

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-242
))
3 State of New Hampshire Banking)
))
4 Department,) Order to Show Cause
))
5 Petitioner,)
))
6 and)
))
7 Complete Mortgage Company Inc, and)
))
8 Linda McGovern Cohen,)
))
9 Respondents)

10 NOTICE OF ORDER

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

13 LEGAL AUTHORITY AND JURISDICTION

14 Pursuant to RSA 397-A:17, the Commissioner of the New Hampshire
15 Banking Department (hereinafter the "Department") has the authority to issue
16 an order to show cause why license revocation and penalties for violations
17 of New 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:20,IV the Commissioner may issue, amend, or
24 rescind such orders as are reasonably necessary to comply with the
25 provisions of RSA Chapter 397-A.

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

5 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct
6 that is or may be an unfair or deceptive act or practice under RSA Chapter
7 358-A and exempt under RSA 358-A:3,I or that may violate any of the
8 provisions of Titles XXXV and XXXVI and administrative rules adopted
9 thereunder. The Commissioner may hold hearings relative to such conduct and
10 may order restitution for a person or persons adversely affected by such
11 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 Chapter
16 541-A. 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 a Respondent fails to
22 appear at the hearing after being duly notified, such person shall be deemed
23 in default, and the proceeding may be determined against the Respondent upon
24 consideration of the Order to Show Cause, the allegations of which may be
25 deemed to be true.

1 If any of the above named Respondents fails to request a hearing within
2 30 calendar days of receipt of such order or reach a formal written and
3 executed settlement with the Department within that time frame, then such
4 person shall likewise be deemed in default, and the orders shall, on the
5 thirty-first day, become permanent, and shall remain in full force and effect
6 until and unless later modified or vacated by the Commissioner, for good cause
7 shown.

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

9 The Staff Petition dated February 1, 2010 (a copy of which is attached
10 hereto) is incorporated by reference hereto.

11 **ORDER**

12 WHEREAS, finding it necessary and appropriate and in the public
13 interest, and consistent with the intent and purposes of the New Hampshire
14 banking laws; and

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

17 It is hereby ORDERED, that:

- 18 1. Respondent Complete Mortgage Company Inc ("Respondent
19 Complete Mortgage") shall show cause why penalties in the
20 amount of \$7,500.00 should not be imposed against it;
- 21 2. Respondent Linda McGovern Cohen ("Respondent Cohen") shall
22 show cause why penalties in the amount of \$12,500.00 should
23 not be imposed against her;
- 24 3. The above named Respondents shall show cause why, in addition
25 to the penalties listed in Paragraphs 1 through 2 above, the

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-242
3 State of New Hampshire Banking)
4 Department,) Staff Petition
5 Petitioner,) February 1, 2010
6 and)
7 Complete Mortgage Company Inc, and)
8 Linda McGovern Cohen,)
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 Complete Mortgage Company Inc (hereinafter "Respondent
15 Complete Mortgage") was licensed as a Mortgage Broker from at
16 least December 6, 2002 until its license expired on December 31,
17 2008.
- 18 2. Respondent Linda McGovern Cohen (hereinafter "Respondent Cohen")
19 was the 100% owner and President of Respondent Complete Mortgage,
20 when licensed by the Department.

21
22 [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
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1 Violation of RSA 397-A:10-a,I(a) Failure to Properly Surrender License (1
2 Count):

3 Violation of RSA 397-A:13,I Failure to File Annual Report (1 Count):

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

6 3. Paragraphs 1 through 2 are hereby realleged as fully set forth
7 herein.

8 4. The 2008 Annual Report was due on or before March 31, 2009.

9 5. On December 12, 2008, Respondents sent in to the Department its
10 2008 license with examination materials, indicating it would
11 cease operations the week of December 21, 2008.

12 6. On March 11, 2009, the Department sent correspondence, via U.S.
13 Certified Mail Return Receipt requested, advising the above named
14 Respondents to publish notice of closing and to remind
15 Respondents the annual report was due no later than March 31,
16 2009. Respondents received the March 11, 2009 correspondence on
17 March 14, 2009.

18 7. To date, the above named Respondents have failed to respond to the
19 Department's correspondence and have failed to properly file
20 surrender documents.

21 8. To date, the accrued penalty for failure to file an annual report
22 has reached the maximum cap of \$2,500.00 (\$25.00 per day/maximum
23 of \$2,500.00).

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

6 10. The Department conducted an examination of Respondent Complete
7 Mortgage on October 27, 2008, while Respondent Complete Mortgage
8 was still licensed with the Department.

9 11. The Department sent Respondents the Notice of Examination and
10 invoice for \$2,180.00 via U.S. Certified Mail Return Receipt
11 requested on March 11, 2009, which Respondents received March 13,
12 2009.

13 12. Respondents failed to respond to the Department correspondence
14 dated March 11, 2009.

15 13. The Department, via U.S. mail, mailed a second notice on April 17,
16 2009 and a third notice on May 21, 2009.

17 14. To date, the above named Respondents still owe the \$2,180.00
18 examination fee for the 4.36 day examination.

19 **II. ISSUES OF LAW**

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

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

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

1 3. RSA 397-A:10-a,I(a) provides that a licensee who ceases to engage
2 in the business of a mortgage banker or mortgage broker at any
3 time during a license year for any cause shall surrender such
4 license in person or by registered or certified mail to the
5 Commissioner within 15 calendar days of such cessation, and shall
6 cause to be published in a newspaper of general circulation in the
7 licensee's market area a notice to such effect. Each of the above
8 named Respondents violated this statute on at least one occasion
9 as alleged above.

10 4. RSA 397-A:12,V provides that the expense of such examination shall
11 be chargeable to and paid by the licensee. Each of the above
12 named Respondents violated this provision on at least one occasion
13 as alleged above. To date, the above named Respondents have
14 failed to pay the \$2,180.00 examination invoice.

15 5. RSA 397-A:13,I provides that a licensee shall file its annual
16 report on or before February 1 each year concerning operations for
17 the preceding year or license period ending December 31. Each of
18 the above named Respondents violated this provision on at least
19 one occasion as alleged above. The maximum fine for this specific
20 violation has reached \$2,500.00 (\$25.00 per day; maximum
21 \$2,500.00) since no annual report was filed for 2007.

22 6. RSA 397-A:13,VI provides that any officer, owner, manager or agent
23 of any licensee shall reply promptly in writing, or other
24 designated form, to any written inquiry from the Department.
25

1 Respondents Cohen has violated this provision on at least two (2)
2 occasions as alleged above.

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

13 8. 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 Chapter 397-A or
17 orders thereunder.

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

1 10. 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;

