

1 State of New Hampshire Banking Department

2	In re the Matter of:) Case No.: 09-051
)
3	State of New Hampshire Banking)
4	Department,) Order to Show Cause
)
5	Petitioner,)
)
6	and)
)
7	Net Trust Mortgage LLC, Yale Scott)
)
8	Roth, and Scott M. Kowalik,)
)
9	Respondents)

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 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 Chapter
15 541-A. 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 July 31, 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 Net Trust Mortgage LLC ("Respondent Net Trust")
18 shall show cause why penalties in the amount of \$10,000.00
19 should not be imposed against it;
- 20 2. Respondent Yale Scott Roth ("Respondent Roth") shall show
21 cause why penalties in the amount of \$10,000.00 should not be
22 imposed against him;
- 23 3. Respondent Scott M. Kowalik ("Respondent Kowalik") shall show
24 cause why penalties in the amount of \$12,500.00 should not be
25 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 \$500.00 examination fee should not be paid to the Department;
4 5. The above named Respondents shall show cause why, in addition
5 to the penalties listed in Paragraphs 1 through 4 above, the
6 accrued fine of \$10,700.00 for failing to provide examination
7 materials should not be paid to the Department;
8 6. Respondents shall be jointly and severally liable for the
9 above amounts alleged in Paragraphs 1 through 5 above;
10 7. The above named Respondents shall show cause why, in addition
11 to the penalties listed in Paragraphs 1 through 6 above,
12 Respondent Net Trust's license should not be revoked.

13 It is hereby further ORDERED that:

- 14 8. Along with the administrative penalties listed for the above
15 named Respondents, the outstanding sum of \$11,200.00 shall be
16 immediately paid; and
17 9. Failure to request a hearing within 30 days of the date of
18 receipt or valid delivery of this Order shall result in a
19 default judgment being rendered and administrative penalties
20 imposed upon the defaulting Respondent(s).

21
22 SIGNED,

23
24 Dated: 09/16/09

25 _____
/s/
PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-051
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) July 31, 2009
)
 6 and)
)
 7 Net Trust Mortgage LLC, Yale Scott)
)
 8 Roth, and Scott M. Kowalik,)
)
 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 Net Trust Mortgage LLC (hereinafter "Respondent Net
15 Trust") was licensed as a Mortgage Broker from at least May 10,
16 2004 (with an amended license date of May 18, 2007) until its
17 license expired on December 31, 2008.
- 18 2. Respondent Yale Scott Roth (hereinafter "Respondent Roth") was
19 the 50% owner and President of Respondent Net Trust, when
20 licensed by the Department.
- 21 3. Respondent Scott M. Kowalik (hereinafter "Respondent Kowalik")
22 was the 50% owner and co-President of Respondent Net Trust, when
23 licensed by the Department.

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

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

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

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

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

10 5. The Department attempted to conduct an examination of Respondent
11 Net Trust on December 15, 2008, while Respondent Net Trust was
12 still licensed with the Department.

13 6. On November 18, 2008, the Department sent the notice of
14 examination to Respondent Net Trust via U.S. Certified Mail
15 Return Receipt requested, which the post office returned to the
16 Department on December 1, 2008 as "attempted, not known".

17 7. On December 3, 2008, the Department sent the notice of examination
18 to Respondent Net Trust via UPS, which the Respondents received
19 on December 8, 2008.

20 8. With no response, on February 12, 2009, the Department sent the
21 notice of examination to Respondent Net Trust via email,
22 facsimile, and U.S. Certified Mail Return Receipt requested.
23 Respondents received the email, but the facsimile and certified
24 mail were unsuccessful.

25 9. The materials requested in the notice of examination were due on

1 December 29, 2008, which is 21 days after the December 8, 2008
2 delivery of the notice of examination.

3 10. To date, the Department has not received the examination
4 materials.

5 11. To date, fines have accrued for failing to provide the requested
6 files. The current fine to date is \$10,700.00 (\$50.00 a day x
7 214 days) and still accruing.

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

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

11 13. The Department conducted an examination of Respondent Net Trust on
12 December 15, 2008, while Respondent Net Trust was still licensed
13 with the Department.

14 14. On March 9, 2009, the Department mailed the invoice for \$500.00 to
15 Respondent Net Trust, via U.S. Certified Mail Return Receipt
16 requested, which the post office returned to the Department on
17 April 2, 2009 as "attempted, not known".

18 15. The Department, via U.S. mail, mailed a second notice on April 17,
19 2009 and a third notice on May 21, 2009.

20 16. The above named Respondents did not respond to any of the notices
21 for payment of the \$500.00 invoice.

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

1 **II. ISSUES OF LAW**

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

- 3 1. The Department realleges the above stated facts in Paragraphs 1
4 through 17 as fully set forth herein.
- 5 2. The Department has jurisdiction over the licensing and regulation
6 of persons engaged in mortgage banker or broker activities
7 pursuant to NH RSA 397-A:2 and RSA 397-A:3.
- 8 3. RSA 397-A:11,II provides that requested files and business records
9 must be received by the Department within 21 calendar days of
10 request. The licensee will be subject to a \$50.00 a day fine
11 every day after the 21-day period the records are not produced.
12 Respondents currently owe \$10,700.00. Each of the above named
13 Respondents violated this statute on at least one occasion as
14 alleged above.
- 15 4. RSA 397-A:12,III requires licensees to comply with examination
16 requests with or without prior notice. All books, papers, files,
17 related material, and records of assets shall be subject to the
18 Department's examination. Each of the above named Respondents
19 violated this statute on at least one occasion as alleged above.
- 20 5. RSA 397-A:12,V provides that the expense of such examination shall
21 be chargeable to and paid by the licensee. Each of the above
22 named Respondents violated this provision on at least one occasion
23 as alleged above. To date, the above named Respondents have
24 failed to pay the \$500.00 examination invoice.
- 25

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

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

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

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 Chapter 397-A or
4 orders 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.

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