

1 State of New Hampshire Banking Department

2	In re the Matter of:)Case No.: 08-381
)
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	Empire Equity Group, Inc. (d/b/a 1 st)
)
8	Metropolitan of NY), Corporate Office)
)
9	Management Providers, Inc., Daniel)
)
10	Howard Jacobs, Joshua Israel Lieber,)
)
11	Ezra S. Beyman, William Dean Warren,)
)
12	and Christopher Derek Max,)
)
13	Respondents)

14 NOTICE OF ORDER

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

17 LEGAL AUTHORITY AND JURISDICTION

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

21 Pursuant to RSA 397-A:18, the Department has the authority to issue a
22 complaint setting forth charges whenever the Department is of the opinion
23 that the licensee or person over whom the Department has jurisdiction is

1 violating or has violated any provision of RSA Chapter 397-A, rule or order
2 thereunder.

3 Pursuant to RSA 397-A:18, II, the Department has the authority to
4 issue and cause to be served an order requiring any person engaged in any
5 act or practice constituting a violation of RSA 397-A or any rule or order
6 thereunder, to cease and desist from violations of RSA 397-A.

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

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

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

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

NOTICE OF RIGHT TO REQUEST A HEARING

1 Pursuant to RSA 541-A:30, the Department shall hold a hearing within
2 ten (10) working days after the date of this Order suspending the Respondents'
3 license. That hearing is noticed under separate cover. A record of this
4 proceeding shall be made by a certified shorthand court reporter provided by
5 this Department. If any of the Respondents fails to appear at the hearing
6 after being duly notified, such person shall be deemed in default, and the
7 proceeding may be determined against the defaulting Respondent(s) upon
8 consideration of the Order, the allegations of which may be deemed to be
9 true.

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

14 The above named Respondents have the right to be represented by
15 counsel at each Respondent's own expense. Any such request shall be in
16 writing, and signed by the Respondents or by the duly authorized agent of
17 the above named Respondents, and shall be delivered either by hand or
18 certified mail, return receipt requested, to the New Hampshire Banking
19 Department, 53 Regional Drive, Suite 200, Concord, NH 03301.

STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF

20 The Staff Petition dated November 6, 2008 (a copy of which is attached
21 hereto) is incorporated by reference hereto.

ORDER

22 WHEREAS, finding it necessary and appropriate and in the public
23 interest, and consistent with the intent and purposes of the New Hampshire
24 banking laws,

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

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

6 It is hereby ORDERED, that:

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

11 It is hereby further ORDERED, that:

- 12 3. Respondent Empire Equity Group (d/b/a 1st Metropolitan
13 Mortgage of NY) (hereinafter, "Respondent 1st Metropolitan
14 Mortgage") shall show cause why penalties in the amount of
15 \$770,000.00 should not be imposed against it;
- 16 4. Respondent Corporate Office Management Providers, Inc.
17 (hereinafter, "Respondent Corporate Office Management") shall
18 show cause why penalties in the amount of \$692,500.00 should
19 not be imposed against it;
- 20 5. Respondent Daniel Howard Jacobs (hereinafter, "Respondent
21 Jacobs") shall show cause why penalties in the amount of
22 \$770,000.00 should not be imposed against him;
- 23 6. Respondent Joshua Israel Lieber (hereinafter, "Respondent
24 Lieber") shall show cause why penalties in the amount of
25 \$692,500.00 should not be imposed against him;
7. Respondent Ezra S. Beyman (hereinafter, "Respondent Beyman")
 shall show cause why penalties in the amount of \$77,500.00
 should not be imposed against him;

1 State of New Hampshire Banking Department

2 In re the Matter of:)Case No.: 08-381
3 State of New Hampshire Banking)
4 Department,)Staff Petition
5 Petitioner,)
6 and)
7 Empire Equity Group, Inc. (d/b/a 1st)
8 Metropolitan of NY), Corporate Office)
9 Management Providers, Inc., Daniel)
10 Howard Jacobs, Joshua Israel Lieber,)
11 Ezra S. Beyman, William Dean Warren,)
12 and Christopher Derek Max,)
13 Respondents)

14
15 I. STATEMENT OF ALLEGATIONS

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

18 Facts Common on All Counts:

- 19 1. Respondent Empire Equity Group (d/b/a 1st Metropolitan Mortgage of
20 NY) (hereinafter, "Respondent 1st Metropolitan Mortgage") has been
21 licensed as a Mortgage Broker since at least the year 2000 (with
22 an amended license date of January 15, 2008).
- 23 2. Respondent Corporate Office Management Providers, Inc.
24 (hereinafter, "Respondent Corporate Office Management") is the
25 100% direct owner of Respondent 1st Metropolitan Mortgage.

1 3. Respondent Daniel Howard Jacobs (hereinafter, "Respondent
2 Jacobs") is Chief Executive Officer and Director of Respondent 1st
3 Metropolitan Mortgage, as well as an indirect owner thereof by
4 way of his fifty percent (50%) ownership of Respondent Corporate
5 Office Management.

6 4. Respondent Joshua Israel Lieber (hereinafter, "Respondent
7 Lieber") is an indirect owner of Respondent 1st Metropolitan
8 Mortgage by way of his fifty percent (50%) ownership of
9 Respondent Corporate Office Management.

10 5. Respondent Ezra S. Beyman (hereinafter, "Respondent Beyman") was
11 owner and President of Respondent 1st Metropolitan Mortgage until
12 January 8, 2008, when it was acquired by Respondent Corporate
13 Office Management.

14 6. Respondent William Dean Warren (hereinafter, "Respondent Warren")
15 is the Chief Compliance Officer for Respondent 1st Metropolitan
16 Mortgage.

17 7. Respondent Christopher Derek Max (hereinafter, "Respondent Max")
18 is Respondent 1st Metropolitan Mortgage's Salem, New Hampshire
19 branch office Branch Manager.

20 8. References to Respondents are made throughout the Staff Petition
21 for ease of reference; however:

22 a. Respondents Corporate Office Management and Lieber are only
23 included in violations occurring on and after January 8, 2008;

24 and

25 b. Respondent Beyman is only included in violations occurring

1 before January 8, 2008.

2
3
4 DEFRAUDING THE LENDER - CONSUMER A LOAN FILE

5 Violation of Title 18 U.S.C. Section 1001, et seq. via RSA 397-A:2, III (11
6 Counts):

7 Violation of Title 18 U.S.C. Section 1010 via RSA 397-A:2, III (11 Counts):

8 Violation of Title 18 U.S.C. Section 1344 via RSA 397-A:2, III (11 Counts):

9 Violation of RSA 397-A:6, I Failure to Supervise (11 Counts):

10 Violation of RSA 397-A:17, I(f) Violation of Federal Laws and Rules (11
11 Counts):

12 Violation of RSA 397-A:17, I(g) Failure to Supervise (11 Counts):

13 Violation of RSA 397-A:17, I(k) Dishonest or Unethical Practices (11
14 Counts):

15 Violation of RSA 397-A:17, I(l) Violation of Federal Laws and Rules (11
16 Counts):

17 9. Paragraphs 1 through 8 are hereby realleged as fully set forth
18 herein.

19 10. Consumer A's (two individuals) loan file contained a loan
20 application signed July 2, 2008 but the signature does not appear
21 to match either of the two individuals listed as Borrower, as
22 compared to the Borrowers' identification.

23 11. The July 2, 2008 loan application was prepared by Respondent 1st
24 Metropolitan Mortgage's loan originator (hereinafter, "Employee
25 #1").

1 12. The dollar amounts for Bank Account A was listed as \$160.00 and
2 the dollar amount for Bank Account B was listed as \$3,950.00 on
3 the July 2, 2008 loan application.

4 13. The second loan application was unsigned and dated but it
5 appeared to be whited out and replaced with the date of July 24,
6 2008.

7 14. The July 24, 2008 unsigned loan application showed Bank Account
8 A's balance as \$4,100.97 and Bank Account B's balance as
9 \$1,798.25.

10 15. The third loan application was signed and dated July 25, 2008 and
11 submitted to the Lender.

12 16. Again, the signatures of Consumer A (two individual borrowers) do
13 not match to the signatures on other signed documents or on the
14 Borrowers' identification.

15 17. Bank Account A is listed on the July 25, 2008 loan application
16 submitted to the Lender with a \$4,100.97 balance. Bank Account B
17 is listed on the same loan application submitted to the Lender
18 with a balance of \$1,798.25.

19 18. The Verification of Deposit Form was part of the loan application
20 and submitted to the Lender, as well.

21 19. The Verification of Deposit was dated June 30, 2008 from
22 Respondent 1st Metropolitan Mortgage to an individual at the Bank
23 wherein Consumer A had the two accounts. This is two days from
24 the earliest dated loan application in Consumer A's loan file.

25 20. Section 5 of the Verification of Deposit, filled out by

1 Respondent 1st Metropolitan Mortgage's Employee #1, matches the
2 amounts listed for Bank Account A and Bank Account B in the July
3 2, 2008 loan application. To wit: \$160.00 and \$3,950.00,
4 respectively.

5 21. The Bank's verification, allegedly signed by an individual at the
6 Bank, was signed on July 1, 2008, which is one day earlier than
7 the first loan application found in the loan file.

8 22. This July 1, 2008 Verification of Deposit was submitted to the
9 Lender and found in the Lender's loan file for Consumer A
10 submitted to the Department.

11 23. The name of the individual is of someone who actually works on
12 the Bank; however, the amount on the Bank's alleged verification
13 is \$4,100.97 for Bank Account A and \$1,798.25, which are the same
14 amounts listed on the July 25, 2008 forged loan application
15 submitted to the Lender.

16 24. The Bank Account A balance submitted to the Lender showed a
17 \$4,100.97 balance with a two month average balance of \$4,445.00.

18 25. The Bank Account B balance submitted to the Lender showed a
19 \$1,798.25 balance with a two month average balance of \$476.00.00.

20 26. The Department received actual verifications from the Bank for
21 the same time period used in the July 25, 2008 forged loan
22 application submitted to the Lender.

23 27. Bank Account A actually had a \$0.97 balance with a two month
24 average balance of \$1,093.50 and Bank Account B had a \$1,913.16
25 balance with a two month average balance of \$1,420.00.

1 28. Further, the Department found the original version of the July 1,
2 2008 Verification of Deposit, cut into pieces in Respondent 1st
3 Metropolitan Mortgage's Shred-It bin located in the Salem, New
4 Hampshire branch office.

5 29. The original July 1, 2008 verification showed no creases or
6 facsimile lines, which would be present if it was mailed or
7 submitted to the Bank for an actual verification of deposit.

8 30. The "Mortgage Credit Analysis Worksheet", dated July 25, 2008,
9 disclosed "j. Assets Available \$5,899.22." This figure
10 represents the account totals (\$4,100.97 + 1,798.25) Respondent
11 1st Metropolitan Mortgage used in its July 25, 2008 loan
12 application submitted to the Lender.

13 31. The actual deposit amounts received by the Bank show that "j.
14 Assets Available" should be \$1,914.13 (\$0.97 + \$1,913.16).

15 32. Respondent 1st Metropolitan Mortgage over-stated the assets
16 available by \$3,985.09 (\$5,899.22 - \$1,914.13).

17 33. Section 32 of the desktop underwriter disclosed \$5899.00 as the
18 assets counted towards available funds.

19 34. Respondent 1st Metropolitan Mortgage's July 2, 2008 loan
20 application (signed but not submitted) indicated the total assets
21 as \$4,110.00 (\$160.00 + \$3,950.00). An underwriting summary in
22 the Respondent 1st Metropolitan Mortgage's loan file stated that
23 "the depository assets totaling \$4,110.00 must be verified by one
24 of the following: a) VOD..."

25 35. Therefore, the Verification of Deposit was altered to meet the

1 minimal underwriting requirements.

2 36. The Lender's loan package submitted by Respondent 1st Metropolitan
3 Mortgage contained a document entitled "Conditional Loan
4 Approval", which listed conditions that needed to be satisfied
5 for loan approval and funding.

6 37. Conditions 9, 10, and 22 (which are the FHA Amendatory Clause,
7 Important Notice to Homebuyers, and signed and dated explanation
8 of credit inquires, respectively) required borrower signatures.

9 38. The three documents (Conditions 9, 10, and 22) contained the
10 names of the two individual Borrowers (collectively, Consumer A);
11 however, the signatures did not appear to be of either of the two
12 individual Borrowers collectively known as Consumer A.

13 39. The Verification of Employment was also a required document for
14 the Consumer A loan file submitted to the Lender, who funded the
15 loan for Consumer A.

16 40. A Verification of Employment for one of the two Borrowers of the
17 Consumer A file (for purposes herein "Borrower 1") was discovered
18 in the Shred-It bin in Respondent 1st Metropolitan Mortgage's
19 Salem, New Hampshire branch office. The Verification of
20 Employment indicated Borrower 1 worked for a company in
21 Georgetown, Massachusetts.

22 41. This Verification of Employment was completed in blue ink and
23 contained white out in Section #9 - Applicant's date of
24 Employment.

25 42. Section #9 of the Verification of Employment for Borrower 1

1 appeared to be originally dated April 16, 2008 though the
2 correction showed March 16, 2008.

3 43. The crease line or facsimile transmission line could not be
4 located or detected. The Lender's file contained an exact
5 duplicate copy of this Borrower 1 Verification of Employment.

6 44. The Lender's copy did contain a facsimile transmission line at
7 the top indicating from where the document was faxed. The number
8 listed is a contract engineering and manufacturing company
9 located in Albert Lea, Minnesota, though the company she lists is
10 a different company and different line of work and located in
11 Georgetown, Massachusetts. However, the Verification of
12 Employment was fabricated at Respondent 1st Metropolitan
13 Mortgage's Salem, New Hampshire branch office due to the lack of
14 facsimile transmission lines and creases in the document.

15 **DEFRAUDING THE LENDER - CONSUMER B LOAN FILE**

16 **Violation of Title 18 U.S.C. Section 1001, et seq. via RSA 397-A:2, III (2**
17 **Counts):**

18 **Violation of Title 18 U.S.C. Section 1010 via RSA 397-A:2, III (2 Counts):**

19 **Violation of Title 18 U.S.C. Section 1344 via RSA 397-A:2, III (2 Counts):**

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

21 **Violation of RSA 397-A:17, I(f) Violation of Federal Laws and Rules (2**
22 **Counts):**

23 **Violation of RSA 397-A:17, I(g) Failure to Supervise (2 Counts):**

24 **Violation of RSA 397-A:17, I(k) Dishonest or Unethical Practices (2**
25 **Counts):**

1 Violation of RSA 397-A:17, I(1) Violation of Federal Laws and Rules (2

2 Counts):

3 Violation of RSA 397-A:11, I Failure to Maintain Records (1 Count):

4 Violation of RSA 397-A:12, VIII Failure to Correct Reported Deficiencies (2

5 Counts):

6 45. Paragraphs 1 through 44 are hereby realleged as fully set forth
7 herein.

8 46. A Consumer B loan file had a separate Verification of Deposit,
9 which was found in the Shred-In bin at Respondent 1st Metropolitan
10 Mortgage's Salem, New Hampshire branch office.

11 47. The Borrower 2 Verification of Deposit was written in blue ink
12 and failed to contain facsimile transmission lines or creases.

13 48. The Borrower 2 Verification of Deposit contained two bank
14 accounts (Bank Account C and Bank Account D) with the same Bank
15 as in Consumer A's loan file.

16 49. Section 7 of the Borrower 2 Verification of Deposit was prepared
17 by a loan processor (hereinafter, "Employee #3") of Respondent 1st
18 Metropolitan Mortgage and requested verification of Bank Account
19 C with a balance of \$56.32 and Bank Account D with a balance of
20 \$35,518.81.

21 50. Section 10 of the Borrower 2 Verification of Deposit is the
22 Bank's verification section. Bank Account C disclosed a current
23 and the two month average balance of \$56.32. Bank Account D
24 disclosed a balance of \$35,518.81 and a two month average balance
25 of \$32,724.00.

1 51. Again, the lack of creases and facsimile transmission lines
2 indicates this Borrower 2 Verification of Deposit, which includes
3 the Bank's section of information already filled out, to be
4 fabricated at Respondent 1st Metropolitan Mortgage's Salem, New
5 Hampshire branch office.

6 52. The Department received actual account information from the Bank
7 with respect to the same time frames stated in the Borrower 2
8 Verification of Deposit.

9 53. According to the Bank, Bank Account C had a balance of \$56.32
10 with a two month average balance of \$56.00. Bank Account D had a
11 balance of \$4,518.81 with a two month average balance of
12 \$2,175.50.

13 54. Respondents over-reported funds available in Bank Account D by
14 \$31,000.00.

15 55. On August 15, 2008, the Department asked for the copy of Consumer
16 B's file to be delivered to the Department no later than August
17 20, 2008.

18 56. To date, Respondent 1st Metropolitan Mortgage has been unable to
19 locate any records regarding Consumer B's loan file.

20 57. The Department's previous observation from a previous examination
21 indicated that Respondent 1st Metropolitan Mortgage failed to
22 maintain complete loan files and failed to provide legible copies
23 of documents contained within loan files.

24 58. It appears such violations have been observed again in the 2008
25 examination.

1 DEFRAUDING THE LENDER - CONSUMER C LOAN FILE

2 Violation of Title 18 U.S.C. Section 1001, et seq. via RSA 397-A:2, III (2
3 Counts):

4 Violation of Title 18 U.S.C. Section 1010 via RSA 397-A:2, III (2 Counts):

5 Violation of Title 18 U.S.C. Section 1344 via RSA 397-A:2, III (2 Counts):

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

7 Violation of RSA 397-A:17, I(f) Violation of Federal Laws and Rules (2

8 Counts):

9 Violation of RSA 397-A:17, I(g) Failure to Supervise (2 Counts):

10 Violation of RSA 397-A:17, I(k) Dishonest or Unethical Practices (2

11 Counts):

12 Violation of RSA 397-A:17, I(l) Violation of Federal Laws and Rules (2

13 Counts):

14 59. Paragraphs 1 through 58 are hereby realleged as fully set forth
15 herein.

16 60. Consumer C's loan application disclosed Consumer C was applying
17 to refinance his primary residential dwelling located in
18 Moultonborough, New Hampshire.

19 61. Consumer C's loan application disclosed that the Moultonborough,
20 New Hampshire address was his current address, that Consumer C
21 had two rental properties located in Massachusetts (Hudson and
22 Framingham), and that Consumer C worked for a real estate
23 appraisal company in Stow, Massachusetts.

24 62. The Hudson, Massachusetts rental property was the same address as
25 was listed on Consumer C's credit card statement dated September

1 28, 2006.

2 63. A copy of Consumer C's Massachusetts driver's license was
3 included in the loan file, with an expiration date of June 29,
4 2009.

5 64. Consumer C's loan application disclosed a Massachusetts telephone
6 number as the home telephone number.

7 65. The mortgage, which was executed in Worcester, Massachusetts
8 December 15, 2006, disclosed the occupancy as owner-occupied.

9 66. The two loans (1st and 2nd) were submitted to Lender B as an owner-
10 occupied residence.

11 67. Further, a whitepages.com search for the State of New Hampshire
12 was conducted by the Department on September 15, 2008 and did not
13 reveal a listing for Consumer C.

14 68. However, a whitepages.com search on September 15, 2008 for the
15 State of Massachusetts revealed Consumer C's address as the same
16 as the Framingham, Massachusetts property which was listed as a
17 rental property on Consumer C's loan application.

18 69. The combined facts above reveal that Respondent 1st Metropolitan
19 Mortgage's loan originator willfully misrepresented the occupancy
20 status of Consumer C to Lender B.

21 **INTENT TO DEFRAUD THE LENDER - VARIOUS CONSUMER FILES**

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

23 **Violation of RSA 397-A:17,I(g) Failure to Supervise (2 Counts):**

24 **Violation of RSA 397-A:17,I(k) Dishonest or Unethical Practices (2 Counts):**

25 70. Paragraphs 1 through 69 are hereby realleged as fully set forth

1 herein.

2 71. The above named Respondents failed to properly supervise
3 employees of Respondent 1st Metropolitan Mortgage.

4 72. An email was discovered between Consumer D and Employee #2
5 regarding the purchase of a condominium.

6 73. Consumer D sought a purchase money loan and was not pleased with
7 the interest rate and payment figures Employee #2 calculated.

8 74. In response to Consumer D's dislike of the stated figure,
9 Employee #2 suggested the condominium be financed as a second
10 home for Consumer D's father and the rates would be better.

11 75. This email demonstrates Employee #2's willingness to creatively
12 finance a borrower with a substitute borrower in order to obtain
13 better rates, which in this circumstance would actually be
14 falsifying borrower and occupancy information on the loan file.

15 76. This email also demonstrates the lack of supervision concerning
16 potential loan applications.

17 77. Another example was an email was discovered dated July 15, 2008
18 between a settlement attorney, three of Respondent 1st
19 Metropolitan Mortgage's employees stating "we're wide open to
20 close either late tomorrow or anytime Thursday [sic] (and
21 backdate for weds [sic] w/out telling the lender)."

22 78. Although the documents were not backdated, there is no record
23 that the three licensee employees did not respond they were not
24 willing to backdate documents without lender involvement. This
25 email also demonstrates the lack of supervision of potential loan

1 files and closing documents.

2 MANIPULATION OF DOCUMENTS: CUT, TAPE, COPY, & WHITE OUT

3 Violation of Title 18 U.S.C. Section 1001, et seq. via RSA 397-A:2,III (15
4 Counts):

5 Violation of Title 18 U.S.C. Section 1010 via RSA 397-A:2,III (15 Counts):

6 Violation of Title 18 U.S.C. Section 1344 via RSA 397-A:2,III (15 Counts):

7 Violation of RSA 397-A:6,I Failure to Supervise (15 Counts):

8 Violation of RSA 397-A:17,I(f) Violation of Federal Laws and Rules (15
9 Counts):

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

11 Violation of RSA 397-A:17,I(k) Dishonest or Unethical Practices (15
12 Counts):

13 Violation of RSA 397-A:17,I(l) Violation of Federal Laws and Rules (15
14 Counts):

15 79. Paragraphs 1 through 78 are hereby realleged as fully set forth
16 herein.

17 80. During a review of Respondent 1st Metropolitan Mortgage's Shred-It
18 bins and loan files in the Salem, New Hampshire branch office,
19 Department Examiners found several documents which demonstrate
20 the above named Respondents' manipulation of documents.

21 81. In an email dated June 16, 2008 from Respondent Max to his
22 assigned branch employees, Respondent Max identified Employee
23 #3's duties as "taking care of all disclosures, verifications,
24 closing packages, and QC files."

25 82. In the same email dated June 16, 2008 from Respondent Max to his

1 assigned branch employees, Respondent Max identified Employee
2 #4's duties as "getting all files processed from initial
3 submissions to CTC".

4 83. The borrower signature was cut out on page 4 of 4 of the Consumer
5 E loan application. The loan application disclosed Respondent's
6 Employee #1 as the loan originator, yet the originator signature
7 appears to be that of the processor (Employee #4).

8 84. In another loan file, Consumer F's signature was partially cut
9 out on page 2 of 2 of the Consumer F "Fee Information from Your
10 Mortgage Broker" disclosure document. This disclosure document
11 named another person as loan originator, though the signature
12 seems to be the signature of Employee #4, the loan processor.

13 85. The borrower signature was cut out of page 2 of 2 Consumer G's
14 "Fee Information from Your Mortgage Broker" disclosure document.
15 Again, this disclosure document named the same originator listed
16 in Consumer F's file, but the signature appears to that of
17 Employee #4, the loan processor.

18 86. The borrower signature was cut out on page 2 of 2 of Consumer H's
19 "Fee Information from Your Mortgage Broker" disclosure document.
20 The cut out borrower signature was then taped onto a new
21 disclosure document. This new disclosure document (with the cut
22 and taped borrower signature) was then photocopied several times
23 in order to appear to be an original copy of the disclosure
24 document. The copy of the disclosure document was evident in the
25 loan file maintained in Respondent 1st Metropolitan Mortgage's

1 Salem, New Hampshire branch office. This newly created
2 disclosure named Employee #1 as the loan originator, but the
3 signature appears to be that of Employee #4, the loan processor.

4 87. Consumer I is actually two individual borrowers on the same loan
5 file.

6 88. Consumer I's "Fee Information from Your Mortgage Broker"
7 disclosure document contained white out over the mortgage broker
8 fee compensation, broker fee, total and option 1 fields. This
9 Consumer I disclosure document originally disclosed \$399.00 in
10 mortgage broker compensation and \$495.00 in processing fees for a
11 total of \$894.00, which is the fee agreement that one borrower of
12 Consumer I signed on May 12, 2008 and the second borrower of
13 Consumer I signed on May 18, 2008.

14 89. The whited out portions of Consumer I's disclosure document
15 changed the mortgage broker compensation from \$399.00 to
16 \$1,711.20, the broker fee from \$0.00 to \$399.00 and the total
17 from \$894.00 to \$8,605.20 because there was an additional broker
18 fee of \$7,711.20.

19 90. Option 3 in Consumer I's previously filed disclosure document was
20 blank, but due to altering the document, now included a \$1,711.20
21 fee.

22 91. The Department also discovered a third disclosure document for
23 Consumer I. The third disclosure document indicated the mortgage
24 broker compensation as \$7,711.20, a processing fee of \$495.00, a
25 broker fee of \$399.00 for a total of \$8,605.20. \$895.00 was

1 indicated in option 1 and \$7,711.20 was indicated in option 3.

2 92. The two borrower signatures on Consumer I's disclosure document
3 were not those of the borrowers.

4 93. A photocopy of Consumer I's third disclosure document was also
5 discovered by the Department's Examiner. This third Consumer I
6 disclosure document contained white out over one of the two
7 borrowers' signature, had overwritten dates, and contained the
8 borrower initials atop the overwritten dates. The initials do
9 not appear to be those of the two Consumer I borrowers.

10 94. The above four Consumer I disclosure documents were discovered in
11 Respondent 1st Metropolitan Mortgage's Salem, New Hampshire branch
12 office Shred-It bins.

13 95. The Consumer I loan file contained a copy of the "Fee Information
14 from Your Mortgage Broker" disclosure document, which had a total
15 of \$894.00 in fees and was not signed by the two borrowers.

16 96. The Consumer I loan file also contained a copy of the third
17 disclosure detailed above and contained signatures that were not
18 those of the two borrowers.

19 97. The Consumer I loan file also contained a copy of the loan
20 pricing agreement, which disclosed a total broker fee of \$894.00.
21 This disclosure document named Respondent Max as the loan
22 originator. However, the originator signature seems to be that of
23 Employee #4, the loan processor.

24 98. Finally, the Consumer I loan file contained a letter entitled "To
25 Whom It May Concern" regarding loan proceeds. The signature on

1 the letter named one of the two borrowers but it does not appear
2 to be the borrower's signature.

3 99. The Consumer J "Fee Information from Your Mortgage Broker"
4 disclosure document contained white out over the dates. The date
5 currently on the document is May 27, 2008; yet, the original date
6 appeared to be May 23, 2008.

7 100. The Consumer K loan file contained a disclosure document titled
8 "What is the Most You May Have to Pay". This disclosure document
9 contained white out over the interest rates and payments for years
10 3, 4, 5, and 6.

11 101. The original copy of the Consumer K disclosure document described
12 above contained borrower signatures, disclosed interest rates of
13 5.875%, 5.875%, and 7.875% respectively, and payments appeared to
14 increase from \$952.86 to \$983.26.

15 102. However, with respect to the copy of the Consumer K disclosure
16 document with white out, the interest rates listed decreased from
17 5.875% to 4.25% and payments decreased from \$948.74 to 755.96.

18 103. The white out Consumer K disclosure document described above was
19 also copied and again the copy contained white out over the
20 interest rates and payments. However, on this white out copy of a
21 copy, the interest rates and payments increased to 8.875% and
22 \$1,356.44, respectively. A duplicate copy of this white out
23 original was found in Respondent 1st Metropolitan Mortgage's Shred-
24 It bin in the Salem, New Hampshire branch office.

25 104. The Consumer K disclosure document containing the interest rates

1 and payments of 8.875% and \$1,356.44 was discovered in the loan
2 file, which was not the disclosure document Consumer K borrowers
3 were presented with for signature. Further, Respondent Max was
4 named as the loan originator. Employee #4, the loan processor,
5 certified that all copies of the documents were "true and accurate
6 copies of the originals".

7 105. The Consumer A Truth in Lending statement contained white out over
8 the date, changing it from July 25, 2008 to July 2, 2008.

9 106. The Consumer M "Fee Information from Your Mortgage Broker"
10 disclosure document dated May 20, 2008 contained white out over
11 the mortgage broker compensation, broker fee, and total fields.
12 The Consumer M disclosure document named a loan originator but the
13 signature appears to be that of Employee #4, the loan processor.

14 107. The Consumer N VA Form 26-1082a and the HUD 1003 Addendum Form
15 92900-A each contained white out over the date. The date
16 disclosed was May 9, 2008 but appeared to originally be June 9,
17 2008.

18 **INFLUENCING THE VALUE OF AN APPRAISAL By Respondents' Employees -**

19 **Violation of Title 18 U.S.C. Section 1001, et seq. via RSA 397-A:2,III (4**
20 **Counts):**

21 **Violation of Title 18 U.S.C. Section 1010 via RSA 397-A:2,III (4 Counts):**

22 **Violation of Title 18 U.S.C. Section 1344 via RSA 397-A:2,III (4 Counts):**

23 **Violation of RSA 397-A:6,I Failure to Supervise (4 Counts):**

24 **Violation of RSA 397-A:17,I(f) Violation of Federal Laws and Rules (4**
25 **Counts):**

1 Violation of RSA 397-A:17, I(g) Failure to Supervise (4 Counts):

2 Violation of RSA 397-A:17, I(k) Dishonest or Unethical Practices (4 Counts):

3 Violation of RSA 397-A:17, I(l) Violation of Federal Laws and Rules (4
4 Counts):

5 108. Paragraphs 1 through 107 are hereby realleged as fully set forth
6 herein.

7 109. Respondents' employees attempted to influence the value of
8 appraisals in order to make the loan happen and the sale occur.

9 110. An email from Respondents' Employee #2 to an appraisal company
10 asked for an appraisal at a certain amount. However, the
11 appraisal company's response indicated his appraisal is a bit
12 short of Employee #2's request.

13 111. An email from another appraisal company to Respondents' Employee
14 #2 stated "the consumer is upside down even on the best comp
15 check." Employee #2 responded "here is an appraisal at a certain
16 amount, which makes the loan to value at 95%." It appears
17 Employee #2 was able to influence at least one appraiser on the
18 value of the same property to make the loan work and sale occur.

19 112. Respondents' Employee #2, in an email to a consumer, indicated "he
20 has to get more creative and find another way to make it for the
21 consumer." The email contained the appraiser's comment that
22 "original values will be reduced because active listings are
23 priced lower". Therefore, Employee #2 began mass emailing several
24 emails with the same script, asking for a "value at a specific
25 amount to make the deal work" and further stated "it is only an

1 extra seven thousand dollars."

2 113. Finally, an email from an appraiser to Respondents' Employee #2
3 indicated that "the appraisal was down to a certain amount and
4 dropping." Employee #2 responded that "a certain amount (a higher
5 amount than what the appraiser quoted) will get the deal done if
6 the appraiser could find a way."

7 **SUPERVISION - FAILURE TO SUPERVISE AND SAFEGUARD CONSUMER INFORMATION -**

8 **Violation of the Gramm-Leach-Bliley Act, Title 5, Section 501(a) via RSA**

9 **397-A:2,III (5 Counts):**

10 **Violation of RSA 397-A:6, I Failure to Supervise (5 Counts):**

11 **Violation of RSA 397-A:11,I Failure to Maintain Records (3 Counts):**

12 **Violation of RSA 397-A:11,IV Destruction of Records (3 Counts):**

13 **Violation of RSA 397-A:12,VII Failure to Facilitate Exam (3 Counts):**

14 114. Paragraphs 1 through 113 are hereby realleged as fully set forth
15 herein.

16 115. During an examination of Respondent 1st Metropolitan Mortgage's
17 Salem, New Hampshire branch office, Department Examiners
18 discovered Respondents failed to properly secure nonpublic
19 consumer information by leaving them in unlocked drawers of
20 cubicles and desks.

21 116. When asked by the Department, Respondents could not determine if
22 Respondent 1st Metropolitan Mortgage had retained cleaning
23 professionals to clean office suites and could not produce such
24 contracts. This demonstrates a lack of supervision by
25 Respondents.

1 117. Respondents failed to properly supervise loan originators. An
2 email from Respondent Max to another employee regarding a third
3 employee was found in the Shred-It bin in Respondent 1st
4 Metropolitan Mortgage's Salem, New Hampshire branch office.
5 Respondent Max stated the third employee works out of her house
6 and to simply ensure Respondent Max's name was on the documents.

7 118. A page 3 of 3 of the Tangible Net Benefits Worksheet was also
8 discovered in the Shred-It bin, which contained a white-out over
9 the typed employee's name and had Respondent Max's name
10 handwritten over it.

11 119. On August 15, 2008, the Department requested email logins and
12 passwords for Respondent Max and Respondents' Employee #1. On
13 September 5, 2008, Respondents informed the Department that all
14 email had been deleted.

15 120. On August 15, 2008, the Department also requested three separate
16 loan files due to certain documentation found in Respondent 1st
17 Metropolitan Mortgage's Salem, New Hampshire branch office Shred-
18 It bins. On September 5, 2008, Respondents informed the
19 Department that there were no records of these loan files.

20 121. The Department requested yet another loan file be submitted to the
21 Department by August 20, 2008 for examination review. On
22 September 5, 2008, Respondents informed the Department that a
23 record of this particular loan file has not been discovered.

1 FAILURE TO UPDATE INFORMATION ON FILE WITH THE COMMISSIONER -

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

3 Closure (4 Counts):

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

5 Commissioner (4 Counts):

6 122. Paragraphs 1 through 121 are hereby realleged as fully set forth
7 herein.

8 123. Respondents did not notify the Department until August 14, 2008
9 that Respondents terminated branch manager Respondent Max and all
10 of Respondent 1st Metropolitan Mortgage's Salem, New Hampshire
11 branch office employees.

12 124. Further, Respondents failed to notify the Department until August
13 14, 2008 that Respondent 1st Metropolitan Mortgage's Salem, New
14 Hampshire branch office was closed, which was not done 10 days
15 prior to the effective date of closing.

16 125. Respondents failed to notify the Department that Respondent 1st
17 Metropolitan Mortgage had an administrative regulatory action from
18 Texas dated February 22, 2007.

19 126. Respondents failed to notify the Department that Respondent 1st
20 Metropolitan Mortgage had an administrative regulatory action from
21 Ohio dated May 2007.

22 **II. ISSUES OF LAW**

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

- 24 1. The Department realleges the above stated facts in paragraphs 1
25 through 126 as fully set forth herein.

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

4 3. RSA 297-A:1, XVIII defines "person" as an individual, corporation,
5 business trust, estate, trust, partnership, association, 2 or
6 more persons having a joint or common interest, or any other
7 legal or commercial entity however organized.

8 4. RSA 397-A:1, VI defines a "direct owner" as any person, including
9 individuals, that owns, beneficially owns, has the right to vote,
10 or has the power to sell or direct the sale of 10 percent or more
11 of the applicant or licensee. Respondent Beyman was a direct
12 owner up until January 8, 2008, and Respondent Corporate Office
13 Management is currently a direct owner of, Respondent 1st
14 Metropolitan Mortgage.

15 5. With respect to direct owners and other indirect owners in a
16 multilayered organization, RSA 397-A:1, VIII-a, (a) defines
17 "indirect owner", in the case of an owner that is a corporation,
18 as each of its shareholders that beneficially owns, has the right
19 to vote, or has the power to sell or direct the sale of, 25% or
20 more of that corporation. Respondent Jacobs and Respondent
21 Lieber are indirect owners of Respondent 1st Metropolitan
22 Mortgage.

23 6. RSA 397-A:2, III requires persons subject to or licensed under RSA
24 Chapter 397-A to abide by applicable federal laws and
25 regulations, the laws and rules of the State of New Hampshire,

1 and the orders of the Commissioner. Any violation of such law,
2 regulation, order, or rule is a violation of RSA Chapter 397-A.
3 Each of the above named Respondents violated this statute on at
4 least one hundred five occasions as alleged above.

5 7. RSA 397-A:6, I mandates that licensees supervise their employees,
6 agents, loan originators, and branch offices. Each of the above
7 named Respondents failed to adequately supervise and therefore
8 violated this statute on at least forty one occasions as alleged
9 above.

10 8. RSA 397-A:10,III provides that licensees shall provide written
11 notice to the Department of any proposed closing of any licensed
12 office no later than ten (10) business days prior to the
13 effective date of such change. Each of the above named
14 Respondents violated this statute on at least two occasions as
15 alleged above.

16 9. RSA 397-A:10,IV provides that persons licensed under RSA Chapter
17 397 are under a continuing obligation to update information on
18 file with the Commissioner. Each of the above named Respondents
19 failed to update the Commissioner on at least two occasions as
20 alleged above.

21 10. RSA 397-A:11, I provides that the licensee shall maintain such
22 records as will enable the department to determine whether the
23 licensee's business is in compliance with the provisions of this
24 chapter and the rules adopted pursuant to it. Such records shall
25 be maintained in a readily accessible location and made available

1 for examination at the licensee's New Hampshire principal office
2 or its New Hampshire branch office location or the office of its
3 New Hampshire agent for a period of at least 3 years after the
4 loan is closed, if the loan is not retained in the licensee's
5 loan portfolio, or 3 years after the loan is paid in full, if the
6 loan is retained in the licensee's loan portfolio. Licensees may
7 maintain photocopies, microfilm, or microfiche copies of original
8 documents. Each of the above named Respondents violated this
9 provision on at least four occasions as alleged above.

10 11. RSA 397-A:11, IV provides that licensees must preserve all
11 original business records for as long as the commissioner shall
12 prescribe. Each of the above named Respondents violated this
13 provision on at least three occasions as alleged above.

14 12. RSA 397-A:12, VII provides that every person being examined, and
15 all of the officers, directors, employees, agents, and
16 representatives of such person shall make freely available to the
17 Commissioner or his or her examiners, the accounts, records,
18 documents, files, information, assets, and matters in their
19 possession or control relating to the subject of the examination
20 and shall facilitate the examination. Each of the above named
21 Respondents violated this statute on at least three occasions as
22 alleged above.

23 13. RSA 397-A:12, VIII provides that upon receipt of a written report
24 of examination, the licensee shall have 30 days or such
25 additional reasonable period as the Commissioner for good cause

1 may allow., within which to review the report, recommend any
2 changes and set forth in writing the remedial course of action
3 the licensee will pursue to correct any reported deficiencies
4 outlined in the report. The above named Respondents violation
5 this provision on at least two occasions as alleged above.

6 14. RSA 397-A:17, I(f) provides that licensees are prohibited from
7 making fraudulent misrepresentations, circumvent or conceal,
8 through whatever subterfuge or device, any of the material
9 particulars or the nature thereof required to be stated or
10 furnished to a borrower under the provisions of this chapter.
11 Each of the above named Respondents violated this provision on at
12 least thirty-four occasions as alleged above.

13 15. RSA 397-A:17,I(g) provides that licensees engaging in business in
14 New Hampshire must supervise their agents, originators, managers
15 or employees. Each of the above named Respondents violated this
16 statute on at least thirty-six occasions as alleged above.

17 16. Pursuant to RSA 397-A:17,I(k), licensees engaging in business in
18 New Hampshire are prohibited from engaging in unethical business
19 practices. Each of the above named Respondents violated this
20 statute on at least thirty-six occasions as alleged above.

21 17. RSA 397-A:17,I(l) provides that licensees must abide by all
22 federal laws or rules thereunder. Each of the above named
23 Respondents violated several sections of Title 18 of the United
24 States Code as defined below. Each of the above named
25

1 Respondents violated federal law on at least thirty-six occasions
2 as alleged above.

3 18. The Gramm-Leach-Bliley Act, Title V, Sec. 501(a) states that it
4 is the policy of the Congress that each financial institution has
5 an affirmative and continuing obligation to respect the privacy of
6 its customers and to protect the security and confidentiality of
7 those customers' nonpublic personal information. Each of the
8 above named Respondents violated this provision on at least five
9 occasions as alleged above.

10 19. 18 U.S.C. Section 1001, et seq., provides that except as
11 otherwise provided in this section, whoever, in any matter within
12 the jurisdiction of the executive, legislative, or judicial
13 branch of the Government of the United States, knowingly and
14 willfully (1) falsifies, conceals, or covers up by any trick,
15 scheme, or device a material fact; (2) makes any materially
16 false, fictitious, or fraudulent statement or representation; or
17 (3) makes or uses any false writing or document knowing the same
18 to contain any materially false, fictitious, or fraudulent or
19 entry; shall be fined under this title, imprisoned not more than
20 5 years... Each of the above named Respondents violated this
21 provision on at least thirty-four occasions as alleged above.

22 20. 18 U.S.C. Section 1010, et seq., provides that whoever, for the
23 purpose of obtaining any loan or advance of credit from any
24 person, partnership, association, or corporation with the intent
25 that such loan or advance of credit shall be offered to or

1 accepted by the Department of Housing and Urban Development for
2 insurance, or for the purpose of obtaining any extension or
3 renewal of any loan, advance of credit, or mortgage insured by
4 such department, makes, passes, or utters, or publishes any
5 statement, knowing the same to be false, or alters, forges, or
6 counterfeits any instrument, paper, or document, or utters,
7 publishes, or passes as true any instrument, paper, or document
8 knowing it to have been altered, forged, or counterfeited, or
9 willfully overvalues any security, asset, or income, shall be
10 fined under this title or imprisoned not more than two years, or
11 both. Each of the above named Respondents violated this provision
12 on at least thirty-four occasions as alleged above.

13 21. 18 U.S.C. Section 1344, et seq., provides that whoever knowingly
14 executes, or attempts to execute, a scheme or artifice - (1) to
15 defraud a financial institution; or (2) to obtain any of the
16 moneys, funds, credits, assets, securities, or other property
17 owned by, or under the custody or control of, a financial
18 institution, by means of false or fraudulent pretenses,
19 representations, or promises; shall be fined not more than
20 \$1,000,000.00 or imprisoned not more than 30 years, or both.
21 Each of the above named Respondents violated this provision on at
22 least thirty-four occasions as alleged above.

23 22. RSA 397-A:17,I provides that the Commissioner may suspend any
24 license pending any final determination of any order to show
25 cause or other order, or of any other proceeding under this

1 section, provided that the Commissioner finds that the public
2 interest would be irreparably harmed by delay in issuing such
3 order.

4 23. RSA 397-A:18,I provides that the Department may issue a complaint
5 setting forth charges whenever the Department is of the opinion
6 that the licensee or person over whom the Department has
7 jurisdiction, has violated any provision of RSA 397-A or orders
8 thereunder.

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

17 25. RSA 397-A:21,V provides that every person who directly or
18 indirectly controls a person liable under this section, every
19 partner, principal executive officer or director of such person,
20 every person occupying a similar status or performing a similar
21 function, every employee of such person who materially aids in the
22 act constituting the violation, and every licensee or person acting
23 as a common law agent who materially aids in the acts constituting
24 the violation, either knowingly or negligently, may, upon notice
25 and opportunity for hearing, and in addition to any other penalty

1 provided for by law, be subject to suspension, revocation, or
2 denial of any registration or license, including the forfeiture of
3 any application fee, or the imposition of an administrative fine
4 not to exceed \$2,500, or both. Each of the acts specified shall
5 constitute a separate violation, and such administrative action or
6 fine may be imposed in addition to any criminal or civil penalties
7 imposed.

8 **III. RELIEF REQUESTED**

9 The staff of the Department requests the Commissioner take the following
10 Action:

- 11 1. Find as fact the allegations contained in section I of this Staff
12 Petition;
- 13 2. Make conclusions of law relative to the allegations contained in
14 section II of the this petition;
- 15 3. Pursuant to RSA 397-A:17, order each of the above named
16 Respondents to show cause why their license should not be
17 immediately suspended;
- 18 4. Pursuant to RSA 397-A:17, order each of the above named
19 Respondents to show cause why their license should not be revoked;
- 20 5. Pursuant to RSA 397-A:18, order each of the above named
21 Respondents to immediately Cease and Desist from violations of
22 this chapter;
- 23 6. Assess fines and administrative penalties in accordance with RSA
24 397-A:21, for violations of Chapter 397-A, in the number and amount
25 equal to the violations set forth in section II of this Staff

