

1 State of New Hampshire Banking Department

2	In re the Matter of:)Case No.: 08-191
)
3	State of New Hampshire Banking)
)Order to Show Cause
4	Department,)
)
5	Petitioner,)
)
6	and)
)
7	Unlimited Mortgage Corporation (d/b/a)
)
8	Donna J. Doherty), Andrew F. Armata,)
)
9	and Stacey Alcorn,)
)
10	Respondents)

11 NOTICE OF ORDER

12 This Order to Show Cause commences an adjudicative proceeding under
13 the provisions 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:17,II(e)(1) the Commissioner has the authority
20 to remove or ban from office or employment, including license revocation,
21 any person conducting business under RSA Chapter 397-A who violates RSA
22 Chapter 397-A.

23 Pursuant to RSA 397-A:17,VIII, in addition to any other penalty
24 provided for under RSA Chapter 397-A or RSA 383:10-d, after notice and
25 opportunity for hearing, the Commissioner may enter an order of rescission,

1 restitution, or disgorgement of profits directed to a person who has
2 violated RSA Chapter 397-A, or a rule or order thereunder.

3 Pursuant to RSA 397-A:17,X, an action to enforce any provision of RSA
4 Chapter 397-A shall be commenced within 6 years after the date on which the
5 violation occurred.

6 Pursuant to RSA 397-A:18, the Department has the authority to issue a
7 complaint setting forth charges whenever the Department is of the opinion
8 that the licensee or person over whom the Department has jurisdiction is
9 violating or has violated any provision of RSA Chapter 397-A, or any rule or
10 order thereunder.

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

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

18 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct
19 that is or may be an unfair or deceptive act or practice under RSA Chapter
20 358-A and exempt under RSA 358-A:3,I or that may violate any of the
21 provisions of Titles XXXV and XXXVI and administrative rules adopted
22 thereunder. The Commissioner may hold hearings relative to such conduct and
23 may order restitution for a person or persons adversely affected by such
24 conduct.

1 6. The above named Respondents shall show cause why, in addition
2 to the penalties listed in Paragraphs 1 through 4 above, the
3 fine for \$1,225.00 for the late filing of the financial
4 statement should not be paid to the Department;

5 7. Respondents shall be jointly and severally liable for the
6 above amounts alleged in Paragraphs 1 through 6 above;

7 8. The above named Respondents shall show cause why, in addition
8 to the penalties listed in Paragraphs 1 through 7 above,
9 Respondent Unlimited Mortgage's license should not be
10 revoked;

11 9. The above named Respondents shall show cause why, in addition
12 to the penalties listed in Paragraphs 1 through 8 above,
13 Respondent Armata should not be removed or banned from office
14 or employment;

15 10. The above named Respondents shall show cause why, in addition
16 to the penalties listed in Paragraphs 1 through 9 above,
17 Respondent Alcorn should not be removed or banned from office
18 or employment.

19 It is hereby further ORDERED that:

20 11. Along with the administrative penalties listed for the above
21 named Respondents, the outstanding sum of \$2,591.89 shall be
22 immediately paid; and
23
24
25

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-191
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) December 30, 2009
)
 6 and)
)
 7 Unlimited Mortgage Corporation (d/b/a)
)
 8 Donna J. Doherty), Andrew F. Armata,)
)
 9 and Stacey Alcorn,)
)
 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 Unlimited Mortgage Corporation (d/b/a Donna J.
16 Doherty) (hereinafter "Respondent Unlimited Mortgage") has been
17 licensed as a Mortgage Broker from at least January 1, 2000 (with
18 an amended license date of July 15, 2005).
- 19 2. Respondent Andrew F. Armata (hereinafter "Respondent Armata") is
20 the 50% owner and President of Respondent Unlimited Mortgage.
- 21 3. Respondent Stacey Alcorn (hereinafter "Respondent Alcorn") is the
22 50% owner and Vice President of Respondent Unlimited Mortgage.

23 MARCH 2007 EXAMINATION:

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

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

1 herein.

2 5. The Department conducted an examination of Unlimited Mortgage on
3 March 12, 2007, while Respondent Unlimited Mortgage was still
4 licensed with the Department.

5 6. The Department sent Respondents the report of examination and
6 examination invoice for \$3,135.00 via U.S. Certified Mail Return
7 Receipt requested on December 26, 2007, which Respondents
8 received December 27, 2007.

9 7. The above named Respondents failed to respond to the December 26,
10 2007 correspondence from the Department.

11 8. The Department, via U.S. mail, mailed Respondents a second notice
12 on February 5, 2008 and a third notice on March 14, 2008.

13 9. On or about December 30, 2008, Respondents verbally agreed with
14 the Department to a pay plan to pay off all outstanding invoices,
15 including the one for the March 2007 examination. Respondents
16 subsequently paid all but \$135.00 of the March 2007 \$3,135.00
17 examination fee.

18 10. To date, the above named Respondents still owe the \$135.00
19 remaining portion of the examination fee for the 6.27 day
20 examination.

21 **AUGUST 2008 EXAMINATION:**

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

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

25 12. The Department conducted an examination of Unlimited Mortgage on

1 August 18, 2008, while Respondent Unlimited Mortgage was still
2 licensed with the Department.

3 13. The Department sent Respondents the report of examination and
4 examination invoice for \$1,231.89 via U.S. Certified Mail Return
5 Receipt requested on October 10, 2008, which Respondents received
6 October 11, 2008.

7 14. The above named Respondents failed to respond to the October 10,
8 2008 correspondence from the Department.

9 15. The Department, via U.S. mail, mailed Respondents a second notice
10 on November 21, 2008 and a third notice on January 20, 2009.

11 16. On or about December 30, 2008, Respondents verbally agreed with
12 the Department to a pay plan to pay off all outstanding invoices,
13 including the one for the August 2008 examination. Respondents
14 failed to pay any monies toward the \$1,231.89 outstanding
15 examination fee.

16 17. To date, the above named Respondents still owe the \$1,231.89
17 remaining portion of the examination fee for the 2.13 day
18 examination.

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

20 **Filing of Financial Statement (1 Count):**

21 18. Paragraphs 1 through 17 are hereby realleged as fully set forth
22 herein.

23 19. Respondent Unlimited Mortgage was licensed in 2008 and therefore,
24 subject to the filing of the 2008 financial statement.

25 20. Respondent Unlimited Mortgage's financial statement was due on or

1 before March 31, 2009 and could be filed on the NMLS in lieu of a
2 hard copy filing. Respondent Unlimited Mortgage was notified,
3 along with other licensees, of this option on or about January
4 13, 2009.

5 21. On April 4, 2009, the NMLS notified Respondents of the failure to
6 file the financial statement.

7 22. On June 9, 2009, the Department sent a reminder email and on July
8 24, 2009, the Department sent a certified letter.

9 23. To date, Respondent Unlimited Mortgage has failed to file the
10 financial statement and now owes \$2,500.00 in fines (\$25.00 a
11 day; maximum 100 days).

12 **II. ISSUES OF LAW**

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

14 1. The Department realleges the above stated facts in Paragraphs 1
15 through 23 as fully set forth herein.

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

19 3. RSA 397-A:12,V provides that the expense of such examination shall
20 be chargeable to and paid by the licensee. Each of the above
21 named Respondents violated this provision on at least two
22 occasions as alleged above. To date, the above named Respondents
23 have failed to pay the \$135.00 remaining balance for the March
24 2007 examination invoice and the August 2008 examination invoice
25 of \$1,231.89.

1 4. RSA 397-A:13,IV provides that any mortgage banker or mortgage
2 broker failing to file either the annual report or the financial
3 statement required by RSA Chapter 397-A within the time prescribed
4 may be required to pay to the Department a penalty of \$25.00 for
5 each calendar day the annual report or financial statement is
6 overdue, up to a maximum penalty of \$2,500.00 per report or
7 statement. Each of the above named Respondents violated this
8 provision on at least one occasion as alleged above. Respondents
9 failed to file the 2008 financial statement, thus incurring a fine
10 of \$2,500.00.

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

21 6. RSA 397-A:17,II(e)(1) provides that the Commissioner may issue an
22 order or directive to remove or ban from office or employment,
23 including license revocation, any person conducting business under
24 RSA Chapter 397-A who violates RSA Chapter 397-A.

25 7. RSA 397-A:17,VIII provides that in addition to any other penalty

1 provided for under RSA Chapter 397-A or RSA 383:10-d, after notice
2 and opportunity for hearing, the Commissioner may enter an order
3 of rescission, restitution, or disgorgement of profits directed to
4 a person who has violated RSA Chapter 397-A, or a rule or order
5 thereunder.

6 8. RSA 397-A:17,X provides an action to enforce any provision of RSA
7 Chapter 397-A shall be commenced within 6 years after the date on
8 which the violation occurred.

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

14 10. RSA 397-A:21,IV provides that any person who, either knowingly or
15 negligently, violates any provision of RSA Chapter 397-A, may
16 upon hearing, and in addition to any other penalty provided for
17 by law, be subject to an administrative fine not to exceed
18 \$2,500.00, or both. Each of the acts specified shall constitute
19 a separate violation, and such administrative action or fine may
20 be imposed in addition to any criminal penalties or civil
21 liabilities imposed by New Hampshire Banking laws.

22 11. RSA 397-A:21,V provides that every person who directly or
23 indirectly controls a person liable under this section, every
24 partner, principal executive officer or director of such person,
25 every person occupying a similar status or performing a similar

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

13 **III. RELIEF REQUESTED**

14 The staff of the Department requests the Commissioner take the following
15 action:

- 16 1. Find as fact the allegations contained in section I of this Staff
17 Petition;
- 18 2. Make conclusions of law relative to the allegations contained in
19 section II of this Staff Petition;
- 20 3. Pursuant to RSA 397-A:17, order each of the above named
21 Respondents to show cause why their license should not be revoked;
- 22 4. Pursuant to RSA 397-A:17,II(e)(1), order Respondent Armata be
23 removed or banned from office or employment;
- 24 5. Pursuant to RSA 397-A:17,II(e)(1), order Respondent Alcorn be
25 removed or banned from office or employment;

