

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 08-275  
 )  
 3 State of New Hampshire Banking )  
 )  
 4 Department, ) Order to Show Cause  
 )  
 5 Petitioner, )  
 )  
 6 and )  
 )  
 7 Vermont Allstate Funding, Inc. (d/b/a )  
 )  
 8 Vermont Allstate Funding), Shawn M. )  
 )  
 9 Brown, and Robin L. Brown, )  
 )  
 10 Respondents )

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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 22, 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 Vermont Allstate Funding, Inc. (d/b/a Vermont  
20 Allstate Funding) ("Respondent Vermont Allstate") shall show  
21 cause why penalties in the amount of \$5,000.00 should not be  
22 imposed against it;
- 23 2. Respondent Shawn M. Brown ("Respondent Shawn Brown") shall  
24 show cause why penalties in the amount of \$7,500.00 should  
25 not be imposed against him;

1           3. Respondent Robin L. Brown ("Respondent Robin Brown") shall  
2           show cause why penalties in the amount of \$7,500.00 should  
3           not be imposed against her;

4           4. The above named Respondents shall show cause why, in addition  
5           to the penalties listed in Paragraphs 1 through 3 above, the  
6           fine for \$175.00 for the late filing of the 2007 annual  
7           report should not be paid to the Department;

8           5. The above named Respondents shall show cause why, in addition  
9           to the penalties listed in Paragraphs 1 through 4 above, the  
10          \$1,680.00 examination fee should not be paid to the  
11          Department;

12          6. The above named Respondents shall be jointly and severally  
13          liable for the above amounts alleged in Paragraphs 1 through  
14          5 above;

15          7. The above named Respondents shall show cause why, in addition  
16          to the penalties listed in Paragraphs 1 through 6 above,  
17          Respondent Vermont Allstate's license should not be revoked.

18          It is hereby further ORDERED that:

19          8. Along with the administrative penalties listed for the above  
20          named Respondents, the outstanding sum of \$1,855.00 shall be  
21          immediately paid; and



1 State of New Hampshire Banking Department

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7 Vermont Allstate Funding, Inc. (d/b/a )  
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8 Vermont Allstate Funding), Shawn M. )  
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9 Brown, and Robin L. Brown, )  
) )  
10 Respondents )

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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 Vermont Allstate Funding, Inc. (d/b/a Vermont  
16 Allstate Funding) (hereinafter "Respondent Vermont Allstate")  
17 was licensed as a Mortgage Broker from at least May 15, 2006  
18 (with an amended license date of June 5, 2007) until it  
19 surrendered its license on December 12, 2007.
- 20 2. Respondent Shawn M. Brown (hereinafter "Respondent Shawn Brown")  
21 was the 50% owner and President of Respondent Vermont Allstate,  
22 when licensed by the Department.
- 23 3. Respondent Robin L. Brown (hereinafter "Respondent Robin Brown")  
24 was the 50% owner and Secretary of Respondent Vermont Allstate,  
25 when licensed by the Department.

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 Vermont Allstate was licensed in 2007 and therefore,  
6 subject to the filing of the 2007 annual report of business.

7 6. Respondent Vermont Allstate's 2007 annual report was due on or  
8 before February 1, 2008.

9 7. Respondent Vermont Allstate filed its 2007 annual report on  
10 February 8, 2008 (7 days late), generating a fine of \$175.00  
11 (\$25.00 a day x 7 days).

12 8. The Department sent the above named Respondents invoices February,  
13 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, to which the above named  
16 Respondents have failed to respond.

17 10. To date, Respondent Vermont Allstate has failed to pay the \$175.00  
18 late filing of the 2007 annual report fee.

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

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

21 Department Inquiries (1 Count):

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

24 12. The Department conducted an examination of Respondent Vermont  
25 Allstate on May 29, 2007, while Respondent Vermont Allstate was

1 still licensed with the Department.

2 13. On January 4, 2008, the Department mailed the report of  
3 examination and invoice for \$1,680.00 to Respondent Vermont  
4 Allstate, via U.S. Certified Mail Return Receipt requested, which  
5 Respondents received on January 8, 2008.

6 14. The above named Respondents failed to respond to the January 4,  
7 2008 correspondence from the Department.

8 15. The Department, via U.S. mail, mailed a second notice on February  
9 5, 2008 and a third notice on March 14, 2008.

10 16. The above named Respondents did not respond to any of the three  
11 notices for payment of the \$1,680.00 invoice.

12 17. To date, the above named Respondents still owe the \$1,680.00  
13 examination fee for the 3.36 day examination.

## 14 **II. ISSUES OF LAW**

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

16 1. The Department realleges the above stated facts in Paragraphs 1  
17 through 17 as fully set forth herein.

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

21 3. RSA 397-A:12,V provides that the expense of such examination shall  
22 be chargeable to and paid by the licensee. Each of the above  
23 named Respondents violated this provision on at least one  
24 occasion as alleged above. To date, the above named Respondents  
25 have failed to pay the \$1,680.00 examination invoice.

1 4. RSA 397-A:13,IV provides that any mortgage banker or mortgage  
2 broker failing to file either the annual report or the financial  
3 statement required by RSA Chapter 397-A within the time  
4 prescribed may be required to pay to the Department a penalty of  
5 \$25.00 for each calendar day the annual report or financial  
6 statement is overdue, up to a maximum penalty of \$2,500.00 per  
7 report or statement. Each of the above named Respondents violated  
8 this provision on at least one occasion as alleged above. The  
9 above named Respondents filed an annual report that was 7 days  
10 late, and incurred a penalty of \$175.00.

11 5. RSA 397-A:13,VI provides that any officer, owner, manager or agent  
12 of any licensee shall reply promptly in writing, or other  
13 designated form, to any written inquiry from the Department.  
14 Respondent Shawn Brown and Respondent Robin Brown each violated  
15 this provision on at least one occasion as alleged above.

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

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

6 8. RSA 397-A:21,IV provides that any person who, either knowingly or  
7 negligently, violates any provision of RSA Chapter 397-A, may  
8 upon hearing, and in addition to any other penalty provided for  
9 by law, be subject to an administrative fine not to exceed  
10 \$2,500.00, or both. Each of the acts specified shall constitute  
11 a separate violation, and such administrative action or fine may  
12 be imposed in addition to any criminal penalties or civil  
13 liabilities imposed by New Hampshire Banking laws.

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

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

5 **III. RELIEF REQUESTED**

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

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

