

1 State of New Hampshire Banking Department

2	In re the Matter of:	) Case No.: 09-043
		)
3	State of New Hampshire Banking	)
4	Department,	) Order to Show Cause
		)
5	Petitioner,	)
		)
6	and	)
		)
7	Bankstreet Mortgage LLC, and George	)
		)
8	Scott MacGregor,	)
		)
9	Respondents	)

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10 NOTICE OF ORDER

11 This Order commences an adjudicative proceeding under the provisions  
12 of RSA Chapter 397-A and RSA Chapter 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,IV 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 Chapter  
7 358-A and exempt under RSA 358-A:3,I or that may violate any of the  
8 provisions of Titles XXXV and XXXVI and administrative rules adopted  
9 thereunder. The Commissioner may hold hearings relative to such conduct and  
10 may order restitution for a person or persons adversely affected by such  
11 conduct.

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

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

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

8                     STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF

9           The Staff Petition dated July 31, 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 Bankstreet Mortgage LLC ("Respondent Bankstreet  
19           Mortgage") shall show cause why penalties in the amount of  
20           \$10,000.00 should not be imposed against it;
- 21           2. Respondent George Scott MacGregor ("Respondent MacGregor")  
22           shall show cause why penalties in the amount of \$15,000.00  
23           should not be imposed 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

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 3 State of New Hampshire Banking )  
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 4 Department, ) Staff Petition  
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 5 Petitioner, ) July 31, 2009  
 )  
 6 and )  
 )  
 7 Bankstreet Mortgage LLC, and George )  
 )  
 8 Scott MacGregor, )  
 )  
 9 Respondents )

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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 Bankstreet Mortgage LLC (hereinafter "Respondent  
15 Bankstreet Mortgage") was licensed as a Mortgage Broker from at  
16 least May 8, 2006 (with an amended license date of June 14, 2007)  
17 until it surrendered its license on November 12, 2008.
- 18 2. Respondent George Scott MacGregor (hereinafter "Respondent  
19 MacGregor") was the 100% owner of Respondent Bankstreet Mortgage,  
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 (2 Counts):

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 Bankstreet Mortgage on October 27, 2008, while Respondent  
7 Bankstreet Mortgage was still licensed with the Department.

8 5. On September 26, 2008, the Department sent the notice of  
9 examination to Respondent Bankstreet Mortgage via U.S. Certified  
10 Mail Return Receipt requested, which Respondents received on  
11 October 2, 2008.

12 6. The materials requested in the notice of examination were due on  
13 October 23, 2008, which is 21 days after the October 2, 2008  
14 delivery of the notice of examination.

15 7. On December 2, 2008, with no response, acknowledgment or  
16 examination materials received, the Department sent the notice of  
17 examination to Respondent Bankstreet Mortgage again by U.S.  
18 Certified Mail Return Receipt requested, which Respondents  
19 received on December 16, 2008.

20 8. A third attempt was made by the Department via email on December  
21 2, 2008.

22 9. To date, the Department has not received the examination materials  
23 or acknowledged the examination.

24 10. To date, fines have accrued for failing to provide the requested  
25 files. The current fine to date is \$14,050.00 (\$50.00 a day x

1 281 days) and still accruing.

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

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

5 12. The Department conducted an examination of Respondent Bankstreet  
6 Mortgage on October 27, 2008, while Respondent Bankstreet  
7 Mortgage was still licensed with the Department.

8 13. On March 4, 2009, the Department mailed the invoice for \$500.00 to  
9 Respondent Bankstreet Mortgage, via U.S. Certified Mail Return  
10 Receipt requested, which the post office returned to the  
11 Department on March 12, 2009 as "moved, left no address".

12 14. The Department, via U.S. mail, mailed another notice on April 17,  
13 2009 and a third notice on May 21, 2009.

14 15. The above named Respondents did not respond to any of the notices  
15 for payment of the \$500.00 invoice.

16 16. To date, the above named Respondents still owe the \$500.00  
17 examination fee for the one day examination.

18 **II. ISSUES OF LAW**

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

20 1. The Department realleges the above stated facts in Paragraphs 1  
21 through 16 as fully set forth herein.

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

25 3. RSA 397-A:11, II provides that requested files and business records

1 must be received by the Department within 21 calendar days of  
2 request. The licensee will be subject to a \$50.00 a day fine  
3 every day after the 21-day period the records are not produced.  
4 Respondents currently owe \$14,050.00. Each of the above named  
5 Respondents violated this statute on at least one occasion as  
6 alleged above.

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

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

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



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

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

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

21 10. RSA 397-A:21,IV provides that any person who, either knowingly  
22 or negligently, violates any provision of Chapter 397-A, may upon  
23 hearing, and in addition to any other penalty provided for by law,  
24 be subject to an administrative fine not to exceed \$2,500.00, or  
25 both. Each of the acts specified shall constitute a separate

1 violation, and such administrative action or fine may be imposed  
2 in addition to any criminal penalties or civil liabilities imposed  
3 by New Hampshire Banking laws.

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

20 **III. RELIEF REQUESTED**

21 The staff of the Department requests the Commissioner take the following  
22 action:

- 23 1. Find as fact the allegations contained in section I of this Staff  
24 Petition;  
25 2. Make conclusions of law relative to the allegations contained in

1 section II of this Staff Petition;

2 3. Pursuant to RSA 397-A:17, order each of the above named  
3 Respondents to show cause why their license should not be revoked;

4 4. Assess fines and administrative penalties in accordance with RSA  
5 397-A:21, for violations of Chapter 397-A, in the number and  
6 amount equal to the violations set forth in section II of this  
7 Staff Petition; and

8 5. Take such other administrative and legal actions as necessary for  
9 enforcement of the New Hampshire Banking Laws, the protection of  
10 New Hampshire citizens, and to provide other equitable relief.

11 **IV. RIGHT TO AMEND**

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

16 Respectfully submitted by:

17  
18                   /s/                    
19 Maryam Torben Desfosses  
Hearings Examiner

                  07/31/09                    
Date