

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 08-269  
 )  
 3 State of New Hampshire Banking )  
 )  
 4 Department, ) Order to Show Cause  
 )  
 5 Petitioner, )  
 )  
 6 and )  
 )  
 7 Equity Concepts, Inc., David Sisti, and )  
 )  
 8 Jorge Fernandes, )  
 )  
 9 Respondents )

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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 8, 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 Concepts, Inc. ("Respondent Equity  
18 Concepts") shall show cause why penalties in the amount of  
19 \$2,500.00 should not be imposed against it;
- 20 2. Respondent David Sisti ("Respondent Sisti") shall show cause  
21 why penalties in the amount of \$2,500.00 should not be  
22 imposed against him;
- 23 3. Respondent Jorge Fernandes ("Respondent Fernandes") shall  
24 show cause why penalties in the amount of \$2,500.00 should  
25 not be imposed against him;



1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 08-269  
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4 Department, ) Staff Petition  
5 Petitioner, ) June 8, 2009  
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7 Equity Concepts, Inc., David Sisti, and )  
8 Jorge Fernandes, )  
9 Respondents )

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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 Concepts, Inc. (hereinafter "Respondent Equity  
15 Concepts") was licensed as a Mortgage Broker from at least  
16 November 26, 2003 (with an amended license date of May 5, 2007)  
17 until it surrendered its license on October 23, 2007.
- 18 2. Respondent David Sisti (hereinafter "Respondent Sisti") was the  
19 50% owner and President of Respondent Equity Concepts, when  
20 licensed by the Department.
- 21 3. Respondent Jorge Fernandes (hereinafter "Respondent Fernandes")  
22 was the 50% owner and Vice-President of Respondent Equity  
23 Concepts, when licensed by the Department.
- 24  
25

1 Violation of RSA 397-A:13,IV Failure to Pay Late Penalty Owed for Late

2 Filing of Annual Report (1 Count):

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

5 5. Respondent Equity Concepts was licensed in 2007 and therefore,  
6 subject to the filing of the 2007 annual report of business.

7 6. Respondent Equity Concepts' 2007 annual report was due on or  
8 before February 1, 2008.

9 7. Respondent Equity Concepts filed its 2007 annual report on  
10 February 13, 2008 (12 days late), generating a fine of \$300.00  
11 (\$25.00 a day x 12 days).

12 8. The Department sent the above named Respondents invoices in  
13 February, March and finally on April 29, 2008.

14 9. With no response from the above named Respondents, the Department  
15 sent a final letter on May 1, 2008.

16 10. To date, Respondent Equity Concepts has failed to pay the \$300.00  
17 late filing of the 2007 annual report fee.

18 **II. ISSUES OF LAW**

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

20 1. The Department realleges the above stated facts in Paragraphs 1  
21 through 10 as fully set forth herein.

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

25 3. RSA 397-A:13,IV provides that any mortgage banker or mortgage

1 broker failing to file either the annual report or the financial  
2 statement required by RSA Chapter 397-A within the time  
3 prescribed may be required to pay to the Department a penalty of  
4 \$25.00 for each calendar day the annual report or financial  
5 statement is overdue, up to a maximum penalty of \$2,500.00 per  
6 report or statement. Each of the above named Respondents violated  
7 this provision on at least one occasion as alleged above. The  
8 above named Respondents filed an annual report that was twelve  
9 days late, and incurred a penalty of \$300.00.

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

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

25 6. RSA 397-A:21,IV provides that any person who, either knowingly or

1 negligently, violates any provision of Chapter 397-A, may upon  
2 hearing, and in addition to any other penalty provided for by  
3 law, be subject to an administrative fine not to exceed  
4 \$2,500.00, or both. Each of the acts specified shall constitute  
5 a separate violation, and such administrative action or fine may  
6 be imposed in addition to any criminal penalties or civil  
7 liabilities imposed by New Hampshire Banking laws.

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

