

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 10, 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 Foundation Mortgage Corporation ("Respondent
18 Foundation Mortgage") shall show cause why penalties in the
19 amount of \$5,000.00 should not be imposed against it;
- 20 2. Respondent Keith Shaughnessy ("Respondent Shaughnessy") shall
21 show cause why penalties in the amount of \$7,500.00 should
22 not be imposed against him;
- 23 3. Respondent Jeffrey Garibolto ("Respondent Garibolto") shall
24 show cause why penalties in the amount of \$7,500.00 should
25 not be imposed against him;

1 4. The above named Respondents shall show cause why, in addition
2 to the penalties listed in Paragraphs 1 through 3 above, the
3 \$2,135.00 examination fee should not be paid to the
4 Department;

5 5. The above named Respondents shall show cause why, in addition
6 to the penalties listed in Paragraphs 1 through 4 above, the
7 accrued fine of \$750.00 for the late filing of examination
8 materials should not be paid to the Department;

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

11 7. The above named Respondents shall show cause why, in addition
12 to the penalties listed in Paragraphs 1 through 6 above,
13 Respondent Foundation Mortgage's license should not be
14 revoked.

15 It is hereby further ORDERED that:

16 8. Along with the administrative penalties listed for the above
17 named Respondents, the outstanding sum of \$2,885.00 shall be
18 immediately paid; and

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21 [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
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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: 06/10/09

9 /s/
PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-020
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) June 10, 2009
)
 6 and)
)
 7 Foundation Mortgage Corporation, Keith)
)
 8 Shaughnessy, and Jeffrey Garibolto,)
)
 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 Foundation Mortgage Corporation (hereinafter
15 "Respondent Foundation Mortgage") was licensed as a Mortgage
16 Broker from at least 1997 (with an amended license date of
17 February 20, 2007) until its license expired on December 31,
18 2007.
- 19 2. Respondent Keith Shaughnessy (hereinafter "Respondent
20 Shaughnessy") was the 55% owner, President and control person of
21 Respondent Foundation Mortgage, when licensed by the Department.
- 22 3. Respondent Jeffrey Garibolto (hereinafter "Respondent
23 Garibolto") was the 45% owner, Secretary and control person of
24 Respondent Foundation Mortgage, when licensed by the Department.

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

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

3 Department Inquiries (1 Count):

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

6 5. The Department conducted an examination of Respondent Foundation
7 Mortgage on June 4, 2007, while Respondent Foundation Mortgage
8 was still licensed with the Department.

9 6. On March 28, 2008, the Department mailed the report of examination
10 and invoice for \$2,135.00 to Respondent Foundation Mortgage, via
11 U.S. Certified Mail Return Receipt requested, which Respondents
12 received on April 3, 2008.

13 7. The above named Respondents failed to respond to the March 28,
14 2008 correspondence from the Department.

15 8. The Department, via U.S. mail, mailed a second notice on April 29,
16 2008 and a third notice on June 24, 2008.

17 9. The above named Respondents did not respond to any of the three
18 notices for payment of the \$2,135.00 invoice.

19 10. To date, the above named Respondents still owe the \$2,135.00
20 examination fee for the 4.27 day examination.

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

22 Files in a Timely Manner (1 Count):

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

25 12. On May 7, 2007, the Department mailed a notice of examination to

1 Respondent Foundation Mortgage, via U.S. Certified Mail Return
2 Receipt requested, which Respondents received on May 10, 2007.

3 13. Respondents returned the loan list in a timely manner.

4 14. On July 27, 2007, the Department mailed a request for particular
5 loan files, which the Respondents received on August 1, 2007.

6 15. Respondents had 21 days from August 1, 2007, which would be August
7 22, 2007, to submit the particular loan files to the Department.

8 16. Respondents did not submit those loan files until September 6,
9 2007 (15 days later).

10 17. Respondent Foundation Mortgage's late submittal of examination
11 materials generated a fine of \$750.00 (\$50.00 per day x 15 days).

12 18. On September 11, 2007, the Department sent Respondent Foundation
13 Mortgage the invoice for the late filing of examination
14 materials.

15 19. With no response or payment, the Department mailed a second notice
16 to Respondents on November 1, 2007 and a third notice on December
17 7, 2007.

18 20. The above named Respondents did not respond to any of the three
19 notices for payment of the \$750.00 invoice.

20 21. To date, the above named Respondents still owe \$750.00 for the
21 late filing of examination materials.

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 21 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:11,II provides that requested files and business records
5 must be received by the Department within 21 calendar days of
6 request. The licensee will be subject to a \$50.00 a day fine
7 every day after the 21-day period the records are not produced.
8 Respondents currently owe \$750.00. Each of the above named
9 Respondents violated this statute on at least one occasion as
10 alleged above.

11 4. RSA 397-A:12,V provides that the expense of such examination shall
12 be chargeable to and paid by the licensee. Each of the above
13 named Respondents violated this provision on at least one
14 occasion as alleged above. To date, the above named Respondents
15 have failed to pay the \$2,135.00 examination invoice.

16 5. RSA 397-A:13,VI provides that any officer, owner, manager or agent
17 of any licensee shall reply promptly in writing, or other
18 designated form, to any written inquiry from the Department.
19 Respondent Shaughnessy and Respondent Garibolto each violated
20 this provision on at least one occasion as alleged above.

21 6. RSA 397-A:17,I provides in part that the Commissioner may by
22 order, upon due notice and opportunity for hearing, assess
23 penalties or deny, suspend, or revoke a license or application if
24 it is in the public interest and the applicant, respondent, or
25 licensee, any partner, officer, member, or director, any person

1 occupying a similar status or performing similar functions, or
2 any person directly or indirectly controlling the applicant,
3 respondent, or licensee: (a) has violated any provision of RSA
4 Chapter 397-A or rules thereunder, or (b) has not met the
5 standards established in RSA Chapter 397-A.

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

11 8. RSA 397-A:21,IV provides that any person who, either knowingly or
12 negligently, violates any provision of Chapter 397-A, may upon
13 hearing, and in addition to any other penalty provided for by
14 law, be subject to an administrative fine not to exceed
15 \$2,500.00, or both. Each of the acts specified shall constitute
16 a separate violation, and such administrative action or fine may
17 be imposed in addition to any criminal penalties or civil
18 liabilities imposed by New Hampshire Banking laws.

19 9. RSA 397-A:21,V provides that every person who directly or
20 indirectly controls a person liable under this section, every
21 partner, principal executive officer or director of such person,
22 every person occupying a similar status or performing a similar
23 function, every employee of such person who materially aids in the
24 act constituting the violation, and every licensee or person acting
25 as a common law agent who materially aids in the acts constituting

1 the violation, either knowingly or negligently, may, upon notice
2 and opportunity for hearing, and in addition to any other penalty
3 provided for by law, be subject to suspension, revocation, or
4 denial of any registration or license, including the forfeiture of
5 any application fee, or the imposition of an administrative fine
6 not to exceed \$2,500, or both. Each of the acts specified shall
7 constitute a separate violation, and such administrative action or
8 fine may be imposed in addition to any criminal or civil penalties
9 imposed.

10 **III. RELIEF REQUESTED**

11 The staff of the Department requests the Commissioner take the following
12 action:

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

