

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-360
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,) and
)
 6 and) Cease and Desist Order
)
 7 North Atlantic Financial Corporation,)
)
 8 Stephen Louis Silvestro, and David-)
)
 9 James Gonzales,)
)
 10 Respondents)
)

11
12 NOTICE OF ORDER

13 This Order commences an adjudicative proceeding under the provisions of
14 RSA 397-A, RSA 541-A, BAN 200 and JUS 800.

15 LEGAL AUTHORITY AND JURISDICTION

16 Pursuant to RSA 397-A:18, the Banking Department of the State of New
17 Hampshire (hereinafter the "Department") has the authority to issue a
18 complaint setting forth charges whenever the Department is of the opinion
19 that the licensee or person over whom the Department has jurisdiction is
20 violating or has violated any provision of RSA Chapter 397-A, rule or order
thereunder.

21 Pursuant to RSA 397-A:18 II, the Banking Department of the State of New
22 Hampshire (hereinafter the "Department") has the authority to issue and cause
23 to be served an order requiring any person engaged in any act or practice
24 constituting a violation of RSA 397-A or any rule or order thereunder, to
25 cease and desist from violations of RSA 397-A.

1 Pursuant to RSA 397-A:20, the Commissioner may issue, amend, or rescind
2 such orders as are reasonably necessary to comply with the provisions of the
3 Chapter.

4 Pursuant to RSA 397-A:21, the Commissioner has the authority to
5 suspend, revoke or deny any license and to impose administrative penalties of
6 up to \$2,500.00 for each violation of New Hampshire banking law and rules.

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

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

21 If any of the above named Respondents fails to request a hearing within
22 30 calendar days of receipt of such order or reach formal settlement with the
23 Department within that time frame, then such person shall likewise be deemed in
24 default, and the orders shall, on the thirty-first day, become permanent, and
25 shall remain in full force and effect until and unless later modified or
vacated by the commissioner, for good cause shown.

STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF

The Staff Petition dated August 25, 2008 (a copy of which is attached
hereto) is incorporated by reference hereto.

1 ORDER

2 WHEREAS, finding it necessary and appropriate and in the public
3 interest, and consistent with the intent and purposes of the New Hampshire
4 banking laws, and

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

7 It is hereby ORDERED, that:

- 8 1. Respondent North Atlantic Financial Corporation ("Respondent
9 North Atlantic Financial") shall show cause why penalties in
10 the amount of \$15,000.00 should not be imposed it individually
11 and therefore, \$45,000.00 jointly and severally;
- 12 2. Respondent Stephen Louis Silvestro ("Respondent Silvestro")
13 shall show cause why penalties in the amount of \$37,500.00
14 (\$15,000.00 for Respondent North Atlantic Financial and
15 \$22,500.00 for Respondent Silvestro alone) should not be
16 imposed against him personally and therefore, \$90,000.00
17 jointly and severally;
- 18 3. Respondent David-James Gonzales ("Respondent Gonzales") shall
19 show cause why penalties in the amount of \$37,500.00
20 (\$15,000.00 for Respondent North Atlantic Financial and
21 \$22,500.00 for Respondent Gonzales alone) should not be
22 imposed against him personally and therefore, \$90,000.00
23 jointly and severally;
- 24 4. The above named Respondents shall show cause why, in addition
25 the penalties listed in paragraphs 1 through 3 above,
statutory penalties of \$475.00 should not be imposed for late
filing of the annual report.
5. The above named Respondents shall show cause why, in addition
the penalties listed in paragraphs 1 through 4 above,

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statutory penalties of \$500.00 should not be imposed for the
examination fee.

It is hereby ORDERED that:

6. Along with the \$15,000.00 administrative penalty for Respondent North Atlantic Financial and \$37,500.00 each for Respondent Silvestro and Respondent Gonzales, the outstanding two invoices in the total amount of \$975.00 shall be immediately paid;
7. The annual report must be properly completed and submitted to the Department; and
8. Failure to request a hearing within 30 days of the date of receipt of this Order shall result in a default judgment being rendered and administrative penalties imposed upon the defaulting Respondents.

SIGNED,

Dated: 8/25/08

/ S /
PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-360
)
 3 State of New Hampshire Banking) Staff Petition
)
 4 Department,)
)
 5 Petitioner,) August 25, 2008
)
 6 and)
)
 7 North Atlantic Financial Corporation,)
)
 8 Stephen Louis Silvestro, and David-)
)
 9 James Gonzales,)
)
 10 Respondents)
)

11
12 I. STATEMENT OF ALLEGATIONS

13 The Staff of the Banking Department, State of New Hampshire (hereinafter
14 "Department") alleges the following facts:

15 Facts Common on All Counts:

- 16 1. Respondent North Atlantic Financial Corporation (hereinafter
17 "Respondent North Atlantic Financial") was licensed as a Mortgage
18 Broker from July 24, 2006 to the expiration of its license on
19 December 31, 2007.
- 20 2. Respondent Stephen Louis Silvestro (hereinafter "Respondent
21 Silvestro") is, or was at all relevant times, Chief Executive
22 Officer, Director and 50% Owner of Respondent North Atlantic
23 Financial.
- 24 3. Respondent David-James Gonzales (hereinafter "Respondent
25 Gonzales") is, or was at all relevant times, an Officer,
President and 50% Owner of Respondent North Atlantic Financial.

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

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

4 5. The Department conducted an examination of Respondent North
5 Atlantic Financial on July 23, 2007.

6 6. On October 26, 2007, the Report of Examination and invoice of
7 \$500.00 for the examination were submitted to Respondent North
8 Atlantic Financial and Respondent Gonzales via U.S. Certified Mail
9 Return Receipt requested.

10 7. D. Sylvester is Dennis M. Sylvester, Respondent North Atlantic
11 Financial's Registered Agent.

12 8. D. Sylvester signed for and received the October 26, 2007 invoice
13 on November 8, 2007.

14 9. A second notice was submitted to Respondent North Atlantic
15 Financial and Respondent Gonzales via U.S. mail on December 7,
16 2007.

17 10. A third notice was submitted to Respondent North Atlantic Financial
18 and Respondent Gonzales via U.S. mail on January 17, 2008.

19 11. To date, Respondents have not paid the \$500.00 examination invoice.

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

22 Violation of RSA 397-A:10, III Failure to Inform Commissioner of Office
23 Closure (1 Count):

24 Violation of RSA 397-A:10, IV Failure to Update Information on File with
25 Commissioner (2 Counts):

12. Paragraphs 1 through 11 are hereby realleged as fully set forth

1 herein.

2 13. On January 4, 2008 by U.S. Certified Mail Return Receipt
3 requested, the Department notified Respondent North Atlantic
4 Financial and Respondent Silvestro that Respondents' license
5 expired December 31, 2007. The January 4, 2008 further directed
6 the licensee to the Department's website to obtain the
7 surrender/expiration forms and the procedure to follow for an
8 expired license.

9 14. The January 4, 2008 was signed for and received by D. Sylvester
10 on January 9, 2008.

11 15. D. Sylvester is Dennis M. Sylvester, Respondent North Atlantic
12 Financial's Registered Agent.

13 16. On February 19, 2008, the Department reminded Respondent North
14 Atlantic Financial and Respondent Silvestro that they still
15 needed to complete a surrender/expiration form and publication
16 notice.

17 17. To date, Respondents have not provided the Department a copy of
18 the publication notice or expiration paperwork.

19 18. To date, Respondents have not published notice.

20 19. Respondent North Atlantic Financial, Respondent Silvestro and
21 Respondent Gonzales each failed to notify the Department no later
22 than ten (10) days prior to the effective date of such office
23 closing, the closure of which is implied by the New Hampshire
24 Secretary of State's administrative suspension of Respondent North
25 Atlantic Financial.

20. The New Hampshire Secretary of State Corporation Division's website

1 shows Respondent North Atlantic Financial has been on
2 administrative suspension since August 4, 2008.

3 21. Respondent North Atlantic Financial, Respondent Silvestro and
4 Respondent Gonzales never informed the Department of its
5 administrative suspension with the New Hampshire Secretary of
6 State's Office or Corporation Division.

7 22. Since Respondent North Atlantic Financial was on administrative
8 suspension (due to failing to file an annual report, or sustaining
9 a registered agent, or both), it did not have authority to transact
10 business in the State of New Hampshire.

11 **Violation of 397-A:13, IV Failure to Pay Annual Report Late Filing Fee (1**
12 **Count) :**

13 23. Paragraphs 1 through 22 are hereby realleged as fully set forth
14 herein.

15 24. Respondent North Atlantic Financial's annual report was due in the
16 Department on or before February 1, 2008.

17 25. The Department received the annual report on February 20, 2008,
18 generating a fine of \$25 a day, for a total of \$475.00.

19 26. The Department sent three invoices: March 2008, May 2008 and June
20 24, 2008 and received no payment.

21 27. On July 8, 2008, an additional letter from the Department's
22 Licensing Supervisor was sent regarding this penalty, with no
23 response from any of the three Respondents.

24 28. To date the invoice for \$475.00 remains unpaid.
25

1 Violation of RSA 397-A:13, VI Failure of Officers and Owners to Respond to

2 Department Inquiries (9 Counts):

3 29. Paragraphs 1 through 28 are hereby realleged as fully set forth
4 herein.

5 30. Respondent Silvestro failed to respond to the following Notice to
6 Surrender letters:

7 a. January 4, 2008; and

8 b. February 19, 2008.

9 31. Respondent Silvestro failed to respond to the following Notice to
10 Pay Examination Fee:

11 a. October 26, 2007;

12 b. November 8, 2007; and

13 c. January 17, 2008.

14 32. Respondent Silvestro failed to respond to the Notification of Fine
15 for the late filing of the annual report:

16 a. March 2008;

17 b. May 2008;

18 c. June 24, 2008; and

19 d. July 8, 2008.

20 33. Respondent Gonzales failed to respond to the following Notice to
21 Surrender letters:

22 a. January 4, 2008; and

23 b. February 19, 2008.

24 34. Respondent Gonzales failed to respond to the following Notice to
25 Pay Examination Fee:

a. October 26, 2007;

1 to update the Commissioner on at least two occasions as alleged
2 above.

3 5. 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 time
5 during a license year for any cause shall surrender such license in
6 person or by registered or certified mail to the Commissioner
7 within 15 calendar days of such cessation, and shall cause to be
8 published in a newspaper of general circulation in the licensee's
9 market area a notice to such effect. Each of the above named
10 Respondents violated this statute on one occasion by failing to
11 properly surrender the license.

12 6. RSA 397-A:12, V provides that the expense of such examination shall
13 be chargeable to and paid by the licensee. Each of the above named
14 Respondents violated this statute one time by failing to pay the
15 \$500.00 billed examination fee.

16 7. RSA 397-A:13, I-a provides that a person who surrenders, withdraws,
17 or does not renew a license shall file the annual report as
18 required in paragraph 1 of RSA 397-A:13, notwithstanding the fact
19 that he or she is not licensed on the date that the report is due.

20 8. RSA 397-A:13, IV provides that any mortgage banker or broker
21 failing to file the annual report within the time prescribed may be
22 required to pay to the Department a penalty of \$25.00 per calendar
23 day for each day the annual report is overdue, for a maximum of
24 \$2,500.00. Each of the above named Respondents violated this
25 statute by failing to pay the late fee of \$475.00 for a late filed
annual report.

1 9. 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 Silvestro and Respondent Gonzales each violated this
5 provision on at least 9 occasions each by each failing to respond
6 to Department notices concerning an examination fee, a late fee for
7 a late filed annual report and for failing to properly surrender
8 Respondents' license.

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

14 11. RSA 397-A:21, IV provides that any person who, either knowingly or
15 negligently, violates any provision of Chapter 397-A, may upon
16 hearing, and in addition to any other penalty provided for by law,
17 be subject to an administrative fine not to exceed \$2,500, or both.
18 Each of the acts specified shall constitute a separate violation,
19 and such administrative action or fine may be imposed in addition
20 to any criminal penalties or civil liabilities imposed by New
21 Hampshire Banking laws.

22 12. RSA 397-A:21, V provides that every person who directly or
23 indirectly controls a person liable under this section, every
24 partner, principal executive officer or director of such person,
25 every person occupying a similar status or performing a similar
function, every employee of such person who materially aids in the

1 act constituting the violation, and every licensee or person acting
2 as a common law agent who materially aids in the acts constituting
3 the violation, either knowingly or negligently, may, upon notice and
4 opportunity for hearing, and in addition to any other penalty
5 provided for by law, be subject to suspension, revocation, or denial
6 of any registration or license, including the forfeiture of any
7 application fee, or the imposition of an administrative fine not to
8 exceed \$2,500, or both. Each of the acts specified shall constitute
9 a separate violation, and such administrative action or fine may be
10 imposed in addition to any criminal or civil penalties imposed.

11 **III. RELIEF REQUESTED**

12 The staff of the Department requests the Commissioner take the following
13 Action:

- 14 1. Find as fact the allegations contained in section I of this Staff
15 Petition;
- 16 2. Make conclusions of law relative to the allegations contained in
17 section II of the this petition;
- 18 3. Pursuant to RSA 397-A:18, order each of the above named Respondents
19 to immediately Cease and Desist from violations of this chapter;
- 20 4. Assess fines and administrative penalties in accordance with RSA 397-
21 A:21, for violations of Chapter 397-A, in the number and amount equal
22 to the violations set forth in section II of this Staff 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 New
25 Hampshire citizens, and to provide other equitable relief.

