shall show cause why, in addition
12 to the penalties listed in Paragraphs 1 through 5 above, the
13 fine for \$700.00 for the late filing of the annual report
14 should not be paid to the Department;

15 7. The above named Respondents shall be jointly and severally
16 liable for the above amounts alleged in Paragraphs 1 through
17 6 above;

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

21 It is hereby further ORDERED that:

22 9. Along with the administrative penalties listed for the above
23 named Respondents, the outstanding sum of \$3,700.00 shall be
24 immediately paid; and

1 10. 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
7 SIGNED,

8
9 Dated: 07/08/09

/s/

PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-159
3 State of New Hampshire Banking)
4 Department,) Staff Petition
5 Petitioner,) July 8, 2009
6 and)
7 Granger Mortgage Corporation (d/b/a)
8 LowRatesToYou.com), William W. Granger,)
9 and Philip M. Smoak,)
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 Granger Mortgage Corporation (d/b/a LowRatesToYou.com)
16 (hereinafter "Respondent Granger Mortgage") was licensed as a
17 Mortgage Banker from at least July 16, 2007 until its license
18 expired on December 31, 2008.
- 19 2. Respondent William W. Granger (hereinafter "Respondent Granger")
20 was the 100% owner and President of Respondent Granger Mortgage,
21 when licensed by the Department.
- 22 3. Respondent Philip M. Smoak (hereinafter "Respondent Smoak") was
23 the Vice President of and a control person for Respondent Granger
24 Mortgage, when licensed by the Department.

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

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

3 Department Inquiries (1 Count):

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

6 5. The Department conducted an examination of Respondent Granger
7 Mortgage on July 7, 2008, while Respondent Granger Mortgage was
8 still licensed with the Department.

9 6. On September 8, 2008, the Department mailed the report of
10 examination and invoice for \$500.00 to Respondent Granger
11 Mortgage, via U.S. Certified Mail Return Receipt requested, which
12 Respondents received on September 12, 2008.

13 7. The Respondents failed to respond to the September 8, 2008
14 Department correspondence.

15 8. The Department, via U.S. mail, mailed a second notice on October
16 9, 2008 and a third notice on November 21, 2008.

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

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

21 Violation of RSA 397-A:13,II Failure to File Financial Statement (1 Count):

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

24 12. The Respondents' fiscal year end was September 30, 2007 and the
25 financial statement was due on or before December 31, 2007.

1 13. Respondent Granger Mortgage was licensed on the date the financial
2 statement filing was due the Department.

3 14. The Department sent Respondent Granger Mortgage a reminder letter
4 in September 2007, with a follow-up on January 2, 2008 and the
5 final follow-up letter on February 15, 2008.

6 15. The Department's legal division then sent another letter on May 8,
7 2008 regarding the fine for failure to file the statement.
8 Respondents received this correspondence on May 12, 2008 and
9 contacted the Department. Respondents indicated they would be
10 sending in a letter but one was never received.

11 16. To date, the accrued penalty for failure to file a financial
12 statement has reached the maximum cap of \$2,500.00 (\$25.00 a day,
13 maximum \$2,500.00).

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

15 **Filing of Annual Report (1 Count):**

16 17. Paragraphs 1 through 16 are hereby realleged as fully set forth
17 herein.

18 18. Respondent Granger Mortgage was licensed in 2007 and therefore,
19 subject to the filing of the 2007 annual report of business.

20 19. Respondent Granger Mortgage's 2007 annual report was due on or
21 before February 1, 2008.

22 20. Respondent Granger Mortgage filed its 2007 annual report on
23 February 29, 2008 (28 days late), generating a fine of \$700.00
24 (\$25.00 a day x 28 days).

25 21. To date, the \$700.00 fine remains outstanding.

1 **II. ISSUES OF LAW**

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

- 3 1. The Department realleges the above stated facts in Paragraphs 1
4 through 21 as fully set forth herein.
- 5 2. The Department has jurisdiction over the licensing and regulation
6 of persons engaged in mortgage banker or broker activities
7 pursuant to NH RSA 397-A:2 and RSA 397-A:3.
- 8 3. 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 occasion
11 as alleged above. To date, the above named Respondents have
12 failed to pay the \$500.00 examination invoice.
- 13 4. RSA 397-A:13,II provides that each licensee shall file a financial
14 statement within 90 days from the date of its fiscal year end.
15 Each of the above named Respondents violated this statute on at
16 least one occasion as alleged above. The maximum fine has accrued
17 to \$2,500.00 as calculated by RSA 397-A:13,IV below.
- 18 5. RSA 397-A:13,IV provides that any mortgage banker or mortgage
19 broker failing to file either the annual report or the financial
20 statement required by RSA Chapter 397-A within the time prescribed
21 may be required to pay to the Department a penalty of \$25.00 for
22 each calendar day the annual report or financial statement is
23 overdue, up to a maximum penalty of \$2,500.00 per report or
24 statement. The above named Respondents failed to file a financial
25 statement, the fine of which has accrued to the maximum cap of

1 \$2,500.00. Each of the above named Respondents violated this
2 provision on at least one occasion as alleged above. The above
3 named Respondents have failed to timely file an annual report,
4 which generated a fine of \$700.00.

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

10 7. RSA 397-A:17,I provides in part that the Commissioner may by
11 order, upon due notice and opportunity for hearing, assess
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 any
16 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 standards
19 established in RSA Chapter 397-A.

20 8. 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 9. RSA 397-A:21,IV provides that any person who, either knowingly or

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

8 10. 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
12 amount equal to the violations set forth in section II of this
13 Staff 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 Chapter 397-A or the regulations thereunder.

22 Respectfully submitted by:

23
24 _____
25 /s/
Maryam Torben Desfosses
Hearings Examiner

07/08/09
Date