

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-379
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause with Immediate
) Suspension
 5 Petitioner,)
) and
 6 and)
) Cease and Desist Order
 7 Carteret Mortgage Corporation, Eric E.)
)
 8 Weinstein, Albert L. Elder, Jessica)
)
 9 Harrington, and Stephen Bianco,)
)
 10 Respondents)
)

11 NOTICE OF ORDER

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

14 LEGAL AUTHORITY AND JURISDICTION

15 Pursuant to RSA 397-A:17, the Banking Department of the State of New
16 Hampshire (hereinafter the "Department") has the authority to issue an order
17 to show cause why license revocation and penalties for violations of New
18 Hampshire Banking laws should not be imposed.

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

24 Pursuant to RSA 397-A:18 II, the Banking Department of the State of
25 New Hampshire (hereinafter the "Department") has the authority to issue and

1 cause to be served an order requiring any person engaged in any act or
2 practice constituting a violation of RSA 397-A or any rule or order
3 thereunder, to cease and desist from violations of RSA 397-A.

4 Pursuant to RSA 397-A:17 and RSA 541-A:30 the Bank Commissioner
5 ("Commissioner) may by order summarily postpone or suspend any license or
6 application pending final determination of any order to show cause, or other
7 order, or of any other proceeding under this section, provided the
8 Commissioner finds that the public interest would be irreparably harmed by
9 delay in issuing such order.

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

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

17 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct
18 that is or may be an unfair or deceptive act or practice under RSA 358-A and
19 exempt under RSA 358-A:3,I or that may violate any of the provisions of
20 Titles XXXV and XXXVI and administrative rules adopted thereunder. The
21 Commissioner may hold hearings relative to such conduct and may order
22 restitution for a person or persons adversely affected by such conduct. The
23 Commissioner may utilize all remedies available under the Act.

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

25 Pursuant to RSA 541-A:30, the Department shall hold a hearing within
ten (10) working days after the date of this Order suspending the Respondents'
license. That hearing is noticed under separate order. A record of this
proceeding shall be made by a certified shorthand court reporter provided by

1 this Department.

2 After said hearing and within 20 days of the date of the hearing the
3 Commissioner shall issue a further order vacating this Order or making it
4 permanent as the facts require and making such findings as are necessary. All
5 hearings shall comply with 541-A.

6 The above named Respondents have the right to request a hearing on
7 this Order to Show Cause with Immediate Suspension and Cease and Desist
8 Order (hereinafter "Order"), as well as the right to be represented by
9 counsel at each Respondent's own expense. Any such request shall be in
10 writing, and signed by the Respondents or by the duly authorized agent of
11 the above named Respondents, and shall be delivered either by hand or
12 certified mail, return receipt request, to the New Hampshire Banking
13 Department, 53 Regional Drive, Suite 200, Concord, NH 03301. In accordance
14 with RSA 541-A, a hearing shall be held not more than ten (10) days of such
15 request. If any of the Respondents fails to appear at the hearing after
16 being duly notified, such person shall be deemed in default, and the
17 proceeding may be determined against the defaulting Respondent(s) upon
18 consideration of the Order, the allegations of which may be deemed to be
19 true.

20 If any of the Respondents fails to request a hearing within thirty
21 (30) calendar days of receipt of this Order or reach formal settlement with
22 the Department within that timeframe, then such Respondent shall likewise be
23 deemed in default, and the Order shall, on the thirty-first (31st) day become
24 permanent, and shall remain in full force and effect until and unless later
25 modified or vacated by the Commissioner, for good cause shown.

STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF

24 The Staff Petition dated September 25, 2008 (a copy of which is
25 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,

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 and

8 WHEREAS, FINDING a substantial likelihood that delay will cause harm
9 to the public health, safety or welfare, requiring emergency action,

10 It is hereby ORDERED, that:

- 11 1. **Respondents' license is immediately suspended;** and
12 2. Pursuant to RSA 541-A:30, III, an adjudicative hearing
13 regarding the issue of suspension shall be held within ten
14 (10) working days of the date of this Order.

15 It is hereby further ORDERED, that:

- 16 3. Respondent Carteret Mortgage Corporation ("Respondent
17 Carteret Mortgage") shall show cause why penalties in the
18 amount of \$35,000.00 should not be imposed against it
19 individually and therefore, \$175,000 jointly and severally;
20 4. Respondent Eric E. Weinstein ("Respondent Weinstein") shall
21 show cause why penalties in the amount of \$35,000.00 should
22 not be imposed against him personally and therefore,
23 \$175,000.00 jointly and severally;
24 5. Respondent Albert L. Elder ("Respondent Elder") shall show
25 cause why penalties in the amount of \$35,000.00 should not be
imposed against him personally and therefore, \$175,000.00
jointly and severally;

1 6. Respondent Jessica Harrington("Respondent Harrington") shall
2 show cause why penalties in the amount of \$35,000.00 should
3 not be imposed against her personally and therefore,
4 \$175,000.00 jointly and severally;

5 7. Respondent Stephen Bianco("Respondent Bianco") shall show
6 cause why penalties in the amount of \$35,000.00 should not be
7 imposed against him personally and therefore, \$175,000.00
8 jointly and severally;

9 8. The above named Respondents shall show cause why, in addition
10 to the penalties listed in paragraphs 1 through 7 above,
11 Respondents should not have to refund any and all fees to
12 Consumers for loans that are still in the pipeline;

13 9. The above named Respondents shall show cause why, in addition
14 to the penalties listed in paragraphs 1 through 8 above,
15 Respondents should not have to pay monies to Consumers for
16 those (if any) who have had to seek loans under less
17 attractive offers elsewhere due to Respondents' refusal to
18 complete certain loans in the pipeline; and

19 10. The above named Respondents shall show cause why, in
20 addition to the penalties listed in paragraphs 1 through 9
21 above, Respondent Carteret Mortgage's license should not be
22 revoked.

23 It is hereby further ORDERED that:

24 11. Along with the \$35,000.00 administrative penalty for
25 Respondent Carteret Mortgage and \$35,000.00 administrative
 penalty for each Respondent Weinstein, Respondent Elder,
 Respondent Harrington and Respondent Bianco, any other
 outstanding monies owed Consumers shall be immediately paid;

1 State of New Hampshire Banking Department

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 7 Carteret Mortgage Corporation, Eric E.)
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 10 Respondents)
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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 Carteret Mortgage Corporation (hereinafter "Carteret
17 Mortgage") has been licensed as a Mortgage Banker since at least
18 2000.
- 19 2. Respondent Eric E. Weinstein (hereinafter "Respondent
20 Weinstein") is, or was at all relevant times, owner, officer, or
21 other direct controller of Respondent Carteret Mortgage and
22 materially contributed or should have prevented Respondent
23 Carteret Mortgage's failure to abide by RSA Chapter 397-A as
24 alleged herein.

1 3. Respondent Albert E. Elder (hereinafter "Respondent Elder") is,
2 or was at all relevant times, owner, officer, or other direct
3 controller of Respondent Carteret Mortgage and materially
4 contributed or should have prevented Respondent Carteret
5 Mortgage's failure to abide by RSA Chapter 397-A as alleged
6 herein.

7 4. Respondent Jessica Harrington (hereinafter "Respondent
8 Harrington") is, or was at all relevant times, officer, power of
9 attorney, agent, compliance or operations manager or other
10 direct controller of Respondent Carteret Mortgage and materially
11 contributed or should have prevented Respondent Carteret
12 Mortgage's failure to abide by RSA Chapter 397-A as alleged
13 herein.

14 5. Respondent Stephen Bianco (hereinafter "Respondent Bianco") is,
15 or was at all relevant times, since August 2002, Branch Manager
16 for the Keene, New Hampshire branch of Respondent Carteret
17 Mortgage.

18 Violation of RSA 397-A:10, III Failure to Inform Bank Commissioner of Office

19 Closure (1 Count):

20 Violation of RSA 397-A:10, IV Failure to Update Information on File with

21 Commissioner (1 Count):

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

23 Count):

24 Violation of RSA 397-A:6, I Failure to Supervise (2 Counts):

25 Violation of RSA 397-A:12, III Failure to Facilitate Exam (1 Count):

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

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

4 7. On August 25, 2008, the Department received the original branch
5 office license for the Keene branch location but that was only
6 for a relocation from 428 Main Street to 800 Park Avenue in
7 Keene, New Hampshire (to be effective October 1, 2008) with a
8 branch office manager of Stephen Bianco.

9 8. On or about September 2, 2008, the Department received the
10 principal office license and correspondence dated August 28,
11 2008, stating the office "will be closed effective September 30,
12 2008." No reference of the Keene, New Hampshire branch was made
13 in this letter nor was the branch license included therein.

14 9. On or about September 15, 2008 and September 16, 2008, the
15 Department's Examiners attempted to examine Respondent Carteret
16 Mortgage's approved Keene branch location.

17 10. The Department's Examiners observed the Keene branch located on
18 428 Main Street was permanently closed.

19 11. The Department's Examiners, during the same two-day time period in
20 mid September 2008, observed the Keene branch located on Park
21 Avenue was permanently closed.

22 12. Several telephone calls were placed to Respondent Bianco at the
23 Keene branch telephone number on file with the Department. No
24 one answered the telephone and an answering machine or service
25 did not pick up. No message could be left for the Respondents.

1 13. Therefore, the Keene branch located was closed prior to the
2 September 30, 2008 effective date the above named Respondents
3 used in their notice to the Department.

4 14. The above named Respondents failed to notify the Department no
5 later than ten days prior to the closure of the Keene branch.

6 15. Further, the above named Respondents clearly failed to supervise
7 the dates written in the notice the Department received on
8 September 2, 2008 regarding the closures and failed to keep the
9 Keene branch location open until September 30, 2008.

10 Violation of RSA 397-A:10, IV Failure to Update Information on File with
11 Commissioner (1 Count):

12 Violation of RSA 397-A:6, I Failure to Supervise (1 Count):

13 Violation of RSA 397-A:12, III Failure to Facilitate Exam (1 Count):

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

15 Violation of RSA 397-A:17, I(g) Failure to Supervise (1 Count):

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

18 17. On September 19, 2008, at about 12:57 p.m., Respondent Weinstein
19 submitted an email to the Legal Division's email address
20 indicating that Respondent Carteret Mortgage plans on filing
21 Chapter 7 bankruptcy.

22 18. Respondent Weinstein also mentioned he has told the originators to
23 stop originating loans and that he would "freely assign any loans
24 [loan officers] had to another mortgage company so that the
25 borrower would not be damaged by [the business's] closing."

1 19. Respondent Weinstein also doesn't have the "manpower to pull a
2 pipeline report" for any state. Therefore, he is refusing to
3 facilitate the examination of the pipeline reports.

4 Violation of RSA Chapter 293-A:14.05 via RSA 397-A:2, III Persons Subject to
5 or Licensed by RSA Chapter 397-A Must Comply with Other New Hampshire State

6 Law (1 Count):

7 20. Paragraphs 1 through 19 are hereby realleged as fully set forth
8 herein.

9 21. Respondent Weinstein, in his September 19, 2008 email to the
10 Department, blatantly allowed the loan originators full control
11 over the loan files and those still in the pipeline, neither with
12 any supervision.

13 22. Dissolved corporations must not carry on business except to wind
14 up the affairs of the business. Yet, Respondent Weinstein is
15 allowing loans to be closed without proper supervision and
16 informing individuals to not cash Carteret checks as "it is
17 illegal."

18 Violation of RSA 397-A:12, VIII Failure to Correct Reported Deficiencies (1
19 Count):

20 23. Paragraphs 1 through 22 are hereby realleged as fully set forth
21 herein.

22 24. During the Department's 2007 examination of Respondent Carteret
23 Mortgage, Respondents were subject to an Order to Show Cause,
24 Cease and Desist Order, and Immediate Suspension for failing to
25 facilitate an examination.

1 25. The Departments and Respondents reached a consent agreement on
2 July 26, 2007.

3 26. However, due to the Department's Examiners' recent attempts to
4 examine the Keene, NH branch of Respondent Carteret Mortgage, it
5 appears Respondents have failed to correct the deficiency
6 observed in the 2007 examination.

7 **II. ISSUES OF LAW**

8 The staff of the Department, alleges the following issues of law:

9 1. The Department realleges the above stated facts in paragraphs 1
10 through 26 as fully set forth herein.

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

14 3. RSA 397-A:2, III requires persons subject to or licensed under RSA
15 Chapter 397-A to abide by applicable federal laws and regulations,
16 the laws and rules of the State of New Hampshire, and the orders
17 of the Commissioner. Any violation of such law, regulation, order,
18 or rule is a violation of RSA Chapter 397-A. Each of the above
19 named Respondents violated this statute on at least one occasion
20 as alleged above.

21 4. RSA 397-A:6, I mandates that licensees supervise their employees,
22 agents, loan originators, and branch offices. Each of the above
23 named Respondents failed to adequately supervise and therefore
24 violated this statute on at least three occasions as alleged
25 above.

1 5. RSA 397-A:10, III provides that licensees shall provide written
2 notice to the Department of any proposed closing of any licensed
3 office no later than ten (10) business days prior to the effective
4 date of such change. Each of the above named Respondents violated
5 this statute on at least one occasion as alleged above.

6 6. RSA 397-A:10, IV provides that persons licensed under RSA Chapter
7 397 are under a continuing obligation to update information on
8 file with the Commissioner. Each of the above named Respondents
9 failed to update the Commissioner on at least two occasions as
10 alleged above.

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

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

25

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

10 10. RSA 397-A:12, VIII provides that upon receipt of a written report
11 of examination, the licensee shall have 30 days or such
12 additional reasonable period as the Commissioner for good cause
13 may allow within which to review the report, recommend any
14 changes and set forth in writing the remedial course of action
15 the licensee will pursue to correct any reported deficiencies
16 outlined in the report. The above named Respondents violation
17 this provision on at least one occasion as alleged above.

18 11. RSA 397-A:17, I(g) provides that licensees engaging in business in
19 New Hampshire must supervise their agents, originators, managers
20 or employees. Each of the above named Respondents violated this
21 statute on at least one occasion as alleged above.

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

1 thereunder.

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

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

1 **III. RELIEF REQUESTED**

2 The staff of the Department requests the Commissioner take the following
3 Action:

- 4 1. Find as fact the allegations contained in section I of this Staff
5 Petition;
- 6 2. Make conclusions of law relative to the allegations contained in
7 section II of the this petition;
- 8 3. Pursuant to RSA 397-A:17, order each of the above named
9 Respondents to show cause why their license should not be
10 immediately suspended;
- 11 4. Pursuant to RSA 397-A:17, order each of the above named
12 Respondents to show cause why their license should not be revoked;
- 13 5. Pursuant to RSA 397-A:18, order each of the above named
14 Respondents to immediately Cease and Desist from violations of
15 this chapter;
- 16 6. Assess fines and administrative penalties in accordance with RSA
17 397-A:21, for violations of Chapter 397-A, in the number and amount
18 equal to the violations set forth in section II of this Staff
19 Petition; and
- 20 7. Take such other administrative and legal actions as necessary for
21 enforcement of the New Hampshire Banking Laws, the protection of
22 New Hampshire citizens, and to provide other equitable relief.

23 **IV. RIGHT TO AMEND**

24 The Department reserves the right to amend this Staff Petition and to
25 request that the Commissioner take additional administrative action.

1 Nothing herein shall preclude the Department from bringing additional
2 enforcement action under RSA 397-A or the regulations thereunder.

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Respectfully submitted by:

 / S /
Maryam Torben Desfosses
Staff Attorney

 09/25/08
Date