

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-332
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Crossley Capital, LLC, and Douglas R.)
)
 8 Crossley,)
)
 9 Respondents)

10 NOTICE OF ORDER

11 This Order to Show Cause commences an adjudicative proceeding under
12 the provisions of RSA Chapter 397-A and RSA Chapter 541-A.

13 LEGAL AUTHORITY AND JURISDICTION

14 Pursuant to RSA 397-A:17, the Commissioner of the New Hampshire
15 Banking Department (hereinafter "Department") has the authority to issue an
16 order to show cause why license revocation and penalties for violations of
17 New 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,IV, 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 Chapter
7 358-A and exempt under RSA 358-A:3,I or that may violate any of the
8 provisions of Titles XXXV and XXXVI and administrative rules adopted
9 thereunder. The Commissioner may hold hearings relative to such conduct and
10 may order restitution for a person or persons adversely affected by such
11 conduct.

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

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

1 \$500.00 examination fee for the September 2008 examination
2 should not be paid to the Department;

3 4. The above named Respondents shall show cause why, in addition
4 to the penalties listed in Paragraphs 1 through 3 above, the
5 remaining unpaid examination fee amount of \$450.00 for the
6 April 2007 examination should not be paid to the Department

7 5. The above named Respondents shall show cause why, in addition
8 to the penalties listed in Paragraphs 1 through 4 above, the
9 remaining unpaid fee amount of \$150.00 for the late filing of
10 the financial statement should not be paid to the Department;

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

13 7. The above named Respondents shall show cause why, in addition
14 to the penalties listed in Paragraphs 1 through 6 above,
15 Respondent Crossley Capital's license should not be revoked.

16 It is hereby further ORDERED that:

17 8. Along with the administrative penalties listed for the above
18 named Respondents, the outstanding sum of \$1,100.00 plus each
19 individual consumer's restitution listed above shall be
20 immediately paid; and

21
22
23 [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-332
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) July 2, 2010
)
 6 and)
)
 7 Crossley Capital, LLC, and Douglas R.)
)
 8 Crossley,)
)
 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 Crossley Capital, LLC (hereinafter "Respondent
15 Crossley Capital") was licensed as a Mortgage Broker from at
16 least April 10, 2006 until it surrendered its license on
17 September 17, 2008.

18 2. Respondent Douglas R. Crossley (hereinafter "D. Crossley") was
19 the 100% owner of Respondent Crossley Capital, when licensed by
20 the Department.

21 September 2008 Examination:

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

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

24 Department Inquiries (1 Count):

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

1 herein.

2 4. The Department conducted an examination of Respondent Crossley
3 Capital on September 14, 2008, while Respondent Crossley Capital
4 was still licensed with the Department.

5 5. On October 27, 2008, the Department mailed the report of
6 examination and invoice for \$500.00 to Respondent Crossley
7 Capital, via U.S. Certified Mail Return Receipt requested, which
8 Respondents received on October 30, 2008.

9 6. The above named Respondents failed to respond to the October 27,
10 2008 correspondence from the Department.

11 7. The Department, via U.S. mail, mailed a second notice on December
12 5, 2008 and a third notice on January 20, 2009.

13 8. Respondent D. Crossley sent an email to the Department on January
14 4, 2009 requesting forgiveness of the \$500.00; the Department
15 denied this request on January 7, 2009 and explained there were
16 other outstanding invoices, as well.

17 9. Respondent D. Crossley wrote an email back to the Department on
18 January 7, 2009 but did not pay.

19 10. To date, the above named Respondents still owe the \$500.00
20 examination fee for the one day examination.

21 April 2007 Examination:

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

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

25 12. The Department conducted an examination of Respondent Crossley

1 Capital on April 17, 2007, while Respondent Crossley Capital was
2 still licensed with the Department.

3 13. Respondents requested a payment plan for the \$850.00 examination
4 invoice. The Department agreed to accept payments on or before
5 February 8, February 29, March 28, April 25, May 23 and June 20,
6 2008.

7 14. The Department received payments on February 8, March 10 and April
8 3, 2008. No other payments have been made.

9 15. To date, the balance of \$450.00 for the examination fee remains
10 outstanding.

11 **Violation of RSA 397-A:13, IV Failure to Pay Late Penalty Owed for Late**

12 **Filing of Financial Statement(1 Count):**

13 16. Paragraphs 1 through 15 are hereby realleged as fully set forth
14 herein.

15 17. Respondent Crossley Capital's financial statement was due on or
16 before March 31, 2008.

17 18. Respondent Crossley Capital was still licensed at the time its
18 financial statement filing was due to the Department.

19 19. The Department received Respondent Crossley Capital's financial
20 statement on April 14, 2008 (14 days late), which generated a
21 fine of \$150.00 (\$25.00 a day; maximum \$2,500.00).

22 20. To date, Respondents have not paid the fine.

23 **II. ISSUES OF LAW**

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

25 1. The Department realleges the above stated facts in Paragraphs 1

1 through 20 as fully set forth herein.

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

5 3. 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 two
8 occasions as alleged above. To date, the above named Respondents
9 have failed to pay the \$500.00 examination invoice for September
10 2008 and the April 2007 remaining \$450.00 unpaid portion of the
11 examination fee.

12 4. RSA 397-A:13,IV provides that any mortgage banker or mortgage
13 broker failing to file either the annual report or the financial
14 statement required by RSA Chapter 397-A within the time prescribed
15 may be required to pay to the Department a penalty of \$25.00 for
16 each calendar day the annual report or financial statement is
17 overdue, up to a maximum penalty of \$2,500.00 per report or
18 statement. Each of the above named Respondents violated this
19 provision on at least one occasion as alleged above. The above
20 named Respondents filed a financial statement that was 14 days
21 late, and incurred a penalty of \$150.00.

22 5. RSA 397-A:13,VI provides that any officer, owner, manager or agent
23 of any licensee shall reply promptly in writing, or other
24 designated form, to any written inquiry from the Department.
25 Respondent D. Crossley violated this provision on at least one

1 occasion as alleged above.

2 6. RSA 397-A:17,I provides in part that the Commissioner may by
3 order, upon due notice and opportunity for hearing, assess
4 penalties or deny, suspend, or revoke a license or application if
5 it is in the public interest and the applicant, respondent, or
6 licensee, any partner, officer, member, or director, any person
7 occupying a similar status or performing similar functions, or any
8 person directly or indirectly controlling the applicant,
9 respondent, or licensee: (a) has violated any provision of RSA
10 Chapter 397-A or rules thereunder, or (b) has not met the
11 standards established in RSA Chapter 397-A.

12 7. RSA 397-A:17,I(c) provides that it is a violation of RSA Chapter
13 397-A to accept or process loan applications transmitted or
14 brokered by a mortgage broker who is not licensed, and is not
15 exempt from licensing. Each of the above named Respondents
16 violated this statute on at least five occasions as alleged above.

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

22 9. RSA 397-A:21,IV provides that any person who, either knowingly or
23 negligently, violates any provision of Chapter 397-A, may upon
24 hearing, and in addition to any other penalty provided for by law,
25 be subject to an administrative fine not to exceed \$2,500.00, or

1 both. Each of the acts specified shall constitute a separate
2 violation, and such administrative action or fine may be imposed
3 in addition to any criminal penalties or civil liabilities imposed
4 by New Hampshire Banking laws.

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

21 **III. RELIEF REQUESTED**

22 The staff of the Department requests the Commissioner take the following
23 action:

- 24 1. Find as fact the allegations contained in section I of this Staff
25 Petition;

