

1 State of New Hampshire Banking Department

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3 In re the Matter of: ) Case No.: 08-380  
 )  
 4 State of New Hampshire Banking ) Order for Default Judgment  
 )  
 5 Department, )  
 )  
 6 Petitioner, )  
 )  
 7 and )  
 )  
 8 Our Town Mortgage, LLC, and Robert J. )  
 )  
 9 Giuliana, )  
 )  
 10 Respondents, )  
 )

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11  
12 Default Judgment

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14 **PROCEDURAL CASE HISTORY**

15 The Bank Commissioner issued an Order to Show Cause with Immediate  
16 Suspension and a Cease and Desist Order on or about October 13, 2008, which  
17 incorporates the October 13, 2008 Staff Petition issued by New Hampshire  
18 Banking Department Hearings Examiner Maryam Torben Desfosses. The Bank  
19 Commissioner issued the Notice of Hearing - Order to Show Cause ("Notice of  
20 Hearing") against both Respondents on October 13, 2008.

21 On January 20, 2009, the adjudicative hearing was held before Presiding  
22 Officer Jack Thomas ("Presiding Officer Thomas") at the New Hampshire Banking  
23 Department ("Department"). Respondent Our Town Mortgage, LLC and Respondent  
24 Robert J. Giuliana failed to appear in person or by representative at the  
25 January 20, 2009 adjudicative proceeding. Upon request of the Petitioner,  
Presiding Officer Thomas stayed the proceedings against Respondent Robert J.  
Giuliana. Presiding Officer Thomas heard testimony and accepted exhibits  
relevant to the matter as it relates to Respondent Our Town Mortgage, LLC.

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2           **APPLICABLE RULE OF ADJUDICATORY PROCEEDINGS**

3           Failure of a licensee to appear in person or by representative at the  
4 adjudicative proceeding shall constitute a default.

5           Further, *Jus 810.02 Failure to Attend Hearing of the CHAPTER Jus 800*  
6 *MODEL RULES OF PRACTICE AND PROCEDURE* provides:

7                       If any party to whom a notice has been given in accordance  
8 with Jus 807.03 fails to attend a hearing, the presiding officer  
9 shall declare that party to be in default and shall either:

10                      (a) Dismiss the case, if the party with the burden of proof  
11 fails to appear; or

12                      (b) Hear the testimony and receive the evidence offered by  
13 a party, if that party has the burden of proof in the  
14 case.

15           **FINAL ORDER**

16           It is hereby ORDERED, that:

- 17 1. By operation of law, a Default Judgment was entered against Respondent Our  
18 Town Mortgage, LLC (hereinafter, "Defaulting Respondent Our Town  
19 Mortgage") on January 20, 2009;
- 20 2. The following allegation as stated in the October 13, 2008 Staff Petition  
21 are dismissed:
- 22       a. RSA 397-A:5, III (c), Failure to post continuous surety bond;
  - 23       b. RSA 397-A:10, III, Failure to inform Bank Commissioner of  
24 office closure;
  - 25       c. RSA 397-A:10, IV, Failure to update information on file with  
Bank Commissioner;
  - d. RSA 397-A:10-a, I(a), Failure to properly surrender license;
  - e. RSA 397-A:11, II, Failure to Provide Requested Files;
  - f. RSA 397-A:12, III, Failure to provide requested files;
- Order for Default Judgment - 2

1 g. RSA 397-A:12, VII, Failure to facilitate examination; and

2 h. RSA 397-A:13, V, Failure to file additional documents;

3 3. Defaulting Respondent Our Town Mortgage violated RSA 397-A:13, I

4 one(1) time for failing to file an annual report for period ending

5 December 31, 2007. RSA 397-A:13, IV provides:

6 "Any mortgage banker or mortgage broker failing to file

7 either the annual report or the financial statement required

8 by this section within the time prescribed may be required to

9 pay to the department a penalty of \$25 for each calendar day

10 the annual report or financial statement is overdue up to a

11 maximum penalty of \$2,500 per report or statement."

12 4. Defaulting Respondent Our Town Mortgage violated RSA 397-A:13, II

13 one (1) time by failing to file a financial statement for period ending

14 December 31, 2007 with the Department;

15 5. Defaulting Respondent Our Town Mortgage violated RSA 397-A:13, VI

16 one (1) time for failure of an officer to respond to Department

17 inquiries regarding a financial statement;

18 6. Defaulting Respondent Our Town Mortgage violated RSA 397-A:10, IV

19 on one (1) occasion for failure to update information on file with

20 the Commissioner. Correspondence mailed to Defaulting Respondent Our Town

21 Mortgage by the Department was returned as undeliverable. Defaulting

22 Respondent Our Town Mortgage made changes to the company name, record of

23 ownership and location without properly notifying the Department.

24 7. Defaulting Respondent Our Town Mortgage violated RSA 397-A:12, V

25 one (1) time for failing to pay examination fee;

8. The Department did not meet the burden of proof regarding the following

allegations and they are therefore dismissed:

1 a. RSA 397-A:16, IV, Unauthorized retention of commissions for services  
2 rendered; and

3 b. RSA 397-A:2, II, Mortgage loans brokered do not comply with RSA 293-  
4 15.01;

5 9. Defaulting Respondent Our Town Mortgage violated RSA 293-A:15.01 (RSA 397-  
6 A:2, III) two (2) times because persons licensed under RSA Chapter 397-A  
7 must comply with RSA 293-A:15.01. Business transactions occurred in New  
8 Hampshire during the period when Respondent was issued an administrative  
9 suspension by the New Hampshire Secretary of State;

10 10. Defaulting Respondent Our Town Mortgage's license is hereby revoked;

11 11. Defaulting Respondent Our Town Mortgage shall immediately pay to the  
12 Department an administrative fine of \$2,500 for each aforementioned  
13 violation, totaling \$20,000 to be paid within sixty days from the date of  
14 this Order, unless an agreement is reached between the New Hampshire  
15 Banking Department and Respondents for a later time; and

16 12. Failure to abide by this Order for Default Judgment may result in civil  
17 or criminal penalties.

18 SIGNED,

19  
20 Dated: 2/19/09

21   /s/    
22 PETER C. HILDRETH  
23 BANK COMMISSIONER  
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25