

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 08-384  
 )  
 3 State of New Hampshire Banking )  
 4 Department, ) Order to Show Cause with Immediate  
 ) Suspension  
 5 )  
 ) and  
 6 )  
 ) Cease and Desist Order  
 )  
 7 Elliot A. Willard (d/b/a Family Mortgage )  
 )  
 8 Company), Elliot A. Willard, and Gilbert )  
 )  
 9 W. Cox, )  
 )  
 10 Respondents )

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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  
24 thereunder.

25 Pursuant to RSA 397-A:18, II, the Banking Department of the State of  
New Hampshire (hereinafter the "Department") has the authority to issue and  
cause to be served an order requiring any person engaged in any act or

1 practice constituting a violation of RSA 397-A or any rule or order  
2 thereunder, to cease and desist from violations of RSA 397-A.

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

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

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

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

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

24 Pursuant to RSA 541-A:30, the Department shall hold a hearing within  
25 ten (10) working days after the date of this Order suspending the Respondents'  
license. That hearing is noticed under separate cover. A record of this  
proceeding shall be made by a certified shorthand court reporter provided by  
this Department. If any of the Respondents fails to appear at the hearing  
after being duly notified, such person shall be deemed in default, and the

1 proceeding may be determined against the defaulting Respondent(s) upon  
2 consideration of the Order, the allegations of which may be deemed to be  
3 true.

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

8 The above named Respondents have the right to be represented by  
9 counsel at the Respondents' 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.

14 **STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF**

15 The Staff Petition dated November 12, 2008 (a copy of which is  
16 attached hereto) is incorporated by reference hereto.

17 **ORDER**

18 WHEREAS, finding it necessary and appropriate and in the public  
19 interest, and consistent with the intent and purposes of the New Hampshire  
20 banking laws,

21 WHEREAS, finding that the allegations contained in the Staff Petition,  
22 if proved true and correct, form the legal basis of the relief requested,  
23 and

24 WHEREAS, finding a substantial likelihood that delay will cause harm  
25 to the public health, safety or welfare, requiring emergency action,

It is hereby ORDERED, that:

1. **Respondents' license is immediately suspended;** and

1           2. Pursuant to RSA 541-A:30, III, an adjudicative hearing shall  
2           be held within ten (10) working days of the date of this  
3           Order.

4           It is hereby further ORDERED, that:

5           3. Respondent Elliot A. Willard (d/b/a Family Mortgage Company)  
6           ("Respondent Family Mortgage Company"), Respondent Elliot A.  
7           Willard ("Respondent Willard") and Respondent Gilbert W. Cox  
8           shall each show cause why the November 28, 2007 and November  
9           29, 2007 breached Consent Orders should not be voided and the  
10          alleged amounts of \$7,500.00 Respondent Family Mortgage  
11          Company and Respondent Willard, and \$10,000.00 for Respondent  
12          Cox, should not be imposed in addition to any other alleged  
13          amounts herein;

14          4. Respondent Family Mortgage Company shall show cause why  
15          penalties in the amount of \$27,500.00 should not be imposed  
16          against it in addition to Paragraph 3 above;

17          5. Respondent Willard shall show cause why penalties in the  
18          amount of \$27,500.00 should not be imposed against him in  
19          addition to Paragraph 3 above;

20          6. Respondent Cox shall show cause why penalties in the amount  
21          of \$25,000.00 should not be imposed against him in addition  
22          to Paragraph 3 above;

23          7. Respondents shall be jointly and severally liable for the  
24          above amounts alleged in Paragraphs 3 through 6 above;

25          8. The above named Respondents shall show cause why, in addition  
to the penalties listed in Paragraphs 1 through 7 above,  
Respondent Family Mortgage Company's license should not be  
revoked.



1 State of New Hampshire Banking Department

2 In re the Matter of: )Case No.: 08-384  
3 State of New Hampshire Banking )  
4 Department, )Staff Petition  
5 Petitioner, )  
6 and )  
7 Elliot A. Willard (d/b/a Family )  
8 Mortgage Company), Elliot A. Willard, )  
9 and Gilbert W. Cox, )  
10 Respondents )  
11 )

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12  
13 I. STATEMENT OF ALLEGATIONS

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

16 Facts Common on All Counts:

- 17 1. Respondent Elliot A. Willard (d/b/a Family Mortgage Company)  
18 (hereinafter "Respondent Family Mortgage Company") has been  
19 licensed as a Mortgage Broker with the Department since September  
20 06, 2005
- 21 2. Respondent Elliot A. Willard (hereinafter "Respondent Willard")  
22 is the 100% direct owner of Respondent Family Mortgage Company.
- 23 3. Respondent Gilbert W. Cox (hereinafter "Respondent Cox") is  
24 Respondent Family Mortgage Company's Branch Manager for the 410  
25 South Main Street, Concord, New Hampshire branch office.

1 BREACH OF NOVEMBER 2007 CONSENT ORDERS

2 Violation of RSA 397-A:17, I(e) False or Misleading Statements to

3 Commissioner (1 Count):

4 Violation of RSA 397-A:17, I(a) via RSA 397-A:2, III Breach of Consent Orders

5 (2 Counts for Respondent Family Mortgage Company and Willard; 1 Count for

6 Respondent Cox):

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

8 4. Paragraphs 1 through 3 are hereby realleged as fully set forth  
9 herein.

10 5. On or about October 29, 2007, the Department conducted an  
11 examination of Respondent Family Mortgage Company at the Concord,  
12 New Hampshire branch office location.

13 6. Respondent Cox refused to provide the Department records  
14 requested as part of the examination.

15 7. The Department filed an Order to Show Cause with Immediate  
16 Suspension due to Respondent Cox's refusal to supply the  
17 Department with the requested records.

18 8. The Department then entered into Consent Orders with Respondent  
19 Family Mortgage Company and Respondent Willard on November 28,  
20 2007 and with Respondent Cox on November 29, 2007 as a result of  
21 the October 30, 2007 Order to Show Cause with Immediate  
22 Suspension.

23 9. Respondents submitted the requested records and each agreed to  
24 pay \$1,000.00.

25 10. As of this date, the Department has not received the \$1,000.00

1 from any of above named Respondents.

2 11. The initial October 30, 2007 Order to Show Cause with Immediate  
3 Suspension alleged \$7,500.00 against Respondent Family Mortgage  
4 Company, \$7,500.00 against Respondent Willard and \$10,000.00  
5 against Respondent Cox.

6 12. Respondents' signatures on the November 28, 2007 and November 29,  
7 2007 Consent Orders indicated that Respondents would pay the sum  
8 due.

9 13. The Respondents' failure to pay amounts to a false or misleading  
10 statement to the Commissioner.

11 **FAILURE TO PAY EXAMINATION FEE**

12 **Violation of RSA 397-A:12,V Failure to Pay Examination Fee (2 Counts):**

13 **Violation of RSA 397-A:17,I(e) False or Misleading Statements to**

14 **Commissioner (1 Count):**

15 **Violation of RSA 397-A:17,I(a) via RSA 397-A:2, III (2 Counts):**

16 **Violation of RSA 397-A:13, VI Failure of Officers and Owners to Respond to**

17 **Department Inquiries (2 Counts);**

18 14. Paragraphs 1 through 13 are hereby realleged as fully set forth  
19 herein.

20 15. On March 18, 2008, the Report of Examination for the October 29,  
21 2007 examination and the invoice were submitted to Respondent  
22 Family Mortgage Company via U.S. Certified Mail Return Receipt  
23 requested indicating that Respondent Family Mortgage Company owed  
24 \$6,165.00 for the 12.33 days exam.

25 16. Respondent Family Mortgage Company received the March 18, 2008

1 invoice on March 19, 2008.

2 17. A second notice was sent April 29, 2008 and a third notice was  
3 sent June 24, 2008.

4 18. To date, the above named Respondents still owe the \$6,165.00  
5 examination fee for the 12.33 days examination.

6 19. On August 8, 2008, Respondents contacted the Department and asked  
7 for payment arrangements to pay the outstanding examination  
8 invoice of \$6,165.00.

9 20. On August 26, 2008, the Department mailed a proposed payment  
10 plan, which was returned as undeliverable.

11 21. The Department then mailed via USPS and faxed the same proposed  
12 payment plan to the Respondents, which Respondents received on  
13 August 27, 2008.

14 22. The Respondents have failed to comply with the proposed payment  
15 plan.

## 16 **II. ISSUES OF LAW**

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

18 1. The Department realleges the above stated facts in paragraphs 1  
19 through 22 as fully set forth herein.

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

23 3. RSA 397-A:1, XVIII defines "person" as an individual, corporation,  
24 business trust, estate, trust, partnership, association, 2 or  
25

1 more persons having a joint or common interest, or any other  
2 legal or commercial entity however organized.

3 4. RSA 397-A:1, VI defines a "direct owner" as any person, including  
4 individuals, that owns, beneficially owns, has the right to vote,  
5 or has the power to sell or direct the sale of 10 percent or more  
6 of the applicant or licensee. Respondent Willard is a 100% direct  
7 owner of Respondent Family Mortgage Company.

8 5. RSA 397-A:1, XIX defines "principal" of the applicant or licensee  
9 as including an owner with 10 percent or more ownership interest  
10 and a New Hampshire branch manager. Respondent Cox was the Branch  
11 Manager.

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

19 7. RSA 397-A:6, I mandates that licensees supervise their employees,  
20 agents, loan originators, and branch offices. Each of the above  
21 named Respondents violated this provision on at least one occasion  
22 as alleged above.

23 8. RSA 397-A:12,V provides that the expense of such examination shall  
24 be chargeable to and paid by the licensee. Each of the above  
25

1 named Respondents violated this provision on at least two  
2 occasions as alleged above.

3 9. RSA 383:11,III provides the cost of examinations shall be paid  
4 within 60 days of receipt of the notice thereof. Each of the  
5 above named Respondents violated this provision by failing to pay  
6 within the 60 days as alleged under the violation of RSA 397-  
7 A:12,V. Respondents still owe the \$6,165.00 examination fee.

8 10. RSA 397-A:13, VI provides that any officer, owner, manager or  
9 agent of any licensee shall reply promptly in writing, or other  
10 designated form, to any written inquiry from the Department. Each  
11 of the above named Respondents violated this provision on at  
12 least two occasions as alleged above.

13 11. RSA 397-A:17,I(a) provides that the Commissioner may by order,  
14 upon due notice and opportunity for hearing, assess penalties or  
15 deny, suspend, or revoke a license if it is in the public  
16 interest and the respondent, or licensee, any partner, officer,  
17 member, or director, any person occupying a similar status or  
18 performing similar functions, or any person directly or  
19 indirectly controlling the respondent, or licensee has violated  
20 any provision of RSA Chapter 397-A or rules thereunder. Each of  
21 the above named Respondents violated RSA 397-A:2, III by  
22 breaching the Consent Orders as alleged above.

23 12. RSA 397-A:17,I(e) provides that licensees are prohibited from  
24 making false or misleading statements to the Commissioner or in  
25 any reports to the Commissioner. Each of the above named

1 Respondents violated this provision on at least two occasions as  
2 alleged above.

3 13. RSA 397-A:17,I(1) provides that licensees must abide by all  
4 federal laws or rules thereunder. Each of the above named  
5 Respondents violated several sections of Title 18 of the United  
6 States Code as defined below. Each of the above named  
7 Respondents violated federal law on at least thirty-six occasions  
8 as alleged above.

9 14. RSA 397-A:17,I provides that the Commissioner may suspend any  
10 license pending any final determination of any order to show  
11 cause or other order, or of any other proceeding under this  
12 section, provided that the Commissioner finds that the public  
13 interest would be irreparably harmed by delay in issuing such  
14 order. Respondents violated the Consent Orders and didn't respond  
15 to the payment plan for the examination fee. Such blatant  
16 disregard for good faith compromises with Respondent Family  
17 Mortgage Company (an active licensee) warrants immediate  
18 suspension of its license to avoid any consumer harm.

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

24 16. RSA 397-A:21,IV provides that any person who, either knowingly or  
25 negligently, violates any provision of Chapter 397-A, may upon

1 hearing, and in addition to any other penalty provided for by  
2 law, be subject to an administrative fine not to exceed \$2,500,  
3 or both. Each of the acts specified shall constitute a separate  
4 violation, and such administrative action or fine may be imposed  
5 in addition to any criminal penalties or civil liabilities  
6 imposed by New Hampshire Banking laws.

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

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