

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-010
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Competitive Lending Mortgage Company,)
)
 8 LLC, and Tina M. Christy,)
)
 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.

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

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

25 If any of the above named Respondents fails to request a hearing within

1 30 calendar days of receipt of such order or reach a formal written and
2 executed settlement with the Department within that time frame, then such
3 person shall likewise be deemed in default, and the orders shall, on the
4 thirty-first day, become permanent, and shall remain in full force and effect
5 until and unless later modified or vacated by the Commissioner, for good cause
6 shown.

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

8 The Staff Petition dated June 1, 2009 (a copy of which is attached
9 hereto) is incorporated by reference hereto.

10 **ORDER**

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

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

16 It is hereby ORDERED, that:

- 17 1. Respondent Competitive Lending Mortgage Company, LLC
18 ("Respondent Competitive Lending") shall show cause why
19 penalties in the amount of \$12,500.00 should not be imposed
20 against it;
- 21 2. Respondent Tina M. Christy ("Respondent Christy") shall show
22 cause why penalties in the amount of \$15,000.00 should not be
23 imposed against her;
- 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 \$500.00 examination fee should not be paid to the Department;

2 4. The above named Respondents shall show cause why, in addition
3 to the penalties listed in Paragraphs 1 through 3 above, the
4 accrued fine of \$17,150.00 for failing to provide examination
5 materials plus the UPS cost of \$11.88 should not be paid to
6 the Department;

7 5. The above named Respondents shall show cause why, in addition
8 to the penalties listed in Paragraphs 1 through 4 above, the
9 unpaid fee of \$1,050.00 for the late filing of the financial
10 statement should not be paid to the Department;

11 6. Respondents shall be jointly and severally liable for the
12 above amounts alleged in Paragraphs 1 through 5 above;

13 7. The above named Respondents shall show cause why, in addition
14 to the penalties listed in Paragraphs 1 through 6 above,
15 Respondent Competitive Lending's license should not be
16 revoked.

17 It is hereby further ORDERED that:

18 8. Along with the administrative penalties listed for the above
19 named Respondents, the outstanding sum of \$18,711.88 shall be
20 immediately paid; and

1 9. Failure to request a hearing within 30 days of the date of
2 receipt or valid delivery of this Order shall result in a
3 default judgment being rendered and administrative penalties
4 imposed upon the defaulting Respondent(s).

5
6 SIGNED,

7
8 Dated: 06/01/09

9 /s/
PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-010
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) June 1, 2009
)
 6 and)
)
 7 Competitive Lending Mortgage Company,)
)
 8 LLC, and Tina M. Christy,)
)
 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 Competitive Lending Mortgage Company, LLC (hereinafter
15 "Respondent Competitive Lending") was licensed as a Mortgage
16 Broker from at least June 29, 2007 until its license expired on
17 December 31, 2008.
- 18 2. Respondent Tina M. Christy (hereinafter "Respondent Christy") was
19 the 100% owner and Sole Member of Respondent Competitive Lending,
20 when licensed by the Department.

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

22 Violation of RSA 397-A:12,III Examinations: Failure to Provide Requested
23 Files (1 Count):

24 Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested
25 Files (1 Count):

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

2 Department Inquiries (1 Count):

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

5 4. The Department attempted to conduct an examination of Respondent
6 Competitive Lending on June 23, 2008, while Respondent
7 Competitive Lending was still licensed with the Department.

8 5. On May 23, 2008, the Department sent the notice of examination to
9 Respondent Competitive Lending via U.S. Certified Mail Return
10 Receipt requested, which Respondents received on June 2, 2008 and
11 responded that they were in the process of surrendering their
12 Department mortgage broker license.

13 6. On June 9, 2008, the Department sent an email to Respondent
14 Competitive Lending, indicating that Respondent Competitive
15 Lending was still required to submit the requested materials.

16 7. The materials requested in the notice of examination were due on
17 June 23, 2008, which is 21 days after the June 2, 2008 delivery
18 of the notice of examination.

19 8. On July 23, 2008, with no response, acknowledgment or examination
20 materials received, the Department sent the notice of examination
21 to Respondent Competitive Lending again by U.S. Certified Mail
22 Return Receipt requested, which the post office returned to the
23 Department on August 11, 2008 as "not deliverable as addressed -
24 unable to forward". The same letter was sent via UPS on August
25 11, 2008. An attempt to deliver was made on August 19, 2008 but

1 the receiver had moved. Another attempt was made on August 20,
2 2008, but the receiver refused delivery. The cost of UPS was
3 \$11.88.

4 9. To date, the Department has not received the examination
5 materials.

6 10. To date, fines have accrued for failing to provide the requested
7 files. The current fine to date is \$17,150.00 (\$50.00 a day x
8 343 days) and still accruing.

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

10 11. Paragraphs 1 through 10 are hereby realleged as fully set forth
11 herein.

12 12. The Department conducted an examination of Respondent Competitive
13 Lending on June 23, 2008, while Respondent Competitive Lending
14 was still licensed with the Department.

15 13. On December 1, 2008, the Department mailed the report of
16 examination and invoice for \$500.00 to Respondent Competitive
17 Lending, via U.S. Certified Mail Return Receipt requested, which
18 the post office returned to the Department on December 8, 2008 as
19 "not deliverable".

20 14. On December 9, 2008, the Department mailed the report of
21 examination and invoice for \$500.00 to Respondent Competitive
22 Lending via UPS, which the post office returned to the Department
23 on December 18, 2008 as "receiver moved".

24 15. The Department, via U.S. mail, submitted reminders on January 20,
25 2009 and February 20, 2009.

1 16. The Department, via U.S. mail, mailed another notice on January
2 29, 2009 for the \$11.88 UPS charges.

3 17. The above named Respondents did not respond to any of the notices
4 for payment of the \$500.00 invoice nor the \$11.88 UPS charge.

5 18. To date, the above named Respondents still owe the \$500.00
6 examination fee for the one day examination and the \$11.88 UPS
7 charge.

8 **Violation of RSA 397-A:13,IV Failure to Pay Late Penalty Owed for Late**

9 **Filing of Financial Statement(1 Count):**

10 19. Paragraphs 1 through 17 are hereby realleged as fully set forth
11 herein.

12 20. Respondent Competitive Lending's financial statement was due on or
13 before March 31, 2008.

14 21. Respondent Competitive Lending was still licensed at the time its
15 financial statement filing was due to the Department.

16 22. The Department received Respondent Competitive Lending's financial
17 statement on May 12, 2008 (42 days late), which generated a fine
18 of \$1,050.00 (\$25.00 a day x 42 days).

19 23. The Department submitted correspondence to Respondents on May 8,
20 2008 to pay the fine. On May 12, 2008, the Department received a
21 facsimile requesting a telephone call regarding the late charges.

22 24. Since waivers are not discussed or granted by telephone, the
23 Department submitted a response on May 20, 2008 requesting
24 information on the reasons for the late filing, as well as
25 Respondent Competitive Lending's negative net worth as discovered

1 by the Department.

2 25. The Department sent invoices May, July and September of 2008.

3 26. To date, the outstanding fine of \$1,050.00 is still unpaid.

4 **II. ISSUES OF LAW**

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

6 1. The Department realleges the above stated facts in Paragraphs 1
7 through 26 as fully set forth herein.

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

11 3. RSA 397-A:11,II provides that requested files and business records
12 must be received by the Department within 21 calendar days of
13 request. The licensee will be subject to a \$50.00 a day fine
14 every day after the 21-day period the records are not produced.
15 Respondents currently owe \$17,150.00. Each of the above named
16 Respondents violated this statute on at least one occasion as
17 alleged above.

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

23 5. 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 named Respondents violated this provision on at least one

1 occasion as alleged above. To date, the above named Respondents
2 have failed to pay the \$500.00 examination invoice.

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

12 7. RSA 397-A:13,VI provides that any officer, owner, manager or agent
13 of any licensee shall reply promptly in writing, or other
14 designated form, to any written inquiry from the Department.
15 Respondent Christy violated this provision on at least one
16 occasion as alleged above.

17 8. RSA 397-A:17,I provides in part that the Commissioner may by
18 order, upon due notice and opportunity for hearing, assess
19 penalties or deny, suspend, or revoke a license or application if
20 it is in the public interest and the applicant, respondent, or
21 licensee, any partner, officer, member, or director, any person
22 occupying a similar status or performing similar functions, or
23 any person directly or indirectly controlling the applicant,
24 respondent, or licensee: (a) has violated any provision of RSA
25 Chapter 397-A or rules thereunder, or (b) has not met the

1 standards established in RSA Chapter 397-A.

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

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

15 11. RSA 397-A:21,V provides that every person who directly or
16 indirectly controls a person liable under this section, every
17 partner, principal executive officer or director of such person,
18 every person occupying a similar status or performing a similar
19 function, every employee of such person who materially aids in the
20 act constituting the violation, and every licensee or person acting
21 as a common law agent who materially aids in the acts constituting
22 the violation, either knowingly or negligently, may, upon notice
23 and opportunity for hearing, and in addition to any other penalty
24 provided for by law, be subject to suspension, revocation, or
25 denial of any registration or license, including the forfeiture of

1 any application fee, or the imposition of an administrative fine
2 not to exceed \$2,500, or both. Each of the acts specified shall
3 constitute a separate violation, and such administrative action or
4 fine may be imposed in addition to any criminal or civil penalties
5 imposed.

6 **III. RELIEF REQUESTED**

7 The staff of the Department requests the Commissioner take the following
8 action:

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

