

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-052
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Mortgages Unlimited Corporation, Carl)
)
 8 E. Mata, and Charles Addison)
)
 9 Rheinhardt,)
)
 10 Respondents)

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 24, 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 Mortgages Unlimited Corporation ("Respondent
20 Mortgages Unlimited") shall show cause why penalties in the
21 amount of \$10,000.00 should not be imposed against it;
- 22 2. Respondent Carl E. Mata ("Respondent Mata") shall show cause
23 why penalties in the amount of \$10,000.00 should not be
24 imposed against him;

1 3. Respondent Charles Addison Rheinhardt ("Respondent
2 Rheinhardt") shall show cause why penalties in the amount of
3 \$10,000.00 should not be imposed against him;

4 4. The above named Respondents shall show cause why, in addition
5 to the penalties listed in Paragraphs 1 through 3 above, the
6 \$2,365.00 examination fee should not be paid to the
7 Department;

8 5. The above named Respondents shall show cause why, in addition
9 to the penalties listed in Paragraphs 1 through 4 above, the
10 fine for \$2,500.00 for the failure to file the financial
11 statement should not be paid to the Department;

12 6. The above named Respondents shall be jointly and severally
13 liable for the above amounts alleged in Paragraphs 1 through
14 5 above;

15 7. The above named Respondents shall show cause why, in addition
16 to the penalties listed in Paragraphs 1 through 6 above,
17 Respondent Mortgages Unlimited's license should not be
18 revoked.

19 It is hereby further ORDERED that:

20 8. Along with the administrative penalties listed for the above
21 named Respondents, the outstanding sum of \$4,865.00 shall be
22 immediately paid; and
23
24
25

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-052
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 7 Mortgages Unlimited Corporation, Carl)
)
 8 E. Mata, and Charles Addison)
)
 9 Rheinhardt,)
)
 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 Mortgages Unlimited Corporation (hereinafter
16 "Respondent Mortgages Unlimited") was licensed as a Mortgage
17 Broker from at least January 25, 2008 (with an amended license
18 date of March 3, 2008) until its license expired on December 31,
19 2008.
- 20 2. Respondent Carl E. Mata (hereinafter "Respondent Mata") was the
21 50% owner and President of Respondent Mortgages Unlimited, when
22 licensed by the Department.
- 23 3. Respondent Charles Addison Rheinhardt (hereinafter "Respondent
24 Rheinhardt") was the 50% owner and Vice-President of Respondent
25 Mortgages Unlimited, 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 Mortgages
7 Unlimited on August 18, 2008, while Respondent Mortgages
8 Unlimited was licensed with the Department.

9 6. On September 24, 2008, the Department mailed the report of
10 examination and invoice for \$2,365.00 to Respondent Mortgages
11 Unlimited, via U.S. Certified Mail Return Receipt requested,
12 which Respondents received on September 25, 2008.

13 7. The Respondents failed to respond to the September 24, 2008
14 Department correspondence.

15 8. The Department, via U.S. mail, mailed a second notice on November
16 21, 2008 and a third notice on January 20, 2009.

17 9. The above named Respondents did not respond to any of the notices
18 for payment of the \$2,365.00 invoice.

19 10. To date, the above named Respondents still owe the \$2,365.00
20 examination fee for the 4.73 day examination.

21 Violation of RSA 397-A:13,II Failure to File Financial Statement (1 Count):

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

23 Department Inquiries (1 Count):

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

1 12. The Respondents' fiscal year end was August 31, 2008 and the
2 financial statement was due on or before December 1, 2008.

3 13. Respondent Mortgages Unlimited was licensed on the date the
4 financial statement filing was due the Department.

5 14. The Department sent Respondent Mortgages Unlimited a reminder
6 letter on September 8, 2008, with a follow-up on December 9, 2008
7 and the final follow-up letter via U.S. Certified Mail Return
8 Receipt requested on January 29, 2009.

9 15. Respondents have failed to respond to the Department's reminder
10 letters regarding the financial statement.

11 16. To date, the accrued penalty for failure to file a financial
12 statement has reached the maximum cap of \$2,500.00 (\$25.00 a day,
13 maximum \$2,500.00).

14 **II. ISSUES OF LAW**

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

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

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

21 3. RSA 397-A:12,V provides that the expense of such examination shall
22 be chargeable to and paid by the licensee. Each of the above
23 named Respondents violated this provision on at least one
24 occasion as alleged above. To date, the above named Respondents
25 have failed to pay the \$2,365.00 examination invoice.

1 4. RSA 397-A:13,II provides that each licensee shall file a financial
2 statement within 90 days from the date of its fiscal year end.
3 Each of the above named Respondents violated this statute on at
4 least one occasion as alleged above. The maximum fine has
5 accrued to \$2,500.00 as calculated by RSA 397-A:13,IV below.

6 5. RSA 397-A:13,IV provides that any mortgage banker or mortgage
7 broker failing to file either the annual report or the financial
8 statement required by RSA Chapter 397-A within the time
9 prescribed may be required to pay to the Department a penalty of
10 \$25.00 for each calendar day the annual report or financial
11 statement is overdue, up to a maximum penalty of \$2,500.00 per
12 report or statement. The above named Respondents failed to file a
13 financial statement, the fine of which has accrued to the maximum
14 cap of \$2,500.00. Each of the above named Respondents violated
15 this provision on at least one occasion as alleged above.

16 6. 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 Mata and Respondent Rheinhardt each violated this
20 provision on at least two occasions as alleged above.

21 7. 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 8. 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 Chapter 397-A or
10 orders thereunder.

11 9. RSA 397-A:21, IV provides that any person who, either knowingly or
12 negligently, violates any provision of RSA Chapter 397-A, may
13 upon hearing, and in addition to any other penalty provided for
14 by 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 10. 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.

