

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-318
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Yarrow Bay Mortgage Company Inc.,)
)
 8 Anthony J. Nelson, Brady B. Yeager, and)
)
 9 Paul G. Stelzer,)
)
 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 23, 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 Yarrow Bay Mortgage Company Inc. ("Respondent
20 Yarrow Bay Mortgage") shall show cause why penalties in the
21 amount of \$2,500.00 should not be imposed against it;
- 22 2. Respondent Anthony J. Nelson ("Respondent Nelson") shall show
23 cause why penalties in the amount of \$5,000.00 should not be
24 imposed against him;
- 25 3. Respondent Brady B. Yeager ("Respondent Yeager") shall show

1 cause why penalties in the amount of \$5,000.00 should not be
2 imposed against him;

3 4. Respondent Paul G. Stelzer ("Respondent Stelzer") shall show
4 cause why penalties in the amount of \$5,000.00 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, the
8 \$500.00 examination fee 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 Yarrow Bay Mortgage's license should not be
14 revoked.

15 It is hereby further ORDERED that:

16 8. Along with the administrative penalties listed for the above
17 named Respondents, the outstanding sum of \$500.00 shall be
18 immediately paid; and

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

1 9. 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: 01/23/09

9 /s/
10 PETER C. HILDRETH
11 BANK COMMISSIONER
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-318
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) January 23, 2009
)
 6 and)
)
 7 Yarrow Bay Mortgage Company Inc.,)
)
 8 Anthony J. Nelson, Brady B. Yeager, and)
)
 9 Paul G. Stelzer,)
)
 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 Yarrow Bay Mortgage Company Inc. (hereinafter
16 "Respondent Yarrow Bay Mortgage") was licensed as a Mortgage
17 Broker from at least January 12, 2007 until its license expired
18 on December 31, 2007.
- 19 2. Respondent Anthony J. Nelson (hereinafter "Respondent Nelson")
20 was the 33.3% owner and President of Respondent Yarrow Bay
21 Mortgage, when licensed by the Department.
- 22 3. Respondent Brady B. Yeager (hereinafter "Respondent Yeager") was
23 the 33.3% owner and Vice-President of Respondent Yarrow Bay
24 Mortgage, when licensed by the Department.
- 25 4. Respondent Paul G. Stelzer (hereinafter "Respondent Stelzer")

1 was the 33.3% owner and Vice-President of Respondent Yarrow Bay
2 Mortgage, when licensed by the Department.

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

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

5 Department Inquiries (1 Count):

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

8 6. The Department conducted an examination of Respondent Yarrow Bay
9 Mortgage on January 14, 2008, for activities that occurred while
10 Respondent Yarrow Bay Mortgage was licensed with the Department.

11 7. On March 28, 2008, the Department mailed the report of examination
12 and invoice for \$500.00 to Respondent Yarrow Bay Mortgage, via
13 U.S. Certified Mail Return Receipt requested, which Respondents
14 received on April 30, 2008.

15 8. The above named Respondents failed to respond to the March 28,
16 2008 correspondence from the Department.

17 9. The Department, via U.S. mail, mailed a second notice on April 29,
18 2008 and a third notice on June 24, 2008.

19 10. The above named Respondents did not respond to any of the three
20 notices for payment of the \$500.00 invoice.

21 11. To date, the above named Respondents still owe the \$500.00
22 examination fee for the one day examination.

23 **II. ISSUES OF LAW**

24 The staff of the Department alleges the following issues of law:
25

- 1 1. The Department realleges the above stated facts in Paragraphs 1
2 through 11 as fully set forth herein.
- 3 2. The Department has jurisdiction over the licensing and regulation
4 of persons engaged in mortgage banker or broker activities
5 pursuant to NH RSA 397-A:2 and RSA 397-A:3.
- 6 3. RSA 397-A:12,V provides that the expense of such examination shall
7 be chargeable to and paid by the licensee. Each of the above
8 named Respondents violated this provision on at least one
9 occasion as alleged above. To date, the above named Respondents
10 have failed to pay the \$500.00 examination invoice.
- 11 4. 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 Nelson, Respondent Yeager and Respondent Stelzer each
15 violated this provision on at least one occasion as alleged
16 above.
- 17 5. 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

1 standards established in RSA Chapter 397-A.

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

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

15 8. RSA 397-A:21,V provides that every person who directly or
16 indirectly controls a person liable under this section, every
17 partner, principal executive officer or director of such person,
18 every person occupying a similar status or performing a similar
19 function, every employee of such person who materially aids in the
20 act constituting the violation, and every licensee or person acting
21 as a common law agent who materially aids in the acts constituting
22 the violation, either knowingly or negligently, may, upon notice
23 and opportunity for hearing, and in addition to any other penalty
24 provided for by law, be subject to suspension, revocation, or
25 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 amount
17 equal to the violations set forth in section II of this Staff
18 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.

1 IV. RIGHT TO AMEND

2 The Department reserves the right to amend this Staff Petition and to
3 request that the Commissioner take additional administrative action.
4 Nothing herein shall preclude the Department from bringing additional
5 enforcement action under RSA 397-A or the regulations thereunder.

6 Respectfully submitted by:

7
8 /s/
Maryam Torben Desfosses
9 Hearings Examiner

01/23/09
Date