

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 09-005  
 )  
 3 State of New Hampshire Banking )  
 )  
 4 Department, ) Order to Show Cause  
 )  
 5 Petitioner, )  
 )  
 6 and )  
 )  
 7 Nationwide Mortgage Lenders Corporation )  
 )  
 8 (d/b/a Homepoint Mortgage), and John )  
 )  
 9 D'Amato, )  
 )  
 10 Respondents )

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11 NOTICE OF ORDER

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

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

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

1 provisions of the Chapter.

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

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

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 Chapter  
17 541-A. 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 a formal written and  
4 executed settlement with the Department within that time frame, then such  
5 person shall likewise be deemed in default, and the orders shall, on the  
6 thirty-first day, become permanent, and shall remain in full force and effect  
7 until and unless later modified or vacated by the Commissioner, for good cause  
8 shown.

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

10 The Staff Petition dated July 10, 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 Nationwide Mortgage Lenders Corporation (d/b/a  
20 Homepoint Mortgage) ("Respondent Homepoint Mortgage") shall  
21 show cause why penalties in the amount of \$12,500.00 should  
22 not be imposed against it;
- 23 2. Respondent John D'Amato ("Respondent D'Amato") shall show  
24 cause why penalties in the amount of \$15,000.00 should not be  
25 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. The above named Respondents shall show cause why, in addition  
5 to the penalties listed in Paragraphs 1 through 3 above,  
6 statutory penalties of \$2,500.00 should not be imposed for  
7 failing to file the 2007 annual report;
- 8 5. Respondents shall be jointly and severally liable for the  
9 above amounts alleged in Paragraphs 1 through 4 above;
- 10 6. The above named Respondents shall show cause why, in addition  
11 to the penalties listed in Paragraphs 1 through 5 above,  
12 Respondent Homepoint Mortgage's license should not be  
13 revoked.

14 It is hereby further ORDERED that:

- 15 7. Along with the administrative penalties listed for the above  
16 named Respondents, the outstanding sum of \$3,000.00 shall be  
17 immediately paid; and
- 18 8. Failure to request a hearing within 30 days of the date of  
19 receipt or valid delivery of this Order shall result in a  
20 default judgment being rendered and administrative penalties  
21 imposed upon the defaulting Respondent(s).

22 SIGNED,

23  
24 Dated: 07/14/09

25 \_\_\_\_\_  
/s/  
PETER C. HILDRETH  
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 09-005  
3 State of New Hampshire Banking )  
4 Department, ) Staff Petition  
5 Petitioner, ) July 10, 2009  
6 and )  
7 Nationwide Mortgage Lenders Corporation )  
8 (d/b/a Homepoint Mortgage), and John )  
9 D'Amato, )  
10 Respondents )

11 I. STATEMENT OF ALLEGATIONS

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

14 Facts Common on All Counts:

- 15 1. Respondent Nationwide Mortgage Lenders Corporation (d/b/a  
16 Homepoint Mortgage) (hereinafter "Respondent Homepoint Mortgage")  
17 was licensed as a Mortgage Broker from at least February 9, 2004  
18 (with an amended license date of February 12, 2007) until its  
19 license expired on December 31, 2007.
- 20 2. Respondent John D'Amato (hereinafter "Respondent D'Amato") was  
21 the President of Respondent Homepoint Mortgage, when licensed by  
22 the Department.

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

2 Violation of RSA 397-A:10,IV Failure to Update Information on File with  
3 Commissioner (1 Count):

4 3. Paragraphs 1 through 2 are hereby realleged as fully set forth  
5 herein.

6 4. The Department conducted an examination of Respondent Homepoint  
7 Mortgage on February 25, 2008, for activities that occurred while  
8 Respondent Homepoint Mortgage was licensed with the Department.

9 5. On February 5, 2008, the Department sent the notice of examination  
10 to Respondent Homepoint Mortgage via U.S. Certified Mail Return  
11 Receipt requested, which was returned to the Department on  
12 February 15, 2008 as "attempted, not known".

13 6. On February 21, 2008, the Department sent the notice of  
14 examination via UPS, which was returned to the Department on  
15 March 4, 2008 as "receiver moved".

16 7. To date, the above named Respondents have failed to provide new  
17 location information to the Department.

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

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

21 9. The Department conducted an examination of Respondent Homepoint  
22 Mortgage on February 25, 2008, for activities that occurred while  
23 Respondent Homepoint Mortgage was licensed with the Department.

24 10. As mentioned above, Respondent Homepoint Mortgage failed to  
25 facilitate the examination.

1 11. On July 22, 2008, the Department mailed the invoice for \$500.00 to  
2 Respondent Homepoint Mortgage, via U.S. Certified Mail Return  
3 Receipt requested, which was returned to the Department on August  
4 4, 2008.

5 12. The Department, via U.S. mail, mailed a second notice on August  
6 26, 2008 and a third notice on October 9, 2008.

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

9 Violation of RSA 397-A:10-a,I(a) Failure to Properly Surrender License (1  
10 Count):

11 Violation of RSA 397-A:13,I Failure to File Annual Report (1 Count):

12 Violation of RSA 397-A:13,VI Failure of Officer and Owner to Respond to  
13 Department Inquiries (1 Count):

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

16 15. The 2007 Annual Report was due on or before February 1, 2008.

17 16. On January 4, 2008, the Department sent a certified letter  
18 advising the Respondents that Respondent Homepoint Mortgage's  
19 license had expired on December 31, 2007 and that Respondents had  
20 to file proper surrender forms and an annual report.

21 17. Respondents received the January 4, 2008 certified letter on  
22 January 10, 2008, but failed to respond.

23 18. On February 5, 2008, the Department sent a certified letter that  
24 the annual report was due on February 1, 2008. The letter was  
25 returned as "attempted not known and unable to forward".

1 19. To date, the Department has not received copies of the publication  
2 notice nor the expiration paperwork nor the 2007 annual report.

3 20. To date, the accrued penalty for failure to file an annual report  
4 has reached the maximum cap of \$2,500.00.

5 **II. ISSUES OF LAW**

6 The staff of the Department alleges the following issues of law:

7 1. The Department realleges the above stated facts in Paragraphs 1  
8 through 19 as fully set forth herein.

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

12 3. RSA 397-A:10-a, I(a) provides that a licensee who ceases to engage  
13 in the business of a mortgage banker or mortgage broker at any  
14 time during a license year for any cause shall surrender such  
15 license in person or by registered or certified mail to the  
16 Commissioner within 15 calendar days of such cessation, and shall  
17 cause to be published in a newspaper of general circulation in the  
18 licensee's market area a notice to such effect. Each of the above  
19 named Respondents violated this statute on at least one occasion  
20 as alleged above.

21 4. RSA 397-A:10, IV provides that persons licensed under RSA Chapter  
22 397-A are under a continuing obligation to update information on  
23 file with the Commissioner. Each of the above named Respondents  
24 failed to update the Commissioner on at least one occasion as  
25 alleged above.



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

6 6. RSA 397-A:12,VII provides that every person being examined, and  
7 all of the officers, directors, employees, agents, and  
8 representatives of such person shall make freely available to the  
9 Commissioner or his or her examiners, the accounts, records,  
10 documents, files, information, assets, and matters in their  
11 possession or control relating to the subject of the examination  
12 and shall facilitate the examination. Each of the above named  
13 Respondents violated this statute on at least one occasion as  
14 alleged above.

15 7. RSA 397-A:13,I provides that a licensee shall file its annual  
16 report on or before February 1 each year concerning operations  
17 for the preceding year or license period ending December 31.  
18 Each of the above named Respondents violated this provision on at  
19 least one occasion as alleged above.

20 8. RSA 397-A:13,VI provides that any officer, owner, manager or agent  
21 of any licensee shall reply promptly in writing, or other  
22 designated form, to any written inquiry from the Department.  
23 Respondent D'Amato violated this provision on at least one  
24 occasion as alleged above.

25 9. RSA 397-A:18,I provides that the Department may issue a complaint

1 setting forth charges whenever the Department is of the opinion  
2 that the licensee or person over whom the Department has  
3 jurisdiction, has violated any provision of RSA 397-A or orders  
4 thereunder.

5 10. RSA 397-A:21,IV provides that any person who, either knowingly or  
6 negligently, violates any provision of Chapter 397-A, may upon  
7 hearing, and in addition to any other penalty provided for by  
8 law, be subject to an administrative fine not to exceed  
9 \$2,500.00, or both. Each of the acts specified shall constitute  
10 a separate violation, and such administrative action or fine may  
11 be imposed in addition to any criminal penalties or civil  
12 liabilities imposed by New Hampshire Banking laws.

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

1 constitute a separate violation, and such administrative action or  
2 fine may be imposed in addition to any criminal or civil penalties  
3 imposed.

4 **III. RELIEF REQUESTED**

5 The staff of the Department requests the Commissioner take the following  
6 action:

- 7 1. Find as fact the allegations contained in section I of this Staff  
8 Petition;
- 9 2. Make conclusions of law relative to the allegations contained in  
10 section II of this Staff Petition;
- 11 3. Pursuant to RSA 397-A:17, order each of the above named  
12 Respondents to show cause why their license should not be revoked;
- 13 4. Assess fines and administrative penalties in accordance with RSA  
14 397-A:21, for violations of Chapter 397-A, in the number and  
15 amount equal to the violations set forth in section II of this  
16 Staff Petition; and
- 17 5. Take such other administrative and legal actions as necessary for  
18 enforcement of the New Hampshire Banking Laws, the protection of  
19 New Hampshire citizens, and to provide other equitable relief.

