

1 State of New Hampshire Banking Department

)Case No.: 09-091

2 In re the Matter of: )

3 State of New Hampshire Banking )

4 Department, )

5 Petitioner, )

6 and )

7 Pacific Reverse Mortgage Inc (d/b/a )

8 Financial Heritage), Edward J. Nelson, )

9 and John F. Myers, )

10 Respondents )

11 NOTICE OF ORDER

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 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 February 1, 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 Pacific Reverse Mortgage Inc (d/b/a Financial  
20 Heritage) ("Respondent Financial Heritage") shall show cause  
21 why penalties in the amount of \$10,000.00 should not be  
22 imposed against it;
- 23 2. Respondent Edward J. Nelson ("Respondent Nelson") shall show  
24 cause why penalties in the amount of \$10,000.00 should not be  
25 imposed against him;



1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 09-091  
3 State of New Hampshire Banking )  
4 Department, ) Staff Petition  
5 Petitioner, ) February 1, 2010  
6 and )  
7 Pacific Reverse Mortgage Inc (d/b/a )  
8 Financial Heritage), Edward J. Nelson, )  
9 and John F. Myers, )  
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 Pacific Reverse Mortgage Inc (d/b/a Financial  
16 Heritage) (hereinafter "Respondent Financial Heritage") was  
17 licensed as a Mortgage Banker from at least July 19, 2005 (with  
18 an amended license date of October 6, 2006) until it surrendered  
19 its license on September 17, 2009.
- 20 2. Respondent Edward J. Nelson (hereinafter "Respondent Nelson") was  
21 the 50% owner, control person and Vice-President of Respondent  
22 Financial Heritage, when licensed by the Department.
- 23 3. Respondent John F. Myers (hereinafter "Respondent Myers") was the  
24 50% owner and control person of Respondent Financial Heritage,  
25 when 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 4. Paragraphs 1 through 3 are hereby realleged as fully set forth  
7 herein.

8 5. The Department attempted to conduct an examination of Respondent  
9 Financial Heritage while Respondent Financial Heritage was still  
10 licensed with the Department.

11 6. On June 29, 2009, the Department sent the notice of examination to  
12 Respondent Financial Heritage via U.S. Certified Mail Return  
13 Receipt requested, which Respondents received on July 9, 2009.

14 7. Respondents provided an acknowledgment and identified some loan  
15 information. However, Respondents failed to provide the remaining  
16 requested information from the notice of examination, despite  
17 multiple letters and telephone calls.

18 8. The materials requested in the notice of examination were due on  
19 July 30, 2009, which is 21 days after the July 9, 2009 delivery  
20 of the notice of examination.

21 9. To date, the Department has not received the examination  
22 materials.

23 10. To date, fines have accrued for failing to provide the requested  
24 files. The current fine to date (ending with the license  
25 surrender date of September 17, 2009) is \$2,450.00 (\$50.00 a day

1 x 49 days) and still accruing.

2 Violation of RSA 397-A:10, IV Failure to Update Information on File with

3 Commissioner (1 Count):

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

6 12. Respondents failed to notify the Department of a pending license  
7 revocation by the Georgia Department of Banking and Finance,  
8 which was issued to Respondents on or about August 14, 2009.

9 13. The Department discovered the pending Georgia action via its  
10 examination process.

11 **II. ISSUES OF LAW**

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

13 1. The Department realleges the above stated facts in Paragraphs 1  
14 through 13 as fully set forth herein.

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

18 3. RSA 397-A:10, IV provides that persons licensed under RSA Chapter  
19 397-A are under a continuing obligation to update information on  
20 file with the Commissioner. Each of the above named Respondents  
21 failed to update the Commissioner on at least one occasion as  
22 alleged above.

23 4. RSA 397-A:11, II provides that requested files and business records  
24 must be received by the Department within 21 calendar days of  
25 request. The licensee will be subject to a \$50.00 a day fine

1 every day after the 21-day period the records are not produced.  
2 Respondents currently owe \$2,450.00. Each of the above named  
3 Respondents violated this statute on at least one occasion as  
4 alleged above.

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

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

19 7. RSA 397-A:17,I provides in part that the Commissioner may by  
20 order, upon due notice and opportunity for hearing, assess  
21 penalties or deny, suspend, or revoke a license or application if  
22 it is in the public interest and the applicant, respondent, or  
23 licensee, any partner, officer, member, or director, any person  
24 occupying a similar status or performing similar functions, or any  
25 person directly or indirectly controlling the applicant,

1           respondent, or licensee: (a) has violated any provision of RSA  
2           Chapter 397-A or rules thereunder, or (b) has not met the  
3           standards established in RSA Chapter 397-A.

4           8. RSA 397-A:18,I provides that the Department may issue a complaint  
5           setting forth charges whenever the Department is of the opinion  
6           that the licensee or person over whom the Department has  
7           jurisdiction, has violated any provision of RSA Chapter 397-A or  
8           orders thereunder.

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

17          10. RSA 397-A:21,V provides that every person who directly or  
18          indirectly controls a person liable under this section, every  
19          partner, principal executive officer or director of such person,  
20          every person occupying a similar status or performing a similar  
21          function, every employee of such person who materially aids in the  
22          act constituting the violation, and every licensee or person acting  
23          as a common law agent who materially aids in the acts constituting  
24          the violation, either knowingly or negligently, may, upon notice  
25          and opportunity for hearing, and in addition to any other penalty

1 provided for by law, be subject to suspension, revocation, or  
2 denial of any registration or license, including the forfeiture of  
3 any application fee, or the imposition of an administrative fine  
4 not to exceed \$2,500, or both. Each of the acts specified shall  
5 constitute a separate violation, and such administrative action or  
6 fine may be imposed in addition to any criminal or civil penalties  
7 imposed.

### 8 **III. RELIEF REQUESTED**

9 The staff of the Department requests the Commissioner take the following  
10 action:

- 11 1. Find as fact the allegations contained in section I of this Staff  
12 Petition;
- 13 2. Make conclusions of law relative to the allegations contained in  
14 section II of this Staff Petition;
- 15 3. Pursuant to RSA 397-A:17, order each of the above named  
16 Respondents to show cause why their license should not be revoked;
- 17 4. Assess fines and administrative penalties in accordance with RSA  
18 397-A:21, for violations of RSA Chapter 397-A, in the number and  
19 amount equal to the violations set forth in section II of this  
20 Staff Petition; and
- 21 5. Take such other administrative and legal actions as necessary for  
22 enforcement of the New Hampshire Banking Laws, the protection of  
23 New Hampshire citizens, and to provide other equitable relief.

