

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-204
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Success Mortgage Company, LLC (d/b/a)
)
 8 Success Mortgage), and Jennifer)
)
 9 Elizabeth Truesdale,)
)
 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. The
12 Commissioner may utilize all remedies available under the Consumer
13 Protection Act.

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

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

1 upon consideration of the Order to Show Cause, the allegations of which may be
2 deemed to be true.

3 If any of the above named Respondents fails to request a hearing within
4 30 calendar days of receipt of such order or reach formal settlement with the
5 Department within that time frame, then such person shall likewise be deemed
6 in default, and the orders shall, on the thirty-first day, become permanent,
7 and shall remain in full force and effect until and unless later modified or
8 vacated by the Commissioner, for good cause shown.

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

10 The Staff Petition dated January 2, 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 Success Mortgage Company, LLC (d/b/a Success
20 Mortgage) ("Respondent Success Mortgage") shall show cause
21 why penalties in the amount of \$2,500.00 should not be
22 imposed against it;
- 23 2. Respondent Jennifer Truesdale ("Respondent Truesdale") shall
24 show cause why penalties in the amount of \$5,000.00 should
25 not be imposed against her;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

3. The above named Respondents shall show cause why, in addition to the penalties listed in Paragraphs 1 through 2 above, the \$1,000.00 examination fee should not be paid to the Department;

4. Respondents shall be jointly and severally liable for the above amounts alleged in Paragraphs 1 through 3 above;

5. The above named Respondents shall show cause why, in addition to the penalties listed in Paragraphs 1 through 4 above, Respondent Success Mortgage's license should not be revoked.

It is hereby further ORDERED that:

6. Along with the administrative penalties listed for the above named Respondents, the outstanding sum of \$1,000.00 shall be immediately paid; and

7. Failure to request a hearing within 30 days of the date of receipt or valid delivery of this Order shall result in a default judgment being rendered and administrative penalties imposed upon the defaulting Respondent(s).

SIGNED,

/s/
PETER C. HILDRETH
BANK COMMISSIONER

Dated: 01/02/09

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-204
3 State of New Hampshire Banking)
4 Department,) Staff Petition
5 Petitioner,) January 2, 2009
6 and)
7 Success Mortgage Company, LLC (d/b/a)
8 Success Mortgage), and Jennifer)
9 Elizabeth Truesdale,)
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 Success Mortgage Company, LLC (d/b/a Success
16 Mortgage) (hereinafter "Success Mortgage") was licensed as a
17 Mortgage Broker from at least August 1, 2006 (with an amended
18 license date of June 22, 2007) until it surrendered its license
19 on November 20, 2007.
- 20 2. Respondent Jennifer Elizabeth Truesdale (hereinafter "Respondent
21 Truesdale") was the Manager/Member of Respondent Success
22 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 3. Paragraphs 1 through 2 are hereby realleged as fully set forth
5 herein.

6 4. The Department conducted an examination of Respondent Success
7 Mortgage on July 30, 2007, while Respondent Success Mortgage was
8 still licensed with the Department.

9 5. On February 4, 2008, the Department mailed the report of
10 examination and invoice for \$1,000.00 to Respondent Success
11 Mortgage, via U.S. Certified Mail Return Receipt requested, which
12 Respondents received on February 6, 2008.

13 6. The above named Respondents failed to respond to the February 4,
14 2008 correspondence from the Department.

15 7. The Department, via U.S. mail, mailed a second notice on March 14,
16 2008 and a third notice on April 16, 2008.

17 8. The above named Respondents did not respond to any of the three
18 notices for payment of the \$1,000.00 invoice.

19 9. To date, the above named Respondents still owe the \$1,000.00
20 examination fee for the one day examination.

21 **II. ISSUES OF LAW**

22 The staff of the Department, alleges the following issues of law:

23 1. The Department realleges the above stated facts in Paragraphs 1
24 through 9 as fully set forth herein.

25 2. The Department has jurisdiction over the licensing and regulation

1 of persons engaged in mortgage banker or broker activities
2 pursuant to NH RSA 397-A:2 and RSA 397-A:3.

3 3. RSA 397-A:12,V provides that the expense of such examination shall
4 be chargeable to and paid by the licensee. Each of the above
5 named Respondents violated this provision on at least one
6 occasion as alleged above. To date, the above named Respondents
7 have failed to pay the \$1,000.00 examination invoice.

8 4. RSA 397-A:13,VI provides that any officer, owner, manager or agent
9 of any licensee shall reply promptly in writing, or other
10 designated form, to any written inquiry from the Department.
11 Respondent Truesdale violated this provision on at least one
12 occasion as alleged above.

13 5. RSA 397-A:18,I provides that the Department may issue a complaint
14 setting forth charges whenever the Department is of the opinion
15 that the licensee or person over whom the Department has
16 jurisdiction, has violated any provision of RSA 397-A or orders
17 thereunder.

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

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

17 **III. RELIEF REQUESTED**

18 The staff of the Department requests the Commissioner take the following
19 action:

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- 4. Assess fines and administrative penalties in accordance with RSA 397-A:21, for violations of Chapter 397-A, in the number and amount equal to the violations set forth in section II of this Staff Petition; and
- 5. Take such other administrative and legal actions as necessary for enforcement of the New Hampshire Banking Laws, the protection of New Hampshire citizens, and to provide other equitable relief.

IV. RIGHT TO AMEND

The Department reserves the right to amend this Staff Petition and to request that the Commissioner take additional administrative action. Nothing herein shall preclude the Department from bringing additional enforcement action under RSA 397-A or the regulations thereunder.

Respectfully submitted by:

_____/s/_____
Maryam Torben Desfosses
Hearings Examiner

____01/02/09_____
Date