

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-195
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Source Funding Corp. (d/b/a SFC Home)
)
 8 Finance), Jason Anker, and Eric)
)
 9 Kuharich,)
)
 10 Respondents)

11 NOTICE OF ORDER

12 This Order commences an adjudicative proceeding under the provisions
13 of RSA 397-A and RSA 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, 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 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 imposed against him;

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

5 5. The above named Respondents shall show cause why, in addition
6 to the penalties listed in Paragraphs 1 through 4 above, the
7 accrued fine of \$23,000.00 for failing to provide examination
8 materials should not be paid to the Department;

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

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

16 8. The above named Respondents shall show cause why, in addition
17 to the penalties listed in Paragraphs 1 through 7 above,
18 Respondent Source Funding's license should not be revoked.

19 It is hereby further ORDERED that:

20 9. Along with the administrative penalties listed for the above
21 named Respondents, the outstanding sum of \$26,000.00 shall be
22 immediately paid; and
23
24
25

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-195
3 State of New Hampshire Banking)
4 Department,) Staff Petition
5 Petitioner,) June 10, 2009
6 and)
7 Source Funding Corp. (d/b/a SFC Home)
8 Finance), Jason Anker, and Eric)
9 Kuharich,)
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 Source Funding Corp. (d/b/a SFC Home Finance)
16 (hereinafter "Respondent Source Funding") was licensed as a
17 Mortgage Broker from at least July 20, 2005 until it surrendered
18 its license on August 22, 2008.
- 19 2. Respondent Jason Anker (hereinafter "Respondent Anker") was the
20 50% owner, President, Secretary and Director of Respondent
21 Source Funding, when licensed by the Department.
- 22 3. Respondent Eric Kuharich (hereinafter "Respondent Kuharich") was
23 the 50% owner, Treasurer and Director of Respondent Source
24 Funding, when licensed by the Department.

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 Provide Requested
3 Files (1 Count):

4 Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested
5 Files (1 Count):

6 Violation of RSA 397-A:10,IV Failure to Update Information on File with
7 Commissioner (1 Count):

8 Violation of RSA 397-A:13,VI Failure of Officer and Owner to Respond to
9 Department Inquiries (1 Count):

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

12 5. The Department attempted to conduct an examination of Respondent
13 Source Funding on March 3, 2008, while Respondent Source Funding
14 was still licensed with the Department.

15 6. On February 11, 2008, the Department sent the notice of
16 examination to Source Funding via U.S. Certified Mail Return
17 Receipt requested, which Respondents received on February 15,
18 2008.

19 7. The materials requested in the notice of examination were due on
20 March 7 2008, which is 21 days after the February 15, 2008
21 delivery of the notice of examination.

22 8. With no response from the above named Respondents, the Department
23 submitted a second notice via U.S. Certified Mail Return Receipt
24 requested on March 28, 2008, which the post office returned to
25 the Department on March 28, 2008.

1 9. Again with no response from the above named Respondents, the
2 Department submitted a third notice, this time via UPS, on April
3 23, 2008, which was returned to the Department on May 6, 2008 as
4 "received moved."

5 10. To date, the Department has not received an acknowledgment nor the
6 examination materials.

7 11. To date, fines have accrued for failing to provide the requested
8 files. The current fine to date is \$23,000.00 (\$50.00 a day x
9 460 days) and still accruing.

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

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

13 13. The Department conducted an examination of Respondent Source
14 Funding on March 3, 2008, while Respondent Source Funding was
15 still licensed with the Department.

16 14. On July 17, 2008, the Department mailed the invoice for \$500.00 to
17 Respondent Source Funding, via U.S. Certified Mail Return Receipt
18 requested, which was returned by the post office to the
19 Department on August 4, 2008 as "return to sender".

20 15. On August 12, 2008, the Department mailed the invoice for \$500.00
21 to Respondent Source Funding, via UPS, which was returned to the
22 Department on August 21, 2008 as "received has moved".

23 16. The Department, via U.S. mail, mailed another notice on August 20,
24 2008 and a last notice on September 23, 2008.

25 17. The above named Respondents did not respond to the last two

1 notices for payment of the \$500.00 invoice.

2 18. To date, the above named Respondents still owe the \$500.00
3 examination fee for the one day examination.

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

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

6 **Department Inquiries (1 Count):**

7 19. Paragraphs 1 through 18 are hereby realleged as fully set forth
8 herein.

9 20. The Respondents' fiscal year end was December 31, 2007 and the
10 financial statement was due on or before March 31, 2008.

11 21. Respondent Source Funding was licensed on the date the financial
12 statement filing was due the Department.

13 22. The Department sent Respondent Source Funding a reminder letter on
14 January 24, 2008 notifying the Respondents of the upcoming filing
15 requirement.

16 23. On April 9, 2008, the Department sent another reminder letter to
17 Respondent Source Funding indicating the financial statement had
18 not been received and that a fine had begun to accrue.

19 24. The Department sent Respondent Source Funding another reminder
20 letter on May 8, 2008 via U.S. Certified Mail Return Receipt
21 requested, which Respondents received on May 20, 2008.

22 25. The above named Respondents neither responded to the three
23 reminder letters nor submitted the financial statement.

24 26. To date, the accrued penalty for failure to file a financial
25 statement has reached the maximum cap of \$2,500.00 (\$25.00 per

1 day, with a maximum of \$2,500.00).

2 **II. ISSUES OF LAW**

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

- 4 1. The Department realleges the above stated facts in Paragraphs 1
5 through 26 as fully set forth herein.
- 6 2. The Department has jurisdiction over the licensing and regulation
7 of persons engaged in mortgage banker or broker activities
8 pursuant to NH RSA 397-A:2 and RSA 397-A:3.
- 9 3. RSA 397-A:10,IV provides that persons licensed under RSA Chapter
10 397-A are under a continuing obligation to update information on
11 file with the Commissioner. Each of the above named Respondents
12 failed to update the Commissioner on at least one occasion as
13 alleged above.
- 14 4. RSA 397-A:11,II provides that requested files and business records
15 must be received by the Department within 21 calendar days of
16 request. The licensee will be subject to a \$50.00 a day fine
17 every day after the 21-day period the records are not produced.
18 Respondents currently owe \$23,000.00 (and still accruing). Each
19 of the above named Respondents violated this statute on at least
20 one occasion as alleged above.
- 21 5. RSA 397-A:12,III requires licensees to comply with examination
22 requests with or without prior notice. All books, papers, files,
23 related material, and records of assets shall be subject to the
24 Department's examination. Each of the above named Respondents
25 violated this statute on at least one occasion as alleged above.

1 6. RSA 397-A:12,V provides that the expense of such examination shall
2 be chargeable to and paid by the licensee. Each of the above
3 named Respondents violated this provision on at least one
4 occasion as alleged above. To date, the above named Respondents
5 have failed to pay the \$500.00 examination invoice.

6 7. 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 8. RSA 397-A:13,II provides that each licensee shall file a financial
16 statement within 90 days from the date of its fiscal year end.
17 Each of the above named Respondents violated this statute on at
18 least one occasion as alleged above. The maximum penalty is as
19 calculated under RSA 397-A:13,IV.

20 9. RSA 397-A:13,IV provides that any mortgage banker or mortgage
21 broker failing to file either the annual report or the financial
22 statement required by RSA Chapter 397-A within the time
23 prescribed may be required to pay to the Department a penalty of
24 \$25.00 for each calendar day the annual report or financial
25 statement is overdue, up to a maximum penalty of \$2,500.00 per

1 report or statement. The failure to file a financial statement
2 incurred a penalty of \$2,500.00.

3 10. RSA 397-A:13,VI provides that any officer, owner, manager or
4 agent of any licensee shall reply promptly in writing, or other
5 designated form, to any written inquiry from the Department.
6 Respondent Kuharich and Respondent Anker each violated this
7 provision on at least two occasions as alleged above.

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

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

23 13. RSA 397-A:21,IV provides that any person who, either knowingly or
24 negligently, violates any provision of RSA Chapter 397-A, may
25 upon hearing, and in addition to any other penalty provided for

1 by law, be subject to an administrative fine not to exceed
2 \$2,500.00, or both. Each of the acts specified shall constitute
3 a separate violation, and such administrative action or fine may
4 be imposed in addition to any criminal penalties or civil
5 liabilities imposed by New Hampshire Banking laws.

6 14. RSA 397-A:21,V provides that every person who directly or
7 indirectly controls a person liable under this section, every
8 partner, principal executive officer or director of such person,
9 every person occupying a similar status or performing a similar
10 function, every employee of such person who materially aids in the
11 act constituting the violation, and every licensee or person acting
12 as a common law agent who materially aids in the acts constituting
13 the violation, either knowingly or negligently, may, upon notice
14 and opportunity for hearing, and in addition to any other penalty
15 provided for by law, be subject to suspension, revocation, or
16 denial of any registration or license, including the forfeiture of
17 any application fee, or the imposition of an administrative fine
18 not to exceed \$2,500, or both. Each of the acts specified shall
19 constitute a separate violation, and such administrative action or
20 fine may be imposed in addition to any criminal or civil penalties
21 imposed.

22 **III. RELIEF REQUESTED**

23 The staff of the Department requests the Commissioner take the following
24 action:

- 25 1. Find as fact the allegations contained in section I of this Staff

