

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-067
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Sage Credit Company, Inc. (d/b/a Sage)
)
 8 Credit), and Quentin P. Caruana,)
)
 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 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 17, 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 Sage Credit Company, Inc. (d/b/a Sage Credit)
19 ("Respondent Sage Credit") shall show cause why penalties in
20 the amount of \$30,000.00 should not be imposed against it;
- 21 2. Respondent Quentin P. Caruana ("Respondent Caruana") shall
22 show cause why penalties in the amount of \$35,000.00 should
23 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 \$8,600.00 examination fee should not be paid to the
2 Department;

3 4. The above named Respondents shall show cause why, in addition
4 to the penalties listed in Paragraphs 1 through 3 above, the
5 Respondents shall not reimburse the following consumers the
6 following amounts for co-brokering with an unlicensed entity
7 (each equals 25% of the full amount collected by Respondent
8 Sage Credit):

- 9 A. Consumer A: \$4,981.58;
- 10 B1. Consumer B 1st loan: \$2,129.41;
- 11 B2. Consumer B 2nd loan: \$4,295.00;
- 12 C. Consumer C: \$9,018.00;
- 13 D. Consumer D: \$8,995.00;
- 14 E. Consumer E: \$5,860.00; and
- 15 F. Consumer F: \$9,880.75.

16 5. Respondents shall be jointly and severally liable for the
17 above amounts alleged in Paragraphs 1 through 4 above;

18 6. The above named Respondents shall show cause why, in addition
19 to the penalties listed in Paragraphs 1 through 5 above,
20 Respondent Sage Credit's license should not be revoked.

21 It is hereby further ORDERED that:

22 7. Along with the administrative penalties listed for the above
23 named Respondents, the outstanding sum of \$8,600.00 plus each
24 individual consumer's restitution listed above shall be
25 immediately paid; and

1 State of New Hampshire Banking Department

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 8 Credit), and Quentin P. Caruana,)
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 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 Sage Credit Company, Inc. (d/b/a Sage
15 Credit) (hereinafter "Respondent Sage Credit") was licensed as a
16 Mortgage Banker from at least June 8, 2004 (with an amended
17 license date of October 14, 2008) until its license expired on
18 December 31, 2008.

19 2. Respondent Quentin P. Caruana (hereinafter "Respondent Caruana")
20 was the 100% owner and President of Respondent Sage Credit, when
21 licensed by the Department.

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

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

24 Department Inquiries (1 Count):

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

1 herein.

2 4. The Department conducted an examination of Respondent Sage Credit
3 on October 8, 2007, while Respondent Sage Credit was still
4 licensed with the Department.

5 5. On October 9, 2008, the Department mailed the report of
6 examination and invoice for \$8,600.00 to Respondent Sage Credit,
7 via U.S. Certified Mail Return Receipt requested, which
8 Respondents received on October 20, 2008.

9 6. The above named Respondents failed to respond to the October 8,
10 2008 correspondence from the Department.

11 7. The Department, via U.S. mail, mailed a second notice on November
12 21, 2008 and a third notice on January 20, 2009.

13 8. The above named Respondents did not respond to any of the three
14 notices for payment of the \$8,600.00 invoice.

15 9. To date, the above named Respondents still owe the \$8,600.00
16 examination fee for the 17.2 day examination.

17 **Violation of RSA 397-A:5,III(c) Failure to Post Continuous Surety Bond (1**
18 **Count):**

19 **Violation of RSA 397-A:10,IV Failure to Update Information on File with**
20 **Commissioner (1 Count):**

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

23 10. Paragraphs 1 through 9 are hereby realleged as fully set forth
24 herein.

25 11. On November 17, 2008, the Department was notified by The Guarantee

1 Company of North America USA of a surety bond cancellation to be
2 effective December 3, 2008.

3 12. On November 20, 2008, the Department sent the above named
4 Respondents a notification via U.S. Certified Mail Return Receipt
5 Requested that the bond must be reinstated or replaced
6 immediately and the originally-executed bond sent to the
7 Department.

8 13. On December 1, 2008, the Department received the returned November
9 20, 2008 correspondence with no forwarding address. The
10 Department then telephoned the number on file and an answering
11 machine that picked up made reference to an "Echo Loans."

12 14. On December 2, 2008, the Department then successfully faxed the
13 same November 20, 2008 correspondence.

14 15. To date, the above named Respondents have failed to respond to the
15 November 20, 2008 Department correspondence.

16 16. To date, the Department has not received the required bond
17 reinstatement and its license has since expired.

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

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

21 17. Paragraphs 1 through 16 are hereby realleged as fully set forth
22 herein.

23 18. The Department conducted an examination of Respondent Sage Credit
24 on October 8, 2007.

25 19. While the above named Respondents did produce some documentation

1 for the examination pursuant to the Department's notice of
2 examination, when further questioned on material, the above named
3 Respondents failed to provide the additional requested
4 information in a reasonable timeframe or did not provide the
5 material at all.

6 20. After the Department examiner reviewed the initial documentation
7 provided for the examination, the examiner emailed Respondent
8 Sage Credit on April 1, 2008 for the missing information.

9 21. Respondent emailed the Department the requested missing
10 information on April 3, 2008.

11 22. However, review of the April 3, 2008 email indicated the
12 Department examiner needed additional information. In
13 particular, why the check register showed a number of LLC
14 companies following a specific numerical pattern, such as
15 "SCC1025 LLC, SCC1079 LLC", etc.

16 23. On April 9, 2008, the Department emailed Respondent Sage Credit
17 for the LLC information and explanation, to which Respondent Sage
18 Credit responded it was still working on obtaining this
19 additional missing documentation.

20 24. On April 17, 2008, Respondent Sage Credit responded without
21 directly responding to the Department's April 9, 2008 request.

22 25. On April 22, 2008, the Department examiner emailed Respondent Sage
23 Credit asking for further answers related to the LLCs named
24 above, specifically if the LLCs were the actual names of the
25 entities being paid or just an internal way to clarify them. The

1 Department requested copies of the checks cut to these LLCs and
2 the contracts made with these LLCs.

3 26. On May 12, 2008, the Department examiner emailed to yet again
4 request such information. Respondent Sage Credit indicated it
5 would follow-up with Respondent Caruana to obtain an answer.

6 27. With no response from Respondent Sage Credit or Respondent
7 Caruana, the Department examiner emailed Respondent Sage Credit
8 on May 22, 2008 and again on June 16, 2008.

9 28. On June 20, 2008, the Department finally received a more detailed
10 explanation of the LLC entities, as well as a sample contract.
11 However, no actual contracts or cut checks were provided to the
12 Department as previously requested.

13 29. On June 23, 2008, the Department yet again requested the list of
14 LLCs that worked on NH loans, as well as signed contracts and
15 checks cut to these entities.

16 30. On July 10, 2008, the Department issued a final email to the
17 licensee requesting the status of previous requests.

18 31. To date, the above named Respondents have failed to provide the
19 LLC documentation to the Department.

20 **Violation of RSA 397-A:17, I(c) Unlawful Co-Brokered Loans (7 Counts):**

21 32. Paragraphs 1 through 31 are hereby realleged as fully set forth
22 herein.

23 33. Customortgage, Inc. of Los Alamitos, California is not licensed
24 by the Department, is not exempt under RSA 397-A:4, and in
25 expectation of compensation or gain acted as an intermediary,

1 finder, or agent of a borrower or lender for the purpose of
2 negotiating, arranging, finding or procuring mortgage loans for
3 at least three New Hampshire mortgage loans. Customortgage, Inc.
4 collected the following amounts, of which Petitioner herein
5 requests be refunded to the Consumers:

6 a. Consumer A loan: \$4,981.58;

7 b. Consumer B1 loan: \$2,129.41; and

8 c. Consumer B2 loan: \$4,295.00.

9 34. Newport Lending Group, Inc. of Irvine, California is not licensed
10 by the Department, is not exempt under RSA 397-A:4, and in
11 expectation of compensation or gain acted as an intermediary,
12 finder, or agent of a borrower or lender for the purpose of
13 negotiating, arranging, finding or procuring mortgage loans for
14 at least one New Hampshire mortgage loan. Newport Lending Group,
15 Inc. collected the following amount, of which Petitioner herein
16 requests be refunded to the Consumer:

17 a. Consumer C loan: \$9,018.00.

18 35. Security Pacific Holdings Inc d/b/a Countryside Mortgage
19 Acceptance of Santa Ana, California is not licensed by the
20 Department, is not exempt under RSA 397-A:4, and in expectation
21 of compensation or gain acted as an intermediary, finder, or
22 agent of a borrower or lender for the purpose of negotiating,
23 arranging, finding or procuring mortgage loans for at least one
24 New Hampshire mortgage loan. Security Pacific Holdings Inc d/b/a
25 Countryside Mortgage Acceptance collected the following amount,

1 397-A are under a continuing obligation to update information on
2 file with the Commissioner. Each of the above named Respondents
3 violated this provision on at least one occasion as alleged above.

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

9 6. RSA 397-A:12,V provides that the expense of such examination shall
10 be chargeable to and paid by the licensee. Each of the above
11 named Respondents violated this provision on at least one occasion
12 as alleged above. To date, the above named Respondents have
13 failed to pay the \$8,600.00 examination invoice.

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

23 8. RSA 397-A:13,VI provides that any officer, owner, manager or agent
24 of any licensee shall reply promptly in writing, or other
25 designated form, to any written inquiry from the Department.

1 Respondent Caruana violated this provision on at least two
2 occasions as alleged above.

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

13 10. RSA 397-A:17,I(c) provides that it is a violation of RSA Chapter
14 397-A to accept or process loan applications transmitted or
15 brokered by a mortgage broker who is not licensed, and is not
16 exempt from licensing. Each of the above named Respondents
17 violated this statute on at least seven occasions as alleged
18 above.

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

24 12. RSA 397-A:21,IV provides that any person who, either knowingly or
25 negligently, violates any provision of Chapter 397-A, may upon

1 hearing, and in addition to any other penalty provided for by
2 law, be subject to an administrative fine not to exceed
3 \$2,500.00, or both. Each of the acts specified shall constitute
4 a separate violation, and such administrative action or fine may
5 be imposed in addition to any criminal penalties or civil
6 liabilities imposed by New Hampshire Banking laws.

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

23 **III. RELIEF REQUESTED**

24 The staff of the Department requests the Commissioner take the following
25 action:

