

1 State of New Hampshire Banking Department

2	In re the Matter of:)	Case No.: 08-317
)	
3	State of New Hampshire Banking)	
4	Department,)	Order to Show Cause
)	
5	Petitioner,)	
)	
6	and)	
)	
7	1 st Palm Financial Services LLC, 1 st)	
)	
8	Palm Financial, Inc., Ann R. Mackey,)	
)	
9	and Eric W. Reckard,)	
)	
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 5, 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 1st Palm Financial Services LLC ("Respondent 1st
20 Palm Financial Services LLC") shall show cause why penalties
21 in the amount of \$10,000.00 should not be imposed against it;
- 22 2. Respondent 1st Palm Financial, Inc. ("Respondent 1st Palm
23 Financial, Inc.") shall show cause why penalties in the
24 amount of \$10,000.00 should not be imposed against it;
- 25 3. Respondent Ann R. Mackey ("Respondent Mackey") shall show

1 cause why penalties in the amount of \$30,000.00 should not be
2 imposed against her;

3 4. Respondent Eric W. Reckard ("Respondent Reckard") shall show
4 cause why penalties in the amount of \$30,000.00 should not be
5 imposed against him;

6 5. The above named Respondents shall show cause why, in addition
7 to the penalties listed in Paragraphs 1 through 4 above,
8 statutory penalties of \$2,500.00 should not be imposed for
9 failing to file the 2006 fiscal year end financial statement;

10 6. The above named Respondents shall show cause why, in addition
11 to the penalties listed in Paragraphs 1 through 5 above,
12 statutory penalties of \$2,500.00 should not be imposed for
13 failing to file the 2007 Annual Report;

14 7. Respondents shall be jointly and severally liable for the
15 above amounts alleged in Paragraphs 1 through 6 above;

16 8. The above named Respondents shall show cause why, in addition
17 to the penalties listed in Paragraphs 1 through 7 above,
18 Respondent 1st Palm Financial Services LLC's license should
19 not be revoked.

20 It is hereby further ORDERED that:

21 9. Along with the administrative penalties listed for the above
22 named Respondents, the outstanding statutory penalty of
23 \$5,000.00 shall be immediately paid; and
24
25

1 10. Failure to request a hearing within 30 days of the date of
2 receipt or valid delivery of this Order shall result in a
3 default judgment being rendered and administrative penalties
4 imposed upon the defaulting Respondent(s).
5

6 SIGNED,

7
8 Dated: 01/05/09

/s/
PETER C. HILDRETH
BANK COMMISSIONER

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1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-317
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) January 5, 2009
)
 6 and)
)
 7 1st Palm Financial Services LLC, 1st)
)
 8 Palm Financial, Inc., Ann R. Mackey,)
)
 9 and Eric W. Reckard,)
)
 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 1st Palm Financial Services LLC (hereinafter
16 "Respondent 1st Palm Financial Services LLC") was licensed as a
17 Mortgage Banker from at least April 20, 2005 until its license
18 expired on December 31, 2007.
- 19 2. Respondent 1st Palm Financial, Inc. (hereinafter "Respondent 1st
20 Palm Financial, Inc.") was the 100% owner of Respondent 1st Palm
21 Financial Services LLC, when licensed by the Department.
- 22 3. Respondent Ann R. Mackey (hereinafter "Respondent Mackey") was
23 the President of Respondent 1st Palm Financial Services LLC, when
24 licensed by the Department.
- 25 4. Respondent Eric W. Reckard (hereinafter "Respondent Reckard")

1 was the Chief Financial Officer of Respondent 1st Palm Financial
2 Services LLC, when licensed by the Department.

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

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

5 Department Inquiries (3 Counts):

6 5. Paragraphs 1 through 4 are hereby realleged as fully set forth
7 herein.

8 6. The Respondents' fiscal year end was December 31, 2006 and the
9 financial statement was due on or before April 2, 2007.

10 7. Respondent 1st Palm Financial Services LLC was licensed on the
11 date the financial statement filing was due the Department.

12 8. The Department sent Respondent 1st Palm Financial Services LLC a
13 reminder letter on January 14, 2007 notifying the Respondents of
14 the upcoming filing requirement.

15 9. On April 4, 2007, the Department sent another reminder letter to
16 all licensees (including Respondent 1st Palm Financial Services
17 LLC) whose financial statements had not yet been received.

18 10. The Department sent Respondent 1st Palm Financial Services LLC
19 another reminder letter on April 25, 2007, advising it of the
20 dollar amount of the fine that had accrued as of the date of the
21 letter.

22 11. The above named Respondents neither responded to the three
23 reminder letters nor submitted the financial statement.

24 12. On June 21, 2007, the Department's Legal Division sent Respondent
25 1st Palm Financial Services LLC a consent agreement, which

1 required Respondent 1st Palm Financial Services LLC to submit the
2 financial statement and pay an administrative penalty. The
3 consent agreement was never signed by Respondent 1st Palm
4 Financial Services LLC nor by the Department.

5 13. Instead of signing the consent agreement, Respondent 1st Palm
6 Financial Services LLC submitted an undated letter, which the
7 Department received on July 2, 2007, indicating it was
8 surrendering its authority to transact business in the State of
9 New Hampshire.

10 14. To date, the accrued penalty for failure to file a financial
11 statement has reached the maximum cap of \$2,500.00.

12 **Violation of RSA 397-A:10-a, I(a) Failure to Properly Surrender License (1**
13 **Count):**

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

15 **Violation of RSA 397-A:13, VI Failure of Officer and Owner to Respond to**
16 **Department Inquiries (2 Counts):**

17 15. Paragraphs 1 through 14 are hereby realleged as fully set forth
18 herein.

19 16. The 2007 Annual Report was due on or before February 1, 2008.

20 17. The Department sent email notification to all licensees (including
21 Respondent 1st Palm Financial Services LLC) who owed the
22 Department the 2007 annual report. The email delivery to
23 Respondent 1st Palm Financial Services LLC was unsuccessful.

24 18. On January 9, 2008, the Department telephoned Ms. Mary Parkman (a
25 principal of Respondent 1st Palm Financial Services LLC); the

1 telephone number had been disconnected.

2 19. On January 18, 2008, the Department sent a certified letter
3 advising that Respondent 1st Palm Financial Services LLC's license
4 had expired on December 31, 2007 and that surrender/expiration
5 form documents needed to be submitted to the Department.

6 20. On February 5, 2008, the Department mailed via U.S. Certified Mail
7 Return Receipt requested a reminder letter that the annual report
8 was due on February 1, 2008. The letter was signed for by an A.
9 Mackey on February 11, 2008.

10 21. On February 19, 2008, the Department sent yet another reminder
11 letter via certified mail, instructing Respondent 1st Palm
12 Financial Services LLC to complete and submit
13 surrender/expiration forms, a publication notice and the annual
14 report. The letter was signed for by an A. Mackey on March 12,
15 2008.

16 22. To date, the accrued penalty for failure to file an annual report
17 has reached the maximum cap of \$2,500.00.

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

19 **Violation of RSA 397-A:13, VI Failure of Officer and Owner to Respond to**
20 **Department Inquiries (3 Counts):**

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

23 24. The Department conducted an examination of Respondent 1st Palm
24 Financial Services LLC on October 29, 2007, while Respondent 1st
25 Palm Financial Services LLC was still licensed with the

1 Department.

2 25. On March 5, 2008, the Department submitted the Report of
3 Examination and \$500.00 invoice to Respondent 1st Palm Financial
4 Services LLC via certified mail, which Respondents received on
5 March 12, 2008.

6 26. The above named Respondents failed to respond to the March 5, 2008
7 correspondence from the Department.

8 27. The Department, via U.S. mail, mailed a second notice on April 16,
9 2008 and a third notice on June 24, 2008.

10 28. To date, the above named Respondents still owe the \$500.00
11 examination fee for a one day examination.

12 29. To date, the above named Respondents have not responded to the
13 correspondence regarding the examination fee invoice.

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 29 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:10-a, I (a) provides that a licensee who ceases to
22 engage in the business of a mortgage banker or mortgage broker at
23 any time during a license year for any cause shall surrender such
24 license in person or by registered or certified mail to the
25 Commissioner within 15 calendar days of such cessation, and shall

1 cause to be published in a newspaper of general circulation in the
2 licensee's market area a notice to such effect. Each of the above
3 named Respondents violated this statute on at least one occasion
4 as alleged above.

5 4. RSA 397-A:12,V provides that the expense of such examination shall
6 be chargeable to and paid by the licensee. Each of the above
7 named Respondents violated this provision on at least one
8 occasion as alleged above.

9 5. RSA 397-A:13,I provides that a licensee shall file its annual
10 report on or before February 1 each year concerning operations
11 for the preceding year or license period ending December 31.
12 Each of the above named Respondents violated this provision on at
13 least one occasion as alleged above.

14 6. RSA 397-A:13,II provides that each licensee shall file a financial
15 statement within 90 days from the date of its fiscal year end.
16 Each of the above named Respondents violated this statute on at
17 least one occasion as alleged above.

18 7. RSA 397-A:13,IV provides that any mortgage banker or broker
19 failing to file the annual report or financial statement within
20 the time prescribed may be required to pay to the Department a
21 penalty of \$25.00 per calendar day for each day the annual report
22 is overdue, for a maximum of \$2,500.00. Each of the above named
23 Respondents failed to not only file the annual report and
24 financial statement but also failed to pay the accrued fine as
25 alleged above.

1 8. RSA 397-A:13,VI provides that any officer, owner, manager or agent
2 of any licensee shall reply promptly in writing, or other
3 designated form, to any written inquiry from the Department.
4 Respondent Mackey and Respondent Reckard each violated this
5 provision on at least eight occasions as alleged above.

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

11 10. RSA 397-A:21,IV provides that any person who, either knowingly or
12 negligently, violates any provision of Chapter 397-A, may upon
13 hearing, and in addition to any other penalty provided for by
14 law, be subject to an administrative fine not to exceed
15 \$2,500.00, or both. Each of the acts specified shall constitute
16 a separate violation, and such administrative action or fine may
17 be imposed in addition to any criminal penalties or civil
18 liabilities imposed by New Hampshire Banking laws.

19 11. RSA 397-A:21,V provides that every person who directly or
20 indirectly controls a person liable under this section, every
21 partner, principal executive officer or director of such person,
22 every person occupying a similar status or performing a similar
23 function, every employee of such person who materially aids in the
24 act constituting the violation, and every licensee or person acting
25 as a common law agent who materially aids in the acts constituting

1 the violation, either knowingly or negligently, may, upon notice
2 and opportunity for hearing, and in addition to any other penalty
3 provided for by law, be subject to suspension, revocation, or
4 denial of any registration or license, including the forfeiture of
5 any application fee, or the imposition of an administrative fine
6 not to exceed \$2,500, or both. Each of the acts specified shall
7 constitute a separate violation, and such administrative action or
8 fine may be imposed in addition to any criminal or civil penalties
9 imposed.

10 **III. RELIEF REQUESTED**

11 The staff of the Department requests the Commissioner take the following
12 action:

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

