

1 State of New Hampshire Banking Department

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3 In re the Matter of:) Case No.: 08-034
)
 4 State of New Hampshire Banking) Adjudicative Hearing Decision:
) Order to Pay Fines and Suspend
 5 Department,) License
)
 6 Petitioner,)
)
 7 and)
)
 8 Elliot A. Willard (d/b/a Family)
)
 9 Mortgage Company), Elliot A. Willard)
)
 10 and Gilbert W. Cox)
)

11
12 PROCEDURAL HISTORY

13 Respondents Elliot A. Willard (d/b/a Family Mortgage Company), Elliot
 14 A. Willard and Gilbert W. Cox were served with an Order to Show Cause with
 15 Immediate Suspension and a Cease and Desist Order ("Order") on or about
 16 November 13, 2008. Since the Order involved an immediate suspension,
 17 which requires an adjudicate hearing within 10 days of the initial Order,
 18 the New Hampshire Banking Department ("Department"), represented by Maryam
 19 Torben Desfosses, Hearings Examiner and Petitioner in this case,
 20 automatically scheduled a November 24, 2008 hearing date.

21 On November 19, 2008, the hearing was continued until January 14, 2009.

22 The Petitioner then received communication and supporting evidence from
 23 counsel for Respondent Gilbert W. Cox ("Respondent Cox") that the
 24 underlying allegations concerning Respondent Cox were moot since Respondent
 25 Cox did pay the fine due under the November 29, 2007 Consent Order. As a

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2 result, the Petitioner issued a Motion to Vacate as to Respondent Cox from
3 the matter herein, which Commissioner Peter C. Hildreth ("Commissioner
4 Hildreth") signed on November 25, 2008.

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6 On January 14, 2009, a hearing was held before Presiding Officer
7 Ingrid E. White, who heard testimony and accepted exhibits relevant to the
8 matter. At the conclusion of said hearing the record was left open for a
9 period of ten (10) days for the parties to submit proposed orders, including
10 proposed findings of fact and rulings of law, and any other closing
11 statements.

12 Order

13 Having considered the record, including exhibits submitted by the
14 parties and the testimony taken at the hearing, I hereby:

15 1. GRANT all of Petitioner's Proposed Findings of Fact, including the
16 following paragraphs:

17 i) Paragraph 1 (a) and (b), requesting dismissal of one count
18 each against Respondents under RSA 397-A:17, I(a) and RSA
19 397-A:6, I;

20 ii) Paragraph 2, requesting amendment of Paragraphs 10 and 13 of
21 the Staff Petition; and

22 iii) Paragraph 3, requesting that Paragraph 13 of "Issues of
23 Law" in the Staff Petition be stricken.

24 2. GRANT Petitioner's Proposed Conclusions of Law as follows:

25 i) at paragraph D, that Respondents failed to comply with the
November 28, 2007 Consent Order;

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3 ii) at paragraph E, that Respondents failed to pay the
4 \$6,165.00 examination fee;

5 iii) at paragraph J, that Respondents still owe \$1,000.00 under
6 the November 28, 2007 Consent Order and \$6,165.00 for the
7 Examination fee from the October 27, 2007 examination;

8 iv) at paragraph K, that the liability for Respondents shall be
9 joint and several; and

10 v) at paragraph M, that the Cease and Desist Order should be
11 made permanent.

12 3. DENY Petitioner's Proposed Conclusions of Law as follows:

13 i) at paragraph F, that Respondents made false or misleading
14 statements regarding the Consent Order;

15 ii) at paragraph G, that Respondents made false or misleading
16 statements regarding the payment of the examination fee;

17 iii) at paragraph H, that Respondent Elliot A. Willard (d/b/a
18 Family Mortgage Company) is subject to an administrative
19 fine of \$15,000;

20 iv) at paragraph I, that Respondent Elliot A. Willard is subject
21 to an administrative fine of \$20,000.00; and

22 v) at paragraph L, that Respondents' license should be revoked.

23 4. GRANT in part and DENY in part Petitioner's Proposed Conclusions
24 of Law as follows:
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1 i) at paragraph A, that Respondents violated the statutes stated
2 in the Statement of Allegations and in the Issues of Law of
3 the Staff Petition;

4 ii) at paragraph B, that Respondents failed to pay the
5 examination fee on two occasions. There is only one
6 examination fee involved in this matter, so I find the
7 Respondents violated RSA 397-A:12, V only once; and

8 iii) at paragraph C, that Respondent Elliot Willard failed to
9 respond to Department inquiries regarding the examination
10 fee on two occasions. There is only one examination fee
11 involved in this matter, so I find Respondent Elliot Willard
12 failure to respond to Department inquiries violated RSA 397-
13 A:13, VI only once.
14

15 I HEREBY ORDER the following:

16 A. Respondents shall be liable and pay the \$1,000.00 administrative
17 fine owed under the Consent Agreement of November 28, 2007.

18 B. Respondents shall be liable and pay the \$6,165.00 examination fee
19 for the October 29, 2007 examination.

20 C. Respondents violated RSA Chapter 397-A seven times total and shall
21 be jointly and severally liable for an administrative fine for each
22 violation of \$1,250, amounting to a total fine of \$8,750.00.

23 D. Payment of the amounts in paragraphs (A) through (C) above shall be
24 made in accordance with a payment schedule to be approved by the
25 Department.

1 E. The Respondents shall submit a proposed payment schedule to the
2 Department for review within 30 days of this Order. If necessary, a
3 hearing may be scheduled to determine the payment schedule.
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6 F. Failure to submit a proposed payment schedule, and failure to
7 follow an approved payment schedule may result in further penalties and
8 fines.
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11 It is further ORDERED that Respondent's license shall be suspended for two
12 years from the date of this Order and the Cease and Desist Order is hereby
13 made PERMANENT.
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17 Dated: 2/9/09

18 /s/
Peter C. Hildreth
Bank Commissioner
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