

1 State of New Hampshire Banking Department

)Case No.: 09-002

2 In re the Matter of:

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3 State of New Hampshire Banking

)

)Order to Show Cause

4 Department,

)

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5 Petitioner,

)

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6 and

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7 U.S. Funding Inc. (d/b/a U.S.F.I.

)

)

8 Lending Group), and Jay Park,

)

)

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
25 upon consideration of the Order to Show Cause, the allegations of which may be

1 deemed to be true.

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

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

9 The Staff Petition dated January 30, 2009 (a copy of which is attached
10 hereto) is incorporated by reference hereto.

11 **ORDER**

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

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

17 It is hereby ORDERED, that:

- 18 1. Respondent U.S. Funding Inc. (d/b/a U.S.F.I. Lending Group)
19 ("Respondent U.S. Funding") shall show cause why penalties in
20 the amount of \$10,000.00 should not be imposed against it;
- 21 2. Respondent Jay Park ("Respondent Park") shall show cause why
22 penalties in the amount of \$17,500.00 should not be imposed
23 against him;
- 24 3. The above named Respondents shall show cause why, in addition
25 to the penalties listed in Paragraphs 1 through 2 above, the

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-002
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3 State of New Hampshire Banking)
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4 Department,) Staff Petition
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5 Petitioner,) January 30, 2009
))
6 and)
))
7 U.S. Funding Inc. (d/b/a U.S.F.I.)
))
8 Lending Group), and Jay Park,)
))
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 U.S. Funding Inc. (d/b/a U.S.F.I. Lending Group)
15 (hereinafter "Respondent U.S. Funding") was licensed as a
16 Mortgage Banker from at least July 24, 2007 until its license
17 expired on December 31, 2008.
- 18 2. Respondent Jay Park (hereinafter "Respondent Park") was the 100%
19 owner of Respondent U.S. Funding, when licensed by the
20 Department.

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

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

23 Department Inquiries (1 Count):

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

1 4. The Department conducted an examination of Respondent U.S. Funding
2 on July 21, 2008, while Respondent U.S. Funding was still
3 licensed with the Department.

4 5. On December 1, 2008, the Department mailed the invoice for \$500.00
5 to Respondent U.S. Funding, via U.S. Certified Mail Return
6 Receipt requested, which Respondents received on December 9,
7 2008.

8 6. The Respondents failed to respond to the December 1, 2008
9 Department correspondence.

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

12 **Violation of RSA 397-A:12,VII Failure to Facilitate Exam (1 Count):**

13 **Violation of RSA 397-A:12,III Examinations: Failure to Provide Requested**

14 **Files (1 Count):**

15 **Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested**

16 **Files (1 Count):**

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

18 **Department Inquiries (2 Counts):**

19 8. Paragraphs 1 through 7 are hereby realleged as fully set forth
20 herein.

21 9. The Department conducted an examination of Respondent U.S. Funding
22 on July 21, 2008.

23 10. On June 20, 2008, the Department sent the notice of examination to
24 Respondent U.S. Funding via U.S. Certified Mail Return Receipt
25 requested, which the Respondent received on June 24, 2008.

1 11. The materials requested in the June 20, 2008 notice of examination
2 were due on July 15, 2008, which is 21 days after the June 24,
3 2008 delivery of the notice of examination.

4 12. The above named Respondents failed to respond to the June 20, 2008
5 notice of examination.

6 13. On or about August 29, 2008, the Department sent a reminder email
7 and letter via U.S. Certified Mail Return Receipt requested to
8 Respondent Park requesting the materials that the Department did
9 not receive as a result of the June 20, 2008 notice of
10 examination.

11 14. Respondent U.S. Funding received the August 29, 2008 certified
12 reminder letter on September 2, 2008.

13 15. To date, the above named Respondents have failed to respond to the
14 June 23, 2008 Department correspondence.

15 16. To date, the above named Respondents have failed to file
16 examination materials with the Department.

17 17. To date, the above named Respondents currently owe \$9,950.00
18 (\$50.00 a day x 199 days), and still accruing, for failing to
19 provide examination materials.

20 **II. ISSUES OF LAW**

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

22 1. The Department realleges the above stated facts in Paragraphs 1
23 through 17 as fully set forth herein.

24 2. The Department has jurisdiction over the licensing and regulation
25 of persons engaged in mortgage banker or broker activities

1 pursuant to NH RSA 397-A:2 and RSA 397-A:3.

2 3. RSA 397-A:11,II provides that requested files and business records
3 must be received by the Department within 21 calendar days of
4 request. The licensee will be subject to a \$50.00 a day fine
5 every day after the 21-day period the records are not produced.
6 Respondents currently owe \$9,950.00. Each of the above named
7 Respondents violated this statute on at least one occasion as
8 alleged above.

9 4. RSA 397-A:12,III requires licensees to comply with examination
10 requests with or without prior notice. All books, papers, files,
11 related material, and records of assets shall be subject to the
12 Department's examination. Each of the above named Respondents
13 violated this statute on at least one occasion as alleged above.

14 5. RSA 397-A:12,V provides that the expense of such examination shall
15 be chargeable to and paid by the licensee. Each of the above
16 named Respondents violated this provision on at least one
17 occasion as alleged above. To date, the above named Respondents
18 have failed to pay the \$500.00 examination invoice.

19 6. RSA 397-A:12,VII provides that every person being examined, and
20 all of the officers, directors, employees, agents, and
21 representatives of such person shall make freely available to the
22 Commissioner or his or her examiners, the accounts, records,
23 documents, files, information, assets, and matters in their
24 possession or control relating to the subject of the examination
25 and shall facilitate the examination. Each of the above named

1 Respondents violated this statute on at least one occasion as
2 alleged above.

3 7. RSA 397-A:13,VI provides that any officer, owner, manager or agent
4 of any licensee shall reply promptly in writing, or other
5 designated form, to any written inquiry from the Department.
6 Respondent Park violated this provision on at least three
7 occasions each as alleged above.

8 8. RSA 397-A:17,I provides in part that the Commissioner may by
9 order, upon due notice and opportunity for hearing, assess
10 penalties or deny, suspend, or revoke a license or application if
11 it is in the public interest and the applicant, respondent, or
12 licensee, any partner, officer, member, or director, any person
13 occupying a similar status or performing similar functions, or
14 any person directly or indirectly controlling the applicant,
15 respondent, or licensee: (a) has violated any provision of RSA
16 Chapter 397-A or rules thereunder, or (b) has not met the
17 standards established in RSA Chapter 397-A.

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

23 10. RSA 397-A:21,IV provides that any person who, either knowingly or
24 negligently, violates any provision of Chapter 397-A, may upon
25 hearing, and in addition to any other penalty provided for by

1 law, be subject to an administrative fine not to exceed
2 \$2,500.00, or both. Each of the acts specified shall constitute
3 a separate violation, and such administrative action or fine may
4 be imposed in addition to any criminal penalties or civil
5 liabilities imposed by New Hampshire Banking laws.

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

22 **III. RELIEF REQUESTED**

23 The staff of the Department requests the Commissioner take the following
24 action:

- 25 1. Find as fact the allegations contained in section I of this Staff

