

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 08-169  
 )  
 3 State of New Hampshire Banking )  
 )  
 4 Department, ) Order to Show Cause and  
 )  
 5 Petitioner, ) Cease and Desist Order  
 )  
 6 and )  
 )  
 7 Home Express Mortgage Corp, and Dmitri )  
 )  
 8 Pidvyssotski, )  
 )  
 9 Respondents )  
 )

10 NOTICE OF ORDER

11 This Order commences an adjudicative proceeding under the provisions  
12 of RSA 397-A, RSA 541-A, and JUS 800.

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, rule or order  
thereunder.

22 Pursuant to RSA 397-A:18,II, the Department has the authority to issue  
23 and cause to be served an order requiring any person engaged in any act or  
24 practice constituting a violation of RSA 397-A or any rule or order  
25 thereunder, to cease and desist from violations of RSA 397-A.

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

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

8 Pursuant to RSA 397-A:21,I-a, any person who willfully violates any  
9 provisions of RSA 397-A:2,VI or VII or a cease and desist order or  
10 injunction issued pursuant to RSA 397-A:18,II shall be guilty of a class B  
11 felony. Each of the acts specified shall constitute a separate offense and  
12 a prosecution or conviction for any one of such offenses shall not bar  
13 prosecution or conviction of any other offense.

14 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct  
15 that is or may be an unfair or deceptive act or practice under RSA 358-A and  
16 exempt under RSA 358-A:3, I or that may violate any of the provisions of  
17 Titles XXXV and XXXVI and administrative rules adopted thereunder. The  
18 Commissioner may hold hearings relative to such conduct and may order  
19 restitution for a person or persons adversely affected by such conduct.

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

21 The above named Respondents have a right to request a hearing on this  
22 Order to Show Cause and Cease and Desist Order, as well as the right to be  
23 represented by counsel at each Respondent's own expense. All hearings shall  
24 comply with RSA Chapter 541-A. Any such request for a hearing shall be in  
25 writing, and signed by the Respondent or the duly authorized agent of the  
above named Respondent, and shall be delivered by either by hand or

1 certified mail, return receipt requested, to the Banking Department, State  
2 of New Hampshire, 53 Regional Drive, Suite 200, Concord, NH 03301. Such  
3 hearings will be scheduled within 10 days of the Department's receipt of the  
4 request. If the Respondent fails to appear at the hearing after being duly  
5 notified, such person shall be deemed in default, and the proceeding may be  
6 determined against the Respondent upon consideration of the Order to Show  
7 Cause and Cease and Desist Order, the allegations of which may be deemed to  
8 be true.

9 If any of the above named Respondents fails to request a hearing within  
10 30 calendar days of receipt of such order or reach a formal written and  
11 executed settlement with the Department within that time frame, then such  
12 person shall likewise be deemed in default, and the orders shall, on the  
13 thirty-first day, become permanent, and shall remain in full force and effect  
14 until and unless later modified or vacated by the Commissioner, for good cause  
15 shown.

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

17 The Staff Petition dated July 1, 2009 (a copy of which is attached  
18 hereto) is incorporated by reference hereto.

19 **ORDER**

20 WHEREAS, finding it necessary and appropriate and in the public  
21 interest, and consistent with the intent and purposes of the New Hampshire  
22 banking laws; and

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

25 It is hereby ORDERED, that:

1           1.     The above named Respondents are hereby ordered to  
2                   immediately Cease and Desist from violations of New  
3                   Hampshire law and federal law, and the rules and  
4                   regulations for both thereunder;

5           3.     Respondent Home Express Mortgage Corp ("Respondent Home  
6                   Express") shall show cause why penalties in the amount of  
7                   \$95,000.00 should not be imposed against it;

8           4.     Respondent Dmitri Pidvyssotski, ("Respondent  
9                   Pidvyssotski") shall show cause why penalties in the  
10                  amount of \$95,000.00 should not be imposed against him;

11          5.     The above named Respondents shall show cause why, in  
12                  addition to the penalties listed in Paragraphs 2 through 4  
13                  above, consumer restitution for the following Consumers  
14                  and in the following amounts should not be paid back to  
15                  the listed Consumers:

16                  a.    Consumer B: a total of \$2,491.47;

17                  b.    Consumer D: a total of \$13.00;

18                  c.    Consumer F: a total of \$34.25;

19                  d.    Consumer G: a total of \$2,430.00;

20                  e.    Consumer H: a total of \$2,844.27;

21                  f.    Consumer I: a total of \$4,185.00;

22                  g.    Consumer J: a total of \$1,050.00; and

23                  k.    Consumer K: a total of \$50.00;

24          6.     The above named Respondents shall be jointly and severally  
25                  liable for the above amounts alleged in Paragraphs 2



1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 08-169  
 )  
 3 State of New Hampshire Banking ) Staff Petition  
 )  
 4 Department, )  
 )  
 5 Petitioner, ) July 1, 2009  
 )  
 6 and )  
 )  
 7 Home Express Mortgage Corp, and Dmitri )  
 )  
 8 Pidvyssotski, )  
 )  
 9 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 Home Express Mortgage Corp (hereinafter "Respondent  
16 Home Express") has been licensed as a Mortgage Broker since March  
17 25, 2003.
- 18 2. Respondent Dmitri Pidvyssotski (hereinafter "Respondent  
19 Pidvyssotski") is the 100% owner and President of Respondent Home  
20 Express.

21 LOAN FILES:

22 Violation of RSA 397-A:6,I Failure to Supervise (2 Counts):

23 Violation of RSA 397-A:17,I(g) Failure to Supervise (2 Counts):

24 Violation of RSA 397-A:17,I(k) Dishonest or Unethical Practices (2 Counts):

- 25 3. Paragraphs 1 through 2 are hereby realleged as fully set forth

1           herein.

2           4. The above named Respondents provided inadequate supervision over  
3           critical aspects of the mortgage lending process.

4           5. The Department's Examiner, during the 2007 examination,  
5           discovered Good Faith Estimates signed by the borrowers before  
6           the documents were actually prepared:

7           a. Consumer A's Good Faith Estimate for the second loan listed a  
8           prepared date of May 9, 2006 but Consumer A actually signed and  
9           dated the Good Faith Estimate on May 8, 2006.

10          b. Consumer B's Good Faith Estimate for the first loan listed a  
11          prepared date of June 2, 2006 but Consumer B actually signed  
12          and dated the Good Faith Estimate on May 31, 2006.

13 **APPRAISALS:**

14 **Violation of RSA 397-A:6, I Failure to Supervise (2 Counts):**

15 **Violation of RSA 397-A:17, I(g) Failure to Supervise (2 Counts):**

16 **Violation of RSA 397-A:17, I(k) Dishonest or Unethical Practices (2 Counts):**

17          6. Paragraphs 1 through 5 are hereby realleged as fully set forth  
18          herein.

19          7. The above named Respondents provided inadequate supervision over  
20          critical aspects of the mortgage lending process.

21          8. The Department's Examiner, during the 2007 examination,  
22          discovered an Appraisal Request Form for the Consumer C loan,  
23          which listed a sales price of \$216,000.00 under the loan detail  
24          section. However, next to the \$216,000.00 value, the loan  
25          officer had written "needed". The appraisal came in at

1 \$198,000.00.

2 9. The Department's Examiner, during the 2007 examination,  
3 discovered an Appraisal Request Form for the Consumer D loan,  
4 wherein the notes section stated "Need this one to come in @  
5 \$195+". The appraisal came in at \$185,000.00.

6 **DEFRAUDING THE LENDER WITH VERIFICATION OF DEPOSIT - CONSUMER E LOAN FILE:**

7 **Violation of RSA 397-A:6,I Failure to Supervise (1 Count):**

8 **Violation of RSA 397-A:17,I(g) Failure to Supervise (1 Count):**

9 **Violation of RSA 397-A:17,I(k) Dishonest or Unethical Practices (1 Count):**

10 **Violation of Title 18 U.S.C. Section 1001, et seq. via RSA 397-A:2,III (1**  
11 **Count):**

12 **Violation of Title 18 U.S.C. Section 1010 via RSA 397-A:2, III (1 Count):**

13 **Violation of Title 18 U.S.C. Section 1344 via RSA 397-A:2, III (1 Count):**

14 10. Paragraphs 1 through 9 are hereby realleged as fully set forth  
15 herein.

16 11. The above named Respondents failed to supervise critical aspects  
17 of the mortgage lending process.

18 12. The Department's Examiner, during the 2007 examination,  
19 discovered the Consumer E loan, whose initial application date of  
20 June 4, 2007 listed that Consumer E had \$80,000.00 in Consumer  
21 E's bank account.

22 13. However, in the Verification of Deposit and in the final  
23 application, the amount listed in the bank account was  
24 \$38,000.00.

25 14. When the Department's Examiner inquired with Respondent

1           Pidvyssotski regarding the discrepancy in bank account amounts,  
2           the response was that Consumer E chose to use Consumer E's  
3           personal savings account instead of Consumer E's business  
4           account. The Department's Examiner could not locate any evidence  
5           in the loan to support this radical change.

6           **DEFRAUDING THE LENDERS WITH STATED ASSETS LOANS - CONSUMER F LOAN FILE:**

7           **Violation of RSA 397-A:6, I Failure to Supervise (1 Count):**

8           **Violation of RSA 397-A:17, I(g) Failure to Supervise (1 Count):**

9           **Violation of RSA 397-A:17, I(k) Dishonest or Unethical Practices (1 Count):**

10           **Violation of Title 18 U.S.C. Section 1001, et seq. via RSA 397-A:2, III (1**  
11           **Count):**

12           **Violation of Title 18 U.S.C. Section 1010 via RSA 397-A:2, III (1 Count):**

13           **Violation of Title 18 U.S.C. Section 1344 via RSA 397-A:2, III (1 Count):**

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

16           16. The above named Respondents failed to supervise critical aspects  
17           of the mortgage lending process.

18           17. The Department's Examiner, during the 2007 examination,  
19           discovered Consumer F's multiple loans that only spanned the  
20           course of two months in 2006.

21           18. The Consumer F loan file was first originated by Respondent Home  
22           Express and submitted to Lender 1.

23           19. The original application dated July 27, 2006 stated Consumer F  
24           worked for Employer 1 in client services with a monthly income of  
25           \$4,950.00, which matched the pay stub in the file. The pay stub

1 also had a note indicated Consumer F was going to receive a raise  
2 of \$50.00 per month, starting July 2006.

3 20. The Consumer F loan file to be sent to Lender 1 started as a full  
4 document loan and then changed to a stated income, stated assets  
5 loan with a final application listing Consumer F's income as  
6 \$6,800.00 per month.

7 21. The Consumer F loan with Lender 1 closed August 21, 2006.

8 22. Only one month later, on September 29, 2006, Consumer F had  
9 another loan (a 1<sup>st</sup> and 2<sup>nd</sup>) originated by Respondent Home Express,  
10 again as a stated loan, with Consumer F's income now listed as  
11 \$6,850.00 per month.

12 23. The 1<sup>st</sup> and 2<sup>nd</sup> loans closed on October 10, 2006 with Lender 2.

13 **Violation of the Real Estate Settlement Procedures Act, Regulation X, 24**

14 **C.F.R. Section 3500.7, Appendix B, Illustration 13 and Appendix C via RSA**

15 **397-A:2, III (5 Counts):**

16 **Violation of the Real Estate Settlement Procedures Act, Regulation X, 24**

17 **C.F.R. Section 3500.7, Appendix B, Illustration 13 and Appendix C via RSA**

18 **397-A:16, I (5 Counts):**

19 24. Paragraphs 1 through 23 are hereby realleged as fully set forth  
20 herein.

21 25. During the 2007 Examination of Respondent Home Express, the  
22 Department Examiner discovered five (5) loan files wherein the  
23 Yield Spread Premium was not disclosed on the Good Faith  
24 Estimate.

25

1 26. As a result of the failure to disclose the Yield Spread Premium  
2 ("YSP"), these fees must be refunded back to the five (5)  
3 consumers as follows:

- 4 a. Consumer B in the amount of \$2,441.47;
- 5 b. Consumer G in the amount of \$2,430.00;
- 6 c. Consumer H in the amount of \$2,844.27;
- 7 d. Consumer I in the amount of \$4,185.00; and
- 8 e. Consumer J in the amount of \$1,050.00.

9 **Violation of the Real Estate Settlement Procedures Act, Regulation X, 24**

10 **C.F.R. Section 3500.14 via RSA 397-A:2,III (4 Counts):**

11 27. Paragraphs 1 through 26 are hereby realleged as fully set forth  
12 herein.

13 28. During the 2007 Examination of Respondent Home Express, the  
14 Department Examiner discovered four (4) loans files wherein  
15 charges were collected that either could not be verified or were  
16 over the amount actually charged the Consumers.

17 29. Therefore, the following charges must be refunded to the  
18 following Consumers:

- 19 a. Consumer B in the amount of \$50.00 for an unverified credit  
20 report fee;
- 21 b. Consumer D in the amount of \$13.00 for an overcharge of a  
22 credit report fee that totaled only \$37.00 and of which  
23 Consumer D actually paid \$50.00;
- 24 c. Consumer F in the amount of \$34.25 for an overcharge of a  
25 credit report fee that totaled only \$15.75 and of which

1 Consumer F actually paid \$50.00; and

2 d. Consumer K in the amount of \$50.00 for an unverified credit  
3 report fee.

4 **II. ISSUES OF LAW**

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

6 1. The Department realleges the above stated facts in paragraphs 1  
7 through 29 as fully set forth herein.

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

11 3. RSA 397-A:2,III requires persons subject to or licensed under RSA  
12 Chapter 397-A to abide by applicable federal laws and regulations,  
13 the laws and rules of the State of New Hampshire, and the orders  
14 of the Commissioner. Any violation of such law, regulation, order,  
15 or rule is a violation of RSA Chapter 397-A. Each of the above  
16 named Respondents violated this statute on at least 15 occasions  
17 as alleged above.

18 4. RSA 397-A:6,I mandates that licensees supervise their employees,  
19 agents, loan originators, and branch offices. Each of the above  
20 named Respondents failed to adequately supervise and therefore  
21 violated this statute on at least six occasions as alleged above.

22 5. RSA 397-A:16,I provides that licensees may charge fees and points  
23 for services rendered in conjunction with the origination,  
24 closing, and servicing of loans; provided, however, that the  
25 licensee issues a written disclosure to the borrower stating the

1 estimated amount and purpose of all fees and expenses within three  
2 business days of the receipt of a loan application. Each of the  
3 above named Respondents violated this provision on at least five  
4 occasions as alleged above.

5 6. RSA 397-A:17,I(g) provides that licensees engaging in business in  
6 New Hampshire must supervise their agents, originators, managers  
7 or employees. Each of the above named Respondents violated this  
8 statute on at least six occasions as alleged above.

9 7. Pursuant to RSA 397-A:17,I(k), licensees engaging in business in  
10 New Hampshire are prohibited from engaging in unethical business  
11 practices. Each of the above named Respondents violated this  
12 statute on at least six occasions as alleged above.

13 8. 18 U.S.C. Section 1001, et seq., provides that except as otherwise  
14 provided in this section, whoever, in any matter within the  
15 jurisdiction of the executive, legislative, or judicial branch of  
16 the Government of the United States, knowingly and willfully (1)  
17 falsifies, conceals, or covers up by any trick, scheme, or device  
18 a material fact; (2) makes any materially false, fictitious, or  
19 fraudulent statement or representation; or (3) makes or uses any  
20 false writing or document knowing the same to contain any  
21 materially false, fictitious, or fraudulent or entry; shall be  
22 fined under this title, imprisoned not more than 5 years... Each  
23 of the above named Respondents violated this provision on at  
24 least two occasions via RSA 397-A:2,III as alleged above.

25

1 9. 18 U.S.C. Section 1010, et seq., provides that whoever, for the  
2 purpose of obtaining any loan or advance of credit from any  
3 person, partnership, association, or corporation with the intent  
4 that such loan or advance of credit shall be offered to or  
5 accepted by the Department of Housing and Urban Development for  
6 insurance, or for the purpose of obtaining any extension or  
7 renewal of any loan, advance of credit, or mortgage insured by  
8 such department, makes, passes, or utters, or publishes any  
9 statement, knowing the same to be false, or alters, forges, or  
10 counterfeits any instrument, paper, or document, or utters,  
11 publishes, or passes as true any instrument, paper, or document  
12 knowing it to have been altered, forged, or counterfeited, or  
13 willfully overvalues any security, asset, or income, shall be  
14 fined under this title or imprisoned not more than two years, or  
15 both. Each of the above named Respondents violated this provision  
16 on at least two occasions via RSA 397-A:2,III as alleged above.

17 10. 18 U.S.C. Section 1344, et seq., provides that whoever knowingly  
18 executes, or attempts to execute, a scheme or artifice - (1) to  
19 defraud a financial institution; or (2) to obtain any of the  
20 moneys, funds, credits, assets, securities, or other property  
21 owned by, or under the custody or control of, a financial  
22 institution, by means of false or fraudulent pretenses,  
23 representations, or promises; shall be fined not more than  
24 \$1,000,000.00 or imprisoned not more than 30 years, or both.  
25 Each of the above named Respondents violated this provision on at

1           least two occasions via RSA 397-A:2,III as alleged above.

2           11. 24 C.F.R. Section 3500.7, Appendix B, Illustration 13, and  
3           Appendix C provide that the mortgage broker's fee must be  
4           itemized in the Good Faith Estimate and on the HUD-1 Settlement  
5           Statement. Each of the above named Respondents violated this  
6           provision on at least five occasions (via RSA 397-A:2,III and RSA  
7           397-A:16,I) as alleged above.

8           12. 24 C.F.R. Section 3500.14 of Regulation X, Real Estate Settlement  
9           Procedures Act, provides that no person or entity shall accept  
10          any portion, split or percentage of any charged made or received  
11          for the rendering of a settlement service in connection with a  
12          transaction involving a federally related mortgage loan other  
13          than for a service actually performed. A charged by a person for  
14          which no or nominal services are performed or for which  
15          duplicative fees are charged is an unearned fee and violates this  
16          section. The source of the payment does not determine whether or  
17          not a service is compensable. Nor may the prohibitions of this  
18          part be avoided by creating an arrangement wherein the purchaser  
19          of services splits the fee. Each of the above named Respondents  
20          violated this provision on at least four occasions via RSA 397-  
21          A:2,III as alleged above.

22          13. RSA 397-A:17,I provides in part that the Commissioner may by  
23          order, upon due notice and opportunity for hearing, assess  
24          penalties or deny, suspend, or revoke a license or application if  
25          it is in the public interest and the applicant, respondent, or

1 licensee, any partner, officer, member, or director, any person  
2 occupying a similar status or performing similar functions, or  
3 any person directly or indirectly controlling the applicant,  
4 respondent, or licensee: (a) has violated any provision of RSA  
5 Chapter 397-A or rules thereunder, or (b) has not met the  
6 standards established in RSA Chapter 397-A.

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

12 15. RSA 397-A:21,IV provides that any person who, either knowingly or  
13 negligently, violates any provision of Chapter 397-A, may upon  
14 hearing, and in addition to any other penalty provided for by  
15 law, be subject to an administrative fine not to exceed \$2,500,  
16 or both. Each of the acts specified shall constitute a separate  
17 violation, and such administrative action or fine may be imposed  
18 in addition to any criminal penalties or civil liabilities  
19 imposed by New Hampshire Banking laws.

20 16. RSA 397-A:21,V provides that every person who directly or  
21 indirectly controls a person liable under this section, every  
22 partner, principal executive officer or director of such person,  
23 every person occupying a similar status or performing a similar  
24 function, every employee of such person who materially aids in the  
25 act constituting the violation, and every licensee or person acting

1 as a common law agent who materially aids in the acts constituting  
2 the violation, either knowingly or negligently, may, upon notice  
3 and opportunity for hearing, and in addition to any other penalty  
4 provided for by law, be subject to suspension, revocation, or  
5 denial of any registration or license, including the forfeiture of  
6 any application fee, or the imposition of an administrative fine  
7 not to exceed \$2,500, or both. Each of the acts specified shall  
8 constitute a separate violation, and such administrative action or  
9 fine may be imposed in addition to any criminal or civil penalties  
10 imposed.

11 **III. RELIEF REQUESTED**

12 The staff of the Department requests the Commissioner take the following  
13 action:

- 14 1. Find as fact the allegations contained in section I of this Staff  
15 Petition;
- 16 2. Make conclusions of law relative to the allegations contained in  
17 section II of this Staff Petition;
- 18 3. Pursuant to RSA 397-A:17, order each of the above named  
19 Respondents to show cause why their license should not be revoked;
- 20 4. Pursuant to RSA 397-A:18, order the Respondents to cease and  
21 desist from violations of New Hampshire law and federal law, and  
22 the rules and regulations thereunder;
- 23 5. Refund Consumers B through A the amounts listed above;
- 24 6. Assess fines and administrative penalties in accordance with RSA  
25 397-A:21, for violations of Chapter 397-A, in the number and

