

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-322
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Bryco Funding Inc., Bryce C. Angell,)
)
 8 and John G. Aitken,)
)
 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. The
11 Commissioner may utilize all remedies available under the Consumer
12 Protection Act.

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

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

1 deemed to be true.

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

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

9 The Staff Petition dated January 2, 2009 (a copy of which is attached
10 hereto) is incorporated by reference hereto.

11 **ORDER**

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

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

17 It is hereby ORDERED, that:

- 18 1. Respondent Bryco Funding Inc. ("Respondent Bryco") shall show
19 cause why penalties in the amount of \$12,500.00 should not be
20 imposed against it;
- 21 2. Respondent Bryce C. Angell ("Respondent Angell") shall show
22 cause why penalties in the amount of \$12,500.00 should not be
23 imposed against him;
- 24 3. Respondent John G. Aitken ("Respondent Aitken") shall show
25 cause why penalties in the amount of \$12,500.00 should not be

1 imposed against him;

2 4. The above named Respondents shall show cause why, in addition
3 to the penalties listed in Paragraphs 1 through 3 above, the
4 \$500.00 examination fee should not be paid to the Department;

5 5. The above named Respondents shall show cause why, in addition
6 to the penalties listed in Paragraphs 1 through 4 above,
7 statutory penalties of \$2,500.00 should not be imposed for
8 failing to file the 2007 Annual Report;

9 6. The above named Respondents shall be jointly and severally
10 liable for the above amounts alleged in Paragraphs 1 through
11 5 above;

12 7. The above named Respondents shall show cause why, in addition
13 to the penalties listed in Paragraphs 1 through 6 above,
14 Respondent Bryco's license should not be 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 \$3,000.00 shall be
18 immediately paid; and

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1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-322
3 State of New Hampshire Banking)
4 Department,) Staff Petition
5 Petitioner,) January 2, 2009
6 and)
7 Bryco Funding Inc., Bryce C. Angell,)
8 and John G. Aitken,)
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 Bryco Funding Inc. (hereinafter "Respondent Bryco")
15 was licensed as a Mortgage Banker from at least January 07, 2007
16 (with an amended license date of February 27, 2007) until its
17 license expired on December 31, 2007.
- 18 2. Respondent Bryce C. Angell (hereinafter "Respondent Angell") was
19 the Chief Executive Officer and 50% owner of Respondent Bryco,
20 when licensed by the Department.
- 21 3. Respondent John G. Aitken (hereinafter "Respondent Aitken") was
22 the President and 50% owner of Respondent Bryco, when licensed
23 by the Department.
- 24
25

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

2 Violation of RSA 397-A:10,IV Failure to Update Information on File with
3 Commissioner (1 Count):

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

6 5. The Department conducted an examination of Respondent Bryco on
7 December 31, 2007.

8 6. On December 10, 2007, the Department sent the notice of
9 examination to Respondent Bryco via U.S. Certified Mail Return
10 Receipt requested, which was returned to the Department as
11 "attempted, not known".

12 7. On January 29, 2008, the Department sent the notice of examination
13 via UPS, which was returned to the Department on February 7, 2008
14 as "receiver moved".

15 8. To date, the above named Respondents have failed to provide new
16 location information to the Department.

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

18 9. Paragraphs 1 through 8 are hereby realleged as fully set forth
19 herein.

20 10. As mentioned above, the Department conducted an examination of
21 Respondent Bryco on December 31, 2007, while Respondent Bryco was
22 still licensed with the Department.

23 11. The above named Respondents moved and the Department did not have
24 a viable mailing address for Respondent Bryco.

25 12. To date, the above named Respondents still owe the \$500.00

1 examination invoice for the one day examination.

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

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

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

7 14. Paragraphs 1 through 13 are hereby realleged as fully set forth
8 herein.

9 15. The 2007 Annual Report was due on or before February 1, 2008.

10 16. On January 4, 2008, the Department sent a certified letter
11 advising the Respondents that Respondent Bryco's license had
12 expired on December 31, 2007 and that Respondents had to file
13 proper surrender forms and an annual report. The letter was
14 returned as not deliverable as addressed with no forwarding
15 address.

16 17. On February 5, 2008, the Department sent a certified letter that
17 the annual report was due on February 1, 2008. The letter was
18 returned as not deliverable as addressed with no forwarding
19 address.

20 18. To date, the Department has not received copies of the publication
21 notice nor the expiration paperwork nor the 2007 annual report.

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

1 **II. ISSUES OF LAW**

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

- 3 1. The Department realleges the above stated facts in Paragraphs 1
4 through 19 as fully set forth herein.
- 5 2. The Department has jurisdiction over the licensing and regulation
6 of persons engaged in mortgage banker or broker activities
7 pursuant to NH RSA 397-A:2 and RSA 397-A:3.
- 8 3. RSA 397-A:10,IV provides that persons licensed under RSA Chapter
9 397-A are under a continuing obligation to update information on
10 file with the Commissioner. Each of the above named Respondents
11 failed to update the Commissioner on at least one occasion as
12 alleged above.
- 13 4. RSA 397-A:10-a,I(a) provides that a licensee who ceases to engage
14 in the business of a mortgage banker or mortgage broker at any
15 time during a license year for any cause shall surrender such
16 license in person or by registered or certified mail to the
17 Commissioner within 15 calendar days of such cessation, and shall
18 cause to be published in a newspaper of general circulation in the
19 licensee's market area a notice to such effect. Each of the above
20 named Respondents violated this statute on at least one occasion
21 as alleged above.
- 22 5. RSA 397-A:12,V provides that the expense of such examination shall
23 be chargeable to and paid by the licensee. Each of the above
24 named Respondents violated this provision on at least one
25

1 occasion as alleged above. To date, the above named Respondents
2 have failed to pay the \$500.00 examination invoice.

3 6. RSA 397-A:12,VII provides that every person being examined, and
4 all of the officers, directors, employees, agents, and
5 representatives of such person shall make freely available to the
6 Commissioner or his or her examiners, the accounts, records,
7 documents, files, information, assets, and matters in their
8 possession or control relating to the subject of the examination
9 and shall facilitate the examination. Each of the above named
10 Respondents violated this statute on at least one occasion as
11 alleged above.

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

17 8. RSA 397-A:13,IV provides that any mortgage banker or broker
18 failing to file the annual report or financial statement within
19 the time prescribed may be required to pay to the Department a
20 penalty of \$25.00 per calendar day for each day the annual report
21 is overdue, for a maximum of \$2,500.00. Each of the above named
22 Respondents failed to file the annual report, which capped at the
23 maximum of \$2,500.00.

24 9. RSA 397-A:18,I provides that the Department may issue a complaint
25 setting forth charges whenever the Department is of the opinion

1 that the licensee or person over whom the Department has
2 jurisdiction, has violated any provision of RSA Chapter 397-A or
3 orders thereunder.

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

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

1 fine may be imposed in addition to any criminal or civil penalties
2 imposed.

3 **III. RELIEF REQUESTED**

4 The staff of the Department requests the Commissioner take the following
5 action:

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

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