

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-326
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Epic Mortgage Company Inc, and Bernard)
)
 8 Twomey,)
)
 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.

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 5, 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 Epic Mortgage Company Inc ("Respondent Epic
18 Mortgage") shall show cause why penalties in the amount of
19 \$2,500.00 should not be imposed against it;
- 20 2. Respondent Bernard Twomey ("Respondent Twomey") shall show
21 cause why penalties in the amount of \$5,000.00 should not be
22 imposed against him;
- 23 3. The above named Respondents shall show cause why, in addition
24 to the penalties listed in Paragraphs 1 through 2 above, the
25 \$500.00 examination fee should not be paid to the Department;

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 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 Epic Mortgage Corporation (hereinafter "Epic
15 Mortgage") was licensed as a Mortgage Broker from at least
16 September 24, 2004 (with an amended license date of August 22,
17 2007) until its license expired on December 31, 2007.
- 18 2. Respondent Bernard Twomey (hereinafter "Respondent Twomey") was
19 the President of Respondent Epic Mortgage, when licensed by the
20 Department.

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

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

23 Department Inquiries (1 Count):

- 24 3. Paragraphs 1 through 2 are hereby realleged as fully set forth
25 herein.

1 4. The Department conducted an examination of Respondent Epic
2 Mortgage on October 29, 2007, which is when the examination fee
3 was incurred.

4 5. On March 5, 2008, the Department mailed via U.S. Certified Mail
5 Return Receipt requested the report of examination, along with
6 the invoice for \$500.00, to Respondent Epic Mortgage, which was
7 returned as undeliverable, unable to forward.

8 6. The Department then sent the report of examination and invoice for
9 \$500.00 via UPS, which was returned on or about March 19, 2008 as
10 "receiver refused delivery".

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

13 II. ISSUES OF LAW

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

15 1. The Department realleges the above stated facts in Paragraphs 1
16 through 7 as fully set forth herein.

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

20 3. RSA 397-A:12,V provides that the expense of such examination shall
21 be chargeable to and paid by the licensee. Each of the above
22 named Respondents violated this provision on at least one
23 occasion as alleged above. To date, the above named Respondents
24 have failed to pay the \$500.00 examination invoice.

25

1 4. 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 Twomey violated this provision on at least one
5 occasion as alleged above.

6 5. 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 6. 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 7. 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.

