

1 State of New Hampshire Banking Department

2	In re the Matter of:	)	Case No.: 08-378
		)	
3	State of New Hampshire Banking	)	
		)	Order to Show Cause with Immediate
4	Department,	)	Suspension and Cease and Desist Order
		)	
5	Petitioner,	)	
		)	
6	and	)	
		)	Consent Order (only as to Respondents
7	First Call Mortgage Company, Inc.,	)	First Call Mortgage Company, Inc.,
		)	Kathleen L. Donovan, Carl D.
8	Kathleen L. Donovan, Carl D.	)	McFadden, and Dennis Wright)
		)	
9	McFadden, George Vanderheiden, Peter	)	
		)	
10	S. Lynch and Carolyn A. Lynch as	)	
		)	
11	Joint Tenants, James Arthur	)	
		)	
12	Lesmerises, David Allen Kesler,	)	
		)	
13	Dennis Wright,	)	
		)	
14	Respondents	)	
		)	

15  
16 CONSENT ORDER

17 I. For purposes of amicably settling the above-referenced matter, the New  
18 Hampshire Banking Department (hereinafter referred to as "the  
19 Department") and without admitting any allegations or implications of  
20 fact or the existence of any violations of the Licensing of Non-  
21 Depository First Mortgage Bankers and Brokers Act, RSA 397-A, and its  
22 implementing Administrative Rules, Ban 100 et seq., or other state and  
23 federal laws and regulations, and to avoid protracted administrative  
24 proceedings and judicial review, Respondents First Call Mortgage  
25 Company, Inc. ("Respondent First Call Mortgage"), Kathleen L. Donovan

1 ("Respondent Donovan"), Carl D. McFadden ("Respondent McFadden") and  
2 Dennis Wright ("Respondent Wright") (hereinafter collectively referred  
3 to as "Respondents") do hereby stipulate and agree to the following:

4 1. The term "this action" shall refer to the Department's September  
5 24, 2008 Staff Petition.

6 2. Respondent First Call Mortgage was licensed as a Mortgage Banker  
7 during the period referenced in this action.

8 3. Respondent Donovan was at all relevant times Chief Operating  
9 Officer and a principal of Respondent First Call Mortgage, as  
10 that term is defined in RSA 397-A.

11 4. Respondent McFadden was at all relevant times President, Chief  
12 Executive Officer and a principal of Respondent First Call  
13 Mortgage, as that term is defined in RSA 397-A. Respondent  
14 McFadden was, until on or about August 24, 2007, a 95% owner of  
15 Respondent First Call Mortgage. Respondent McFadden, as of  
16 August 24, 2007, is a 50% owner of Respondent First Call  
17 Mortgage.

18 5. Respondent Wright was the acting Branch Manager for the 264  
19 South River Road, Bedford, NH 03110 branch office for  
20 Respondent First Call Mortgage and therefore, a principal of  
21 Respondent First Call Mortgage.

22 6. Without constituting an admission by Respondent McFadden,  
23 Respondent Donovan and Respondent Wright personally, of any  
24 allegations made or implied by this action; and solely for the  
25 purpose of settlement of all matters in this action, Respondents

1 stipulate that two consumers were harmed by Respondent First  
2 Call Mortgage's activities.

3 II. For purposes of amicably resolving and closing the above-referenced  
4 matter, and without admitting any allegations or implications of fact or the  
5 existence of any violations of the Licensing of Non-Depository First  
6 Mortgage Bankers and Brokers Act, RSA 397-A, and its implementing  
7 Administrative Rules, Ban 100 *et seq.*, or other state and federal laws and  
8 regulations, the above named Respondents and the Department hereby agree to  
9 the following terms and conditions:

- 10 1. The above named Respondents agree that they have voluntarily  
11 entered into this Consent Order without reliance upon any  
12 discussions between the Department and Respondents, without promise  
13 of a benefit of any kind (other than concessions contained in this  
14 Consent Order), and without threats, force, intimidation, or  
15 coercion of any kind. Respondents further acknowledge their  
16 understanding of the nature of the allegations set forth in this  
17 action, including the potential penalties provided by law.
- 18 2. Respondents agree to waive any and all rights to a hearing and  
19 appeal regarding the allegations set forth in this action.
- 20 3. Respondents agree that all terms of this Consent Order are  
21 contractual and none is a mere recital.
- 22 4. Respondent First Call Mortgage represents and warrants that it has  
23 all the necessary rights, powers and ability to carry out all of  
24 the terms of this Consent Order which are applicable to Respondent  
25 First Call Mortgage.

- 1        5.        Respondent Donovan represents and warrants that she has all the  
2                    necessary rights, powers and ability to carry out all of the terms  
3                    of this Consent Order which are applicable to Respondent Donovan.
- 4        6.        Respondent McFadden represents and warrants that he has all the  
5                    necessary rights, powers and ability to carry out all of the terms  
6                    of this Consent Order which are applicable to Respondent McFadden.
- 7        7.        Respondent Wright represents and warrants that he has all the  
8                    necessary rights, powers and ability to carry out all of the terms  
9                    of this Consent Order which are applicable to Respondent Wright.
- 10       8.        Respondents represent and warrant that they can accomplish the full  
11                   relief contemplated and required herein and that all parents,  
12                   subsidiaries, affiliates, and successors necessary to effectuate  
13                   the full relief contemplated by this Consent Order are parties to  
14                   this Consent Order.
- 15       9.        Respondents represent and warrant that they have obtained all  
16                   third-party approvals necessary to comply with the Consent Order.
- 17       10.       Respondents acknowledge that the Department is relying upon the  
18                   representations and warranties of Respondents, stated herein, in  
19                   making its determination in this matter.
- 20       11.       Respondents each agree they are jointly and severally subject to  
21                   potential administrative penalties of at least \$767,500.00 as a  
22                   result of the allegations stated in this action.
- 23       12.       The Department agrees to accept monies in lieu thereof in the  
24                   amount of \$80,000.00, \$32,613.50 of which shall be paid to the  
25                   Department contemporaneously with the execution of this Consent

1 Order and \$40,000.00 of which shall be paid in equal installments  
2 of \$3,333.34 over 12 consecutive months beginning on May 1, 2009  
3 and ending with the final payment due on April 1, 2010. The  
4 remaining \$7,386.50 shall be paid pursuant to Paragraph 13 herein.

5 13. Respondents agree to refund Consumer A the undisclosed Yield Spread  
6 Premium (YSP) of \$7,297.50 and Consumer F the duplicate recording  
7 fee of \$89.00, such amounts of which shall be paid  
8 contemporaneously with the execution of this Consent Order.

9 14. Respondents agree that Respondent First Call Mortgage's Mortgage  
10 Banker license, of which Respondents voluntarily surrendered on  
11 October 21, 2008 after Respondent First Call Mortgage voluntarily  
12 ceased operations, shall be hereby revoked.

13 15. In consideration of the foregoing Consent Order, the Department  
14 agrees not to pursue any further measures relative to this action  
15 while this Consent Order is in effect. However, the provisions of  
16 this Consent Order shall not limit, estop, or otherwise prevent the  
17 Department, or any federal or state agency or department, from  
18 taking any other action affecting Respondents not related to this  
19 action.

20 16. Failure to comply with the terms of this Consent Order as related  
21 to the underlying Cease and Desist Order shall result in imposition  
22 of further administrative penalties and possible criminal  
23 liabilities.

24 17. This Consent Order shall become effective immediately upon the date  
25 of its issuance.

1 18. The provisions of this Consent Order shall remain effective and  
2 enforceable except to the extent that, and until such time as, any  
3 provisions of this Consent Order shall have been modified,  
4 terminated, suspended, or set aside by the Bank Commissioner or  
5 upon an order of a court of competent jurisdiction.

6 This Consent Order represents the resolution of and discharge of any basis  
7 for any civil or administrative proceeding by the Department against the  
8 above named Respondents for violations arising as a result of or in  
9 connection with any actions or omissions by the above named Respondents  
10 through the date of this Consent Order as it applies to the allegations in  
11 this action; provided, however, this release does not apply to facts not  
12 known by the Department or not otherwise provided by the above named  
13 Respondents to the Department as of the date of this Consent Order nor to  
14 actions for restitution under RSA 383:10-d, or any possible actions related  
15 to the examination just completed. Such facts would include, but not be  
16 limited to, any consumer harm from the actions of the above named  
17 Respondents. The Department expressly reserves its right to pursue any  
18 administrative, civil or criminal action or remedy available to it should  
19 the above named Respondents breach this Consent Order or in the future  
20 violate the Act or rules and orders promulgated thereunder.

1 **WHEREFORE**, based on the foregoing, we have set our hands to this Agreement,  
2 with it taking effect upon the signature of Peter C. Hildreth, Bank  
3 Commissioner.

4  
5 Recommended this 8th day of April, 2009 by

6 \_\_\_\_\_  
/s/

7 Maryam Torben Desfosses, Hearings Examiner, Banking Department

8 Executed this 14th day of April, 2009 by

9 \_\_\_\_\_  
/s/

10 Alexander J. Walker, Esq., as legal representative for Respondents First  
11 Call Mortgage, Kathleen L. Donovan, Carl D. McFadden and Dennis Wright

12  
13 **SO ORDERED,**

14 Entered this 14th day of April, 2009.

15 \_\_\_\_\_  
/s/

16 Peter C. Hildreth,  
17 Bank Commissioner