

1 State of New Hampshire Banking Department

2	In re the Matter of:) Case No.: 08-258
)
3	State of New Hampshire Banking)
4	Department,) Order to Show Cause
)
5	Petitioner,)
)
6	and)
)
7	Equity Advantage, LLC, and Terrence)
)
8	Turanick,)
)
9	Respondents)

10 NOTICE OF ORDER

11 This Order commences an adjudicative proceeding under the provisions
12 of RSA 397-A and RSA 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:20, the Commissioner may issue, amend, or
24 rescind such orders as are reasonably necessary to comply with the
25 provisions of the Chapter.

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 358-A and
7 exempt under RSA 358-A:3,I or that may violate any of the provisions of
8 Titles XXXV and XXXVI and administrative rules adopted thereunder. The
9 Commissioner may hold hearings relative to such conduct and may order
10 restitution for a person or persons adversely affected by such conduct.

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

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

25 If any of the above named Respondents fails to request a hearing within

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

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

8 The Staff Petition dated June 10, 2009 (a copy of which is attached
9 hereto) is incorporated by reference hereto.

10 **ORDER**

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

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

16 It is hereby ORDERED, that:

- 17 1. Respondent Equity Advantage, LLC ("Respondent Equity
18 Advantage") shall show cause why penalties in the amount of
19 \$12,500.00 should not be imposed against it;
- 20 2. Respondent Terrence Turanick ("Respondent Turanick") shall
21 show cause why penalties in the amount of \$22,500.00 should
22 not be imposed against him;
- 23 3. The above named Respondents shall show cause why, in addition
24 to the penalties listed in Paragraphs 1 through 2 above, the
25 \$500.00 examination fee should not be paid to the Department;

1 4. The above named Respondents shall show cause why, in addition
2 to the penalties listed in Paragraphs 1 through 3 above,
3 statutory penalties of \$2,500.00 should not be imposed for
4 failing to file the 2007 financial statement;

5 5. The above named Respondent shall show cause why, in addition
6 to the penalties listed in Paragraphs 1 through 4 above, the
7 accrued fine of \$18,950.00 for the failure to file
8 examination materials should not be paid to the Department;

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

11 7. The above named Respondents shall show cause why, in addition
12 to the penalties listed in Paragraphs 1 through 6 above,
13 Respondent Equity Advantage's license should not be revoked.

14 It is hereby further ORDERED that:

15 8. Along with the administrative penalties listed for the above
16 named Respondents, the outstanding sum of \$21,950.00 shall be
17 immediately paid; and

18
19
20 [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
21
22
23
24
25

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-258
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) June 10, 2009
)
 6 and)
)
 7 Equity Advantage, LLC, and Terrence)
)
 8 Turanick,)
)
 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 Equity Advantage, LLC (hereinafter "Respondent Equity
15 Advantage") was licensed as a Mortgage Banker from at least
16 January 20, 2006 until its license expired on December 31, 2008.
- 17 2. Respondent Terrence Turanick (hereinafter "Respondent Turanick")
18 was the President of Respondent Equity Advantage, when licensed
19 by the Department.

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

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

22 Department Inquiries (1 Count):

- 23 3. Paragraphs 1 through 2 are hereby realleged as fully set forth
24 herein.
- 25 4. The Department conducted an examination of Respondent Equity

1 Advantage on May 19, 2008, while Respondent Equity Advantage was
2 still licensed with the Department. Respondents failed to
3 facilitate the examination.

4 5. On August 12, 2008, the Department mailed the invoice for \$500.00
5 to Respondent Equity Advantage, via U.S. Certified Mail Return
6 Receipt requested, which Respondents received on August 15, 2008.

7 6. Respondents failed to respond to the August 12, 2008 Department
8 correspondence.

9 7. The Department, via U.S. mail, mailed a second notice on September
10 23, 2008 and a third notice on November 21, 2008.

11 8. The above named Respondents did not respond to any of the three
12 notices for payment of the \$500.00 invoice.

13 9. To date, the above named Respondents still owe the \$500.00
14 examination fee for the one day examination.

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

16 **Violation of RSA 397-A:12,III Examinations: Failure to Provide Requested**

17 **Files (1 Count):**

18 **Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested**

19 **Files (1 Count):**

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

21 **Department Inquiries (2 Counts):**

22 10. Paragraphs 1 through 9 are hereby realleged as fully set forth
23 herein.

24 11. The Department was scheduled to conduct an examination of
25 Respondent Equity Advantage on May 19, 2008, while Respondent

1 Equity Advantage was still licensed with the Department.

2 12. On April 30, 2008, the Department sent the notice of examination
3 to Respondent Equity Advantage via U.S. Certified Mail Return
4 Receipt requested, which Respondent Equity Advantage received on
5 May 5, 2008.

6 13. With no response, on May 19, 2008, the Department sent the notice
7 of examination to Respondent Equity Advantage via U.S. Certified
8 Mail Return Receipt requested, which Respondent Equity Advantage
9 received on May 22, 2008.

10 14. The examination materials were due 21 days after Respondents'
11 receipt of the initial notice of examination, which would have
12 been May 26, 2008.

13 15. The Department still has not received Respondent Equity
14 Advantage's examination materials.

15 16. To date, fines have accrued for failing to provide the requested
16 files. The current fine to date is \$18,950.00 (\$50.00 a day x
17 379 days) and is still accruing.

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

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

21 17. Paragraphs 1 through 16 are hereby realleged as fully set forth
22 herein.

23 18. The Respondents' fiscal year end was December 31, 2007 and the
24 financial statement was due on or before March 31, 2008.

25 19. Respondent Equity Advantage was licensed on the date the financial

1 statement filing was due the Department.

2 20. The Department sent Respondent Equity Advantage a reminder letter
3 on January 24, 2008, via U.S. mail, with a follow-up on April 9,
4 2008.

5 21. On May 8, 2008, the Department sent a final reminder letter via
6 U.S. Certified Mail Return Receipt requested, which Respondents
7 received on May 12, 2008.

8 22. The above named Respondents neither responded to the reminder
9 letters nor submitted the financial statement.

10 23. To date, the accrued penalty for failure to file a financial
11 statement has reached the maximum cap of \$2,500.00 (\$25.00 a day,
12 maximum \$2,500.00).

13 **II. ISSUES OF LAW**

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

- 15 1. The Department realleges the above stated facts in Paragraphs 1
16 through 23 as fully set forth herein.
- 17 2. The Department has jurisdiction over the licensing and regulation
18 of persons engaged in mortgage banker or broker activities
19 pursuant to NH RSA 397-A:2 and RSA 397-A:3.
- 20 3. RSA 397-A:11,II provides that requested files and business records
21 must be received by the Department within 21 calendar days of
22 request. The licensee will be subject to a \$50.00 a day fine
23 every day after the 21-day period the records are not produced.
24 Each of the above named Respondents violated this provision on at
25

1 least one occasion as alleged above. Respondents currently owe
2 \$18,950.00 to date and the fine is still accruing.

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

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

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

22 7. RSA 397-A:13,II provides that each licensee shall file a financial
23 statement within 90 days from the date of its fiscal year end.
24 Each of the above named Respondents violated this statute on at
25

1 least one occasion as alleged above. The maximum fine has
2 accrued to \$2,500.00, as calculated by RSA 397-A:13,IV below.

3 8. RSA 397-A:13,IV provides that any mortgage banker or mortgage
4 broker failing to file either the annual report or the financial
5 statement required by RSA Chapter 397-A within the time
6 prescribed may be required to pay to the Department a penalty of
7 \$25.00 for each calendar day the annual report or financial
8 statement is overdue, up to a maximum penalty of \$2,500.00 per
9 report or statement. The above named Respondents failed to file a
10 financial statement, the fine of which has now accrued to the
11 maximum cap of \$2,500.00.

12 9. RSA 397-A:13,VI provides that any officer, owner, manager or agent
13 of any licensee shall reply promptly in writing, or other
14 designated form, to any written inquiry from the Department.
15 Respondent Turanick violated this provision on at least four
16 occasions as alleged above.

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

standards established in RSA Chapter 397-A.

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

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

13. RSA 397-A:21,V provides that every person who directly or indirectly controls a person liable under this section, every partner, principal executive officer or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act constituting the violation, and every licensee or person acting as a common law agent who materially aids in the acts constituting the violation, either knowingly or negligently, may, upon notice and opportunity for hearing, and in addition to any other penalty provided for by law, be subject to suspension, revocation, or denial of any registration or license, including the forfeiture of

1 any application fee, or the imposition of an administrative fine
2 not to exceed \$2,500, or both. Each of the acts specified shall
3 constitute a separate violation, and such administrative action or
4 fine may be imposed in addition to any criminal or civil penalties
5 imposed.

6 **III. RELIEF REQUESTED**

7 The staff of the Department requests the Commissioner take the following
8 action:

- 9 1. Find as fact the allegations contained in section I of this Staff
10 Petition;
- 11 2. Make conclusions of law relative to the allegations contained in
12 section II of this Staff Petition;
- 13 3. Pursuant to RSA 397-A:17, order each of the above named
14 Respondents to show cause why their license should not be revoked;
- 15 4. Assess fines and administrative penalties in accordance with RSA
16 397-A:21, for violations of Chapter 397-A, in the number and
17 amount equal to the violations set forth in section II of this
18 Staff Petition; and
- 19 5. Take such other administrative and legal actions as necessary for
20 enforcement of the New Hampshire Banking Laws, the protection of
21 New Hampshire citizens, and to provide other equitable relief.

