

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-390
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Citadel Mortgage Corporation, and David)
)
 8 Geddes,)
)
 9 Respondents)

10 NOTICE OF ORDER

11 This Order commences an adjudicative proceeding under the provisions
12 of RSA 397-A and RSA 541-A.

13 LEGAL AUTHORITY AND JURISDICTION

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

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

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

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

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

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

14 The above named Respondents have the right to request a hearing on
15 this Order to Show Cause, as well as the right to be represented by counsel
16 at each Respondent's own expense. All hearings shall comply with RSA 541-A.
17 Any such request for a hearing shall be in writing, and signed by the
18 Respondent or the duly authorized agent of the above named Respondent, and
19 shall be delivered either by hand or certified mail, return receipt
20 requested, to the Banking Department, State of New Hampshire, 53 Regional
21 Drive, Suite 200, Concord, NH 03301. Such hearings will be scheduled within
22 10 days of the Department's receipt of the request. If the Respondent fails
23 to appear at the hearing after being duly notified, such person shall be
24 deemed in default, and the proceeding may be determined against the Respondent

1 upon consideration of the Order to Show Cause, the allegations of which may be
2 deemed to be true.

3 If any of the above named Respondents fails to request a hearing within
4 30 calendar days of receipt of such order or reach formal settlement with the
5 Department within that time frame, then such person shall likewise be deemed
6 in default, and the orders shall, on the thirty-first day, become permanent,
7 and shall remain in full force and effect until and unless later modified or
8 vacated by the Commissioner, for good cause shown.

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

10 The Staff Petition dated February 5, 2009 (a copy of which is attached
11 hereto) is incorporated by reference hereto.

12 **ORDER**

13 WHEREAS, finding it necessary and appropriate and in the public
14 interest, and consistent with the intent and purposes of the New Hampshire
15 banking laws, and

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

18 It is hereby ORDERED, that:

- 19 1. Respondent Citadel Mortgage Corporation ("Respondent Citadel
20 Mortgage") shall show cause why penalties in the amount of
21 \$5,000.00 should not be imposed against it;
- 22 2. Respondent David Geddes ("Respondent Geddes") shall show
23 cause why penalties in the amount of \$7,500.00 should not be
24 imposed against him;

1 3. The above named Respondents shall show cause why, in addition
2 to the penalties listed in Paragraphs 1 through 2 above, the
3 \$500.00 examination fee should not be paid to the Department;

4 4. Respondents shall be jointly and severally liable for the
5 above amounts alleged in Paragraphs 1 through 3 above;

6 5. The above named Respondents shall show cause why, in addition
7 to the penalties listed in Paragraphs 1 through 4 above,
8 Respondent Citadel Mortgage's license should not be revoked.

9 It is hereby further ORDERED that:

10 6. Along with the administrative penalties listed for the above
11 named Respondents, the outstanding sum of \$500.00 shall be
12 immediately paid; and

13 7. Failure to request a hearing within 30 days of the date of
14 receipt or valid delivery of this Order shall result in a
15 default judgment being rendered and administrative penalties
16 imposed upon the defaulting Respondent(s).

17
18 SIGNED,

19
20 Dated: 02/05/09

21 /s/
PETER C. HILDRETH
22 BANK COMMISSIONER
23
24
25

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-390
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 7 Citadel Mortgage Corporation, and David)
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 8 Geddes,)
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 9 Respondents)

10 I. STATEMENT OF ALLEGATIONS

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

13 Facts Common on All Counts:

- 14 1. Respondent Citadel Mortgage Corporation (hereinafter "Citadel
15 Mortgage") was licensed as a Mortgage Broker from at least 1999
16 until its license expired on December 31, 2007.
- 17 2. Respondent David Geddes (hereinafter "Respondent Geddes") was
18 the 100% owner and President of Respondent Citadel Mortgage,
19 when licensed by the Department.

20 Violation of RSA 397-A:12,V Failure to Pay Examination Fee (1 Count):

21 Violation of RSA 397-A:13,VI Failure of Officer and Owner to Respond to

22 Department Inquiries (1 Count):

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

24 Commissioner (1 Count):

- 25 3. Paragraphs 1 through 2 are hereby realleged as fully set forth

1 herein.

2 4. The Department conducted an examination of Respondent Citadel
3 Mortgage on March 17, 2008, for activities that occurred while
4 Respondent Citadel Mortgage was licensed with the Department.

5 5. On April 16, 2008, the Department mailed the report of examination
6 and invoice for \$500.00 to Respondent Citadel Mortgage, via U.S.
7 Certified Mail Return Receipt requested, which was returned to
8 the Department on April 21, 2008 as "moved, left no address".

9 6. On April 23, 2008, the Department mailed the report of examination
10 and invoice for \$500.00 to Respondent Citadel Mortgage via UPS,
11 which was returned to the Department on May 5, 2008 because "the
12 package was not picked up as arranged."

13 7. The reason for the failed package delivery by UPS implies that the
14 above named Respondents received the notice and simply decided
15 not to pick it up.

16 8. The Department mailed a second notice on June 24, 2008 and a third
17 notice on August 1, 2008.

18 9. The above named Respondents did not respond to any of the notices
19 for payment of the \$500.00 invoice.

20 10. To date, the above named Respondents still owe the \$500.00
21 examination fee for the one day examination.

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 10 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 397-A:10,IV provides that persons licensed under RSA Chapter
5 397-A are under a continuing obligation to update information on
6 file with the Commissioner. Each of the above named Respondents
7 failed to update the Commissioner on at least one occasion as
8 alleged above.
- 9 4. RSA 397-A:12,V provides that the expense of such examination shall
10 be chargeable to and paid by the licensee. Each of the above
11 named Respondents violated this provision on at least one
12 occasion as alleged above. To date, the above named Respondents
13 have failed to pay the \$500.00 examination invoice.
- 14 5. RSA 397-A:13,VI provides that any officer, owner, manager or agent
15 of any licensee shall reply promptly in writing, or other
16 designated form, to any written inquiry from the Department.
17 Respondent Geddes violated this provision on at least one
18 occasion as alleged above.
- 19 6. RSA 397-A:17,I provides in part that the Commissioner may by
20 order, upon due notice and opportunity for hearing, assess
21 penalties or deny, suspend, or revoke a license or application if
22 it is in the public interest and the applicant, respondent, or
23 licensee, any partner, officer, member, or director, any person
24 occupying a similar status or performing similar functions, or
25 any person directly or indirectly controlling the applicant,

1 respondent, or licensee: (a) has violated any provision of RSA
2 Chapter 397-A or rules thereunder, or (b) has not met the
3 standards established in RSA Chapter 397-A.

4 7. 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 8. 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
13 \$2,500.00, or both. Each of the acts specified shall constitute
14 a separate violation, and such administrative action or fine may
15 be imposed in addition to any criminal penalties or civil
16 liabilities imposed by New Hampshire Banking laws.

17 9. 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 this Staff 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 revoked;
- 17 4. Assess fines and administrative penalties in accordance with RSA
18 397-A:21, for violations of Chapter 397-A, in the number and amount
19 equal to the violations set forth in section II of this Staff
20 Petition; and
- 21 5. Take such other administrative and legal actions as necessary for
22 enforcement of the New Hampshire Banking Laws, the protection of
23 New Hampshire citizens, and to provide other equitable relief.

1 IV. RIGHT TO AMEND

2 The Department reserves the right to amend this Staff Petition and to
3 request that the Commissioner take additional administrative action.
4 Nothing herein shall preclude the Department from bringing additional
5 enforcement action under RSA 397-A or the regulations thereunder.

6
7 Respectfully submitted by:

8
9 /s/
10 Maryam Torben Desfosses
Hearings Examiner

 02/05/09
Date