

1 State of New Hampshire Banking Department

2	In re the Matter of:) Case No.: 08-192
)
3	State of New Hampshire Banking)
4	Department,) Order to Show Cause and
)
5	Petitioner,) Cease and Desist Order
)
6	and)
)
7	Stone Coast Mortgage Corp., and James)
)
8	J. Joyce,)
)
9	Respondents)

10 NOTICE OF ORDER

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

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, or any rule or
22 order thereunder.

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

1 thereunder, to cease and desist from violations of RSA Chapter 397-A.

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

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

9 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct
10 that is or may be an unfair or deceptive act or practice under RSA Chapter
11 358-A and exempt under RSA 358-A:3,I or that may violate any of the
12 provisions of Titles XXXV and XXXVI and administrative rules adopted
13 thereunder. The Commissioner may hold hearings relative to such conduct and
14 may order restitution for a person or persons adversely affected by such
15 conduct.

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

17 The above named Respondents have the right to request a hearing on
18 this Order to Show Cause and Cease and Desist Order, as well as the right to
19 be represented by counsel at each Respondent's own expense. All hearings
20 shall comply with RSA Chapter 541-A. Any such request for a hearing shall be
21 in writing, and signed by the Respondent or the duly authorized agent of the
22 above named Respondent, and shall be delivered either by hand or certified
23 mail, return receipt requested, to the Banking Department, State of New
24 Hampshire, 53 Regional Drive, Suite 200, Concord, NH 03301. Such hearings
25 will be scheduled within 10 days of the Department's receipt of the request.

1 If the Respondent fails to appear at the hearing after being duly notified,
2 such person shall be deemed in default, and the proceeding may be determined
3 against the Respondent upon consideration of the Order to Show Cause and Cease
4 and Desist Order, the allegations of which may be deemed to be true.

5 If any of the above named Respondents fails to request a hearing within
6 30 calendar days of receipt of such order or reach a formal written and
7 executed settlement with the Department within that time frame, then such
8 person shall likewise be deemed in default, and the orders shall, on the
9 thirty-first day, become permanent, and shall remain in full force and effect
10 until and unless later modified or vacated by the Commissioner, for good cause
11 shown.

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

13 The Staff Petition dated October 16, 2009 (a copy of which is attached
14 hereto) is incorporated by reference hereto.

15 **ORDER**

16 WHEREAS, finding it necessary and appropriate and in the public
17 interest, and consistent with the intent and purposes of the New Hampshire
18 banking laws; and

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

21 It is hereby ORDERED, that:

- 22 1. The above named Respondents are hereby ordered to **immediately**
23 **Cease and Desist** from violations of New Hampshire law;
24 2. Respondent Stone Coast Mortgage Corp. ("Respondent Stone
25 Coast") shall show cause why penalties in the amount of

1 \$7,500.00 should not be imposed against it;

2 3. Respondent James J. Joyce ("Respondent Joyce") shall show
3 cause why penalties in the amount of \$12,500.00 should not be
4 imposed against her;

5 4. The above named Respondents shall show cause why, in addition
6 to the penalties listed in Paragraphs 2 through 3 above, the
7 accrued fine of \$5,550.00 for the March 31, 2008 examination
8 for failing to timely provide examination materials should
9 not be paid to the Department;

10 5. Respondents shall be jointly and severally liable for the
11 above amounts alleged in Paragraphs 2 through 4 above;

12 6. The above named Respondents shall show cause why, in addition
13 to the penalties listed in Paragraphs 2 through 5 above,
14 Respondent Stone Coast'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 \$5,550.00 shall be
18 immediately paid; and

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1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-192
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) October 16, 2009
)
 6 and)
)
 7 Stone Coast Mortgage Corp., and James)
)
 8 J. Joyce,)
)
 9 Respondents)

10 I. STATEMENT OF ALLEGATIONS

11 The Staff of the Banking Department, State of New Hampshire (hereinafter
12 "Department") alleges the following facts:

13 Facts Common on All Counts:

- 14 1. Respondent Stone Coast Mortgage Corp. (d/b/a Stone Coast)
 15 (hereinafter "Respondent Stone Coast") has been licensed as a
 16 Mortgage Broker from at least April 2, 2007.
- 17 2. Respondent James J. Joyce (hereinafter "Respondent Joyce") is the
 18 100% owner and President of Respondent Stone Coast.

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

2 Violation of RSA 397-A:12,III Examinations: Failure to Timely Provide

3 Requested Files (1 Count):

4 Violation of RSA 397-A:11,II Record Keeping: Failure to Timely Provide

5 Requested Files (1 Count):

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

7 Department Inquiries (2 Counts):

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

10 4. The Department attempted to conduct an examination of Respondent
11 Stone Coast on March 31, 2008.

12 5. On March 7, 2008, the Department sent the notice of examination to
13 Respondent Stone Coast via U.S. Certified Mail Return Receipt
14 requested, which Respondents received on March 12, 2008.

15 6. Respondents provided an acknowledgment and submitted the loan list
16 on March 19, 2009, as is required pursuant to the notice of
17 examination. However, Respondents failed to provide the remaining
18 requested information from the notice of examination, despite
19 multiple letters and telephone calls.

20 7. The remaining materials requested in the March 7, 2008 notice of
21 examination were due on April 2, 2008, which is 21 days after the
22 March 12, 2008 delivery of the notice of examination.

23 8. On April 16, 2008, the Department's Examiner in Charge requested
24 the missing items, by sending correspondence via U.S. Certified
25 Mail Return Receipt requested, which Respondents received on

1 April 21, 2008.

2 9. With no response, the Department sent correspondence dated April
3 28, 2008 requesting the missing examination materials.
4 Respondents received this correspondence on May 1, 2008.

5 10. To date, the Department has not received the examination
6 materials. As a result, the Department invoiced the Respondents
7 on July 22, 2008.

8 11. To date, fines have accrued for failing to provide the requested
9 files. The current fine from April 2, 2008 to July 22, 2008 to
10 date is \$5,550.00 (\$50.00 a day x 111 days).

11 **II. ISSUES OF LAW**

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

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

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

18 3. RSA 397-A:11,II provides that requested files and business records
19 must be received by the Department within 21 calendar days of
20 request. The licensee will be subject to a \$50.00 a day fine
21 every day after the 21-day period the records are not produced.
22 Respondents owe \$5,550.00 for failing to submitting materials 111
23 days late (closure date of examination used for calculation). Each
24 of the above named Respondents violated this statute on at least
25 one occasion as alleged above.

1 4. RSA 397-A:12,III requires licensees to comply with examination
2 requests with or without prior notice. All books, papers, files,
3 related material, and records of assets shall be subject to the
4 Department's examination. Each of the above named Respondents
5 violated this statute on at least one occasion as alleged above.

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

15 6. RSA 397-A:13,VI provides that any officer, owner, manager or agent
16 of any licensee shall reply promptly in writing, or other
17 designated form, to any written inquiry from the Department.
18 Respondents Joyce has violated this provision on at least two (2)
19 occasions as alleged above.

20 7. RSA 397-A:17,I provides in part that the Commissioner may by
21 order, upon due notice and opportunity for hearing, assess
22 penalties or deny, suspend, or revoke a license or application if
23 it is in the public interest and the applicant, respondent, or
24 licensee, any partner, officer, member, or director, any person
25 occupying a similar status or performing similar functions, or any

1 person directly or indirectly controlling the applicant,
2 respondent, or licensee: (a) has violated any provision of RSA
3 Chapter 397-A or rules thereunder, or (b) has not met the
4 standards established in RSA Chapter 397-A.

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

10 9. RSA 397-A:18,II, provides the Department has the authority to
11 issue and cause to be served an order requiring any person engaged
12 in any act or practice constituting a violation of RSA Chapter
13 397-A or any rule or order thereunder, to cease and desist from
14 violations of RSA Chapter 397-A.

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

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

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

14 **III. RELIEF REQUESTED**

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

- 17 1. Find as fact the allegations contained in section I of this Staff
18 Petition;
- 19 2. Make conclusions of law relative to the allegations contained in
20 section II of this Staff Petition;
- 21 3. Pursuant to RSA 397-A:17, order each of the above named
22 Respondents to show cause why their license should not be revoked;
- 23 4. Pursuant to RSA 397-A:18, order each of the above named
24 Respondents to immediately Cease and Desist from violations of
25 this chapter;

