

1 State of New Hampshire Banking Department

2	In re the Matter of:) Case No.: 09-084
)
3	State of New Hampshire Banking)
) Order to Show Cause
4	Department,)
)
5	Petitioner,)
)
6	and)
)
7	Brook Trout Mortgage Inc., Jonathan H.)
)
8	Beecher, Kristen M. Beecher, and David)
)
9	M. Geddes,)
)
10	Respondents)

11 NOTICE OF ORDER TO SHOW CAUSE

12 This Order to Show Cause commences an adjudicative proceeding under
13 the provisions of RSA Chapter 397-A and RSA Chapter 541-A.

14 LEGAL AUTHORITY AND JURISDICTION

15 Pursuant to RSA 397-A:17, the Commissioner of the New Hampshire
16 Banking Department (hereinafter the "Department") has the authority to issue
17 an order to show cause why license revocation and penalties for violations
18 of New 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 a Respondent fails to
23 appear at the hearing after being duly notified, such person shall be deemed
24 in default, and the proceeding may be determined against the Respondent upon
25 consideration of this 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 March 17, 2010 (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 Brook Trout Mortgage Inc. ("Respondent Brook Trout
20 Mortgage") shall show cause why penalties in the amount of
21 \$7,500.00 should not be imposed against it;
- 22 2. Respondent Jonathan H. Beecher ("Respondent J. Beecher")
23 shall show cause why penalties in the amount of \$7,500.00
24 should not be imposed against him;
- 25 3. Respondent Kristen M. Beecher ("Respondent M. Beecher") shall

1 show cause why penalties in the amount of \$7,500.00 should
2 not be imposed against her;

3 4. Respondent David M. Geddes ("Respondent Geddes") shall show
4 cause why penalties in the amount of \$7,500.00 should not be
5 imposed against him;

6 5. The above named Respondents shall show cause why, in addition
7 to the penalties listed in Paragraphs 1 through 4 above, the
8 \$2,885.00 examination fee should not be paid to the
9 Department;

10 6. The above named Respondents shall show cause why, in addition
11 to the penalties listed in Paragraphs 1 through 5 above, the
12 unpaid amount of \$200.00 for the late filing of the financial
13 statement should not be paid to the Department;

14 7. Respondents shall be jointly and severally liable for the
15 above amounts alleged in Paragraphs 1 through 6 above;

16 8. The above named Respondents shall show cause why, in addition
17 to the penalties listed in Paragraphs 1 through 7 above,
18 Respondent Brook Trout Mortgage's license should not be
19 revoked.

20 It is hereby further ORDERED that:

21 9. Along with the administrative penalties listed for the above
22 named Respondents, the outstanding sum of \$3,085.00 shall be
23 immediately paid; and
24
25

1 10. Failure to request a hearing within 30 days of the date of
2 receipt or valid delivery of this Order to Show Cause shall
3 result in a default judgment being rendered and
4 administrative penalties imposed upon the defaulting
5 Respondent (s) .

6
7 SIGNED,

8
9 Dated: 03/18/10

/s/

PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-084
3 State of New Hampshire Banking)
4 Department,) Staff Petition
5 Petitioner,) March 17, 2010
6 and)
7 Brook Trout Mortgage Inc., Jonathan H.)
8 Beecher, Kristen M. Beecher, and David)
9 M. Geddes,)
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 Brook Trout Mortgage Inc. (hereinafter "Respondent
16 Brook Trout Mortgage") was licensed as a Mortgage Broker from at
17 least January 1, 2008 until it surrendered its license on
18 December 21, 2009.
- 19 2. Respondent Jonathan H. Beecher (hereinafter "Respondent J.
20 Beecher") was the 50% owner and President of Respondent Brook
21 Trout Mortgage, when licensed by the Department.
- 22 3. Respondent Kristen M. Beecher (hereinafter "Respondent K.
23 Beecher") was the 50% owner and Vice-President of Respondent
24 Brook Trout Mortgage, when licensed by the Department.
- 25 4. Respondent David M. Geddes (hereinafter "Respondent Geddes") was

1 the Director of and control person for Respondent Brook Trout
2 Mortgage, when licensed by the Department.

3 **Violation of RSA 397-A:13, IV Failure to Pay Late Penalty Owed for Late**

4 **Filing of Financial Statement (1 Count):**

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

7 6. Respondent Brook Trout Mortgage's financial statement was due on
8 or before March 31, 2009.

9 7. Respondent Brook Trout Mortgage was still licensed at the time its
10 financial statement filing was due to the Department.

11 8. The Department received Respondent Brook Trout Mortgage's
12 financial statement on April 9, 2009 (9 days late), which
13 generated a fine of \$225.00 (\$25.00 a day x 9 days; maximum
14 \$2,500.00).

15 9. The unaudited financial statement was actually filed April 8,
16 2009, so a \$25.00 waiver was processed, leaving a total balance
17 due of \$200.00.

18 10. To date, Respondents have not paid the fine and attempts at
19 communication have been unsuccessful.

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

21 11. Paragraphs 1 through 10 are hereby realleged as fully set forth
22 herein.

23 12. The Department conducted an examination of Respondent Brook Trout
24 Mortgage on January 5, 2009, while Respondent Brook Trout
25 Mortgage was still licensed with the Department.

1 13. On March 11, 2009, the Department mailed the report of examination
2 and invoice for \$2,885.00 to Respondent Brook Trout Mortgage, via
3 U.S. Certified Mail Return Receipt requested, which Respondents
4 received on March 18, 2009.

5 14. The above named Respondents failed to respond to the March 11,
6 2009 correspondence from the Department.

7 15. A second notice was submitted to Respondent Brook Trout Mortgage
8 on April 17, 2009 and a third notice was submitted to Respondent
9 Brook Trout Mortgage on May 21, 2009.

10 16. On May 18, 2009, the above named Respondents contacted the
11 Department and requested a payment plan. The Department
12 submitted a payment plan to the above named Respondents on May
13 19, 2009. The above named Respondents failed to make payments.

14 17. On June 17, 2009, the above named Respondents contacted the
15 Department to ask for another agreement as they were unable to
16 make the first payment. An agreement was reached and submitted to
17 the above named Respondents on August 3, 2009 via U.S. Certified
18 Mail Return Receipt requested. The above named Respondents have
19 failed to claim the August 3, 2009 correspondence.

20 18. To date, the above named Respondents still owe the \$2,885.00
21 examination fee for the 5.77 day examination.

22 **Violation of RSA 397-A:5,III(c) Failure to Increase Surety Bond (1 Count):**

23 19. Paragraphs 1 through 18 are hereby realleged as fully set forth
24 herein.

25 20. As of July 31, 2009, New Hampshire Mortgage Brokers were required

1 to increase their licensee surety bonds to \$50,000.00. On June
2 16, 2009, the Department mailed a letter to Respondent Brook
3 Trout Mortgage regarding the new law going into effect on July
4 31, 2009 pursuant to the implementation of the federal S.A.F.E.
5 ("Secure and Fair Enforcement for Mortgage Licensing Act of
6 2008") Act.

7 21. On August 20, 2009, the Department submitted a reminder e-mail.

8 22. On October 1, 2009 and October 5, 2009, the Department attempted
9 contact with Respondent J. Beecher, but the call would not be
10 accepted.

11 23. On October 8, 2009, the Department sent another email with a read
12 receipt which has not been returned.

13 24. To date, no increased bond has been received.

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 23 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:5,III(c) provides, inter alia, that each mortgage broker
22 shall post a continuous surety bond in the minimum amount of
23 \$50,000.00 to the Commissioner. Each of the above named
24 Respondents violated this provision on at least one occasion as
25 alleged above.

1 4. RSA 397-A:12,V provides that the expense of such examination shall
2 be chargeable to and paid by the licensee. Each of the above
3 named Respondents violated this provision on at least one occasion
4 as alleged above. To date, the above named Respondents have
5 failed to pay the \$2,885.00 examination invoice.

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 prescribed
9 may be required to pay to the Department a penalty of \$25.00 for
10 each calendar day the annual report or financial statement is
11 overdue, up to a maximum penalty of \$2,500.00 per report or
12 statement. Each of the Respondents violated this provision on at
13 least one occasion by filing the financial statement 8 days late,
14 thus generating a fine of \$200.00.

15 6. 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 has, inter alia, (a) violated any
23 provision of RSA Chapter 397-A or rules thereunder, or (b) not met
24 the standards established in RSA Chapter 397-A.

25 7. 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 8. RSA 397-A:21,IV provides that any person who, either knowingly or
6 negligently, violates any provision of RSA Chapter 397-A, may upon
7 hearing, and in addition to any other penalty provided for by law,
8 be subject to an administrative fine not to exceed \$2,500.00, or
9 both. Each of the acts specified shall constitute a separate
10 violation, and such administrative action or fine may be imposed
11 in addition to any criminal penalties or civil liabilities imposed
12 by New Hampshire Banking laws.

13 9. 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 RSA 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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IV. RIGHT TO AMEND

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

Respectfully submitted by:

 /s/
Maryam Torben Desfosses
Hearings Examiner

 03/17/10
Date