

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-349
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Vanguard Mortgage & Title, Inc, Michael)
)
 8 Gene Knight, and Richard F. Jardine,)
)
 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 11, 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 Vanguard Mortgage & Title, Inc ("Respondent
18 Vanguard Mortgage") shall show cause why penalties in the
19 amount of \$15,000.00 should not be imposed against it;
- 20 2. Respondent Michael Gene Knight ("Respondent Knight") shall
21 show cause why penalties in the amount of \$25,000.00 should
22 not be imposed against him;
- 23 3. Respondent Richard F. Jardine ("Respondent Jardine") shall
24 show cause why penalties in the amount of \$25,000.00 should
25 not be imposed against him;

1 4. The above named Respondents shall show cause why, in addition
2 to the penalties listed in Paragraphs 1 through 3 above,
3 statutory penalties of \$1,275.00 should not be imposed for
4 failing to file the 2008 annual report;

5 5. The above named Respondent shall show cause why, in addition
6 to the penalties listed in Paragraphs 1 through 4 above, the
7 \$500.00 examination fee should not be paid to the Department;

8 6. The above named Respondent shall show cause why, in addition
9 to the penalties listed in Paragraphs 1 through 5 above, the
10 accrued fine of \$21,000.00 for the failure to file
11 examination materials should not be paid to the Department;

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

15 8. The above named Respondents shall show cause why, in addition
16 to the penalties listed in Paragraphs 1 through 7 above,
17 Respondent Vanguard Mortgage's license should not be revoked.

18 It is hereby further ORDERED that:

19 9. Along with the administrative penalties listed for the above
20 named Respondents, the outstanding sum of \$22,775.00 shall be
21 immediately paid; and

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-349
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 4 Department,) Staff Petition
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 5 Petitioner,) June 11, 2009
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 7 Vanguard Mortgage & Title, Inc, Michael)
)
 8 Gene Knight, and Richard F. Jardine,)
)
 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 Vanguard Mortgage & Title, Inc (hereinafter
15 "Respondent Vanguard Mortgage") was licensed as a Mortgage
16 Banker from at least October 10, 2005 (with an amended license
17 date of January 23, 2006) until it surrendered its license on
18 August 11, 2008.
- 19 2. Respondent Michael Gene Knight (hereinafter "Respondent Knight")
20 was the 63% owner, President and Chief Executive Officer of
21 Respondent Vanguard Mortgage, when licensed by the Department.
- 22 3. Respondent Richard F. Jardine (hereinafter "Respondent Jardine")
23 was the Chief Financial Officer and control person for
24 Respondent Vanguard Mortgage, when licensed by the Department.

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

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

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

6 5. The 2008 Annual Report was due the latest on or before February 1,
7 2009.

8 6. On August 11, 2008, the Department received Respondent Vanguard
9 Mortgage's license, forms and letter stating Respondent Vanguard
10 Mortgage was surrendering its license.

11 7. On August 6, 2008, the Department emailed Respondent Knight
12 regarding what documents need to be submitted, including the
13 annual report. On the same day, the Department received an email
14 from Debra Sirinek indicating that Respondent Knight was no
15 longer employed by Respondent Vanguard Mortgage but the
16 Department never received such notice.

17 8. Further, Respondents failed to submit the annual report.

18 9. To date, the Department has not received the 2008 annual report.

19 10. To date, the accrued penalty for failure to file an annual report
20 has reached \$1,275.00 (\$25.00 per day x 51 days).

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

1 12. The Department conducted an examination of Respondent Vanguard
2 Mortgage on March 3, 2008, while Respondent Vanguard Mortgage was
3 still licensed with the Department.

4 13. Since the Respondents failed to facilitate the examination, on
5 December 1, 2008, the Department mailed the invoice for \$500.00
6 to Respondent Vanguard Mortgage, via U.S. Certified Mail Return
7 Receipt requested, which Respondents received on December 5,
8 2008.

9 14. Respondent Vanguard Mortgage failed to respond to the December 1,
10 2008 correspondence from the Department.

11 15. The Department, via U.S. mail, mailed a second notice on January
12 20, 2008 and a third notice on February 20, 2008.

13 16. Respondent Vanguard Mortgage did not respond to any of the three
14 notices for payment of the \$500.00 invoice.

15 17. To date, Respondent Vanguard Mortgage still owes the \$500.00
16 examination fee for the one day examination.

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

18 **Violation of RSA 397-A:12,III Examinations: Failure to Provide Requested**

19 **Files (1 Count):**

20 **Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested**

21 **Files (1 Count):**

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

23 **Department Inquiries (3 Counts):**

24 18. Paragraphs 1 through 17 are hereby realleged as fully set forth
25 herein.

1 19. The Department was scheduled to conduct an examination of
2 Respondent Vanguard Mortgage on March 3, 2008, while Respondent
3 Vanguard Mortgage was still licensed with the Department.

4 20. On March 28, 2008, the Department sent the notice of examination
5 for the second phase of the examination to Respondent Vanguard
6 Mortgage via U.S. Certified Mail Return Receipt requested, which
7 Respondent Vanguard Mortgage received on April 3, 2008.

8 21. The examination materials were due 14 days after Respondents'
9 receipt of the second phase notice of examination, which would
10 have been April 17, 2008.

11 22. With no response, the Department submitted a second notice to
12 Respondent Vanguard Mortgage via electronic mail on May 27, 2008.

13 23. Again with no response, the Department submitted a third notice
14 via U.S. Certified Mail Return Receipt requested on July 12,
15 2008, which Respondents received on August 6, 2008.

16 24. The Department still has not received Respondent Vanguard
17 Mortgage's examination materials.

18 25. To date, fines have accrued for failing to provide the requested
19 files. The current fine to date is \$21,000.00 (\$50.00 a day x
20 420 days) and is still accruing.

21 **II. ISSUES OF LAW**

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

23 1. The Department realleges the above stated facts in Paragraphs 1
24 through 25 as fully set forth herein.

25 2. The Department has jurisdiction over the licensing and regulation

1 of persons engaged in mortgage banker or broker activities
2 pursuant to NH RSA 397-A:2 and RSA 397-A:3.

3 3. RSA 397-A:10-a,I(a) provides that a licensee who ceases to engage
4 in the business of a mortgage banker or mortgage broker at any
5 time during a license year for any cause shall surrender such
6 license in person or by registered or certified mail to the
7 Commissioner within 15 calendar days of such cessation, and shall
8 cause to be published in a newspaper of general circulation in the
9 licensee's market area a notice to such effect. Each of the above
10 named Respondents violated this statute on at least one occasion
11 as alleged above.

12 4. RSA 397-A:11,II provides that requested files and business records
13 must be received by the Department within 21 calendar days of
14 request. The licensee will be subject to a \$50.00 a day fine
15 every day after the 21-day period the records are not produced.
16 Each of the above named Respondents violated this provision on at
17 least one occasion as alleged above. Respondents currently owe
18 \$21,000.00 to date and the fine is still accruing.

19 5. RSA 397-A:12,III requires licensees to comply with examination
20 requests with or without prior notice. All books, papers, files,
21 related material, and records of assets shall be subject to the
22 Department's examination. Each of the above named Respondents
23 violated this statute on at least one occasion as alleged above.

24 6. RSA 397-A:12,V provides that the expense of such examination shall
25 be chargeable to and paid by the licensee. Each of the above

1 named Respondents violated this provision on at least one
2 occasion as alleged above. To date, the above named Respondents
3 have failed to pay the \$500.00 examination invoice.

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

13 8. RSA 397-A:13,I provides that a licensee shall file its annual
14 report on or before February 1 each year concerning operations
15 for the preceding year or license period ending December 31.
16 Each of the above named Respondents violated this provision on at
17 least one occasion as alleged above. The fine has accrued to
18 \$1,275.00 as calculated pursuant to RSA 397-A:13,IV below.

19 9. RSA 397-A:13,IV provides that any mortgage banker or broker
20 failing to file the annual report or financial statement within
21 the time prescribed may be required to pay to the Department a
22 penalty of \$25.00 per calendar day for each day the annual report
23 is overdue, for a maximum of \$2,500.00. Each of the above named
24 Respondents failed to file the annual report, which has accrued
25 to \$1,275.00 (\$25.00 per day x 51 days).

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

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

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

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

1 a separate violation, and such administrative action or fine may
2 be imposed in addition to any criminal penalties or civil
3 liabilities imposed by New Hampshire Banking laws.

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

20 **III. RELIEF REQUESTED**

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

- 23 1. Find as fact the allegations contained in section I of this Staff
24 Petition;
- 25 2. Make conclusions of law relative to the allegations contained in

