

1 State of New Hampshire Banking Department

) Case No.:09-095

2 In re the Matter of:

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3 State of New Hampshire Banking

)

) Order to Show Cause

4 Department,

)

)

5 Petitioner,

)

)

6 and

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)

7 Mortgage Trust Group Inc (d/b/a

)

)

8 McDonald Mortgage Company), and

)

)

9 Josephine A. McDonald (a/k/a Jo

)

)

10 McDonald),

)

)

11 Respondents

)

12 NOTICE OF ORDER

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

15 LEGAL AUTHORITY AND JURISDICTION

16 Pursuant to RSA 397-A:17, the Banking Department of the State of New  
17 Hampshire (hereinafter the "Department") has the authority to issue an order  
18 to show cause why license revocation and penalties for violations of New  
19 Hampshire Banking laws should not be imposed.

20 Pursuant to RSA 397-A:17,II(e)(1) the Commissioner has the authority  
21 to remove or ban from office or employment, including license revocation,  
22 any person conducting business under RSA Chapter 397-A who violates RSA  
23 Chapter 397-A.

24 Pursuant to RSA 397-A:17,X, an action to enforce any provision of RSA  
25 Chapter 397-A shall be commenced within 6 years after the date on which the

1 violation occurred.

2 Pursuant to RSA 397-A:18, the Department has the authority to issue a  
3 complaint setting forth charges whenever the Department is of the opinion  
4 that the licensee or person over whom the Department has jurisdiction is  
5 violating or has violated any provision of RSA Chapter 397-A, or any rule or  
6 order thereunder.

7 Pursuant to RSA 397-A:20,IV, the Commissioner may issue, amend, or  
8 rescind such orders as are reasonably necessary to comply with the  
9 provisions of the Chapter.

10 Pursuant to RSA 397-A:21, the Commissioner has the authority to  
11 suspend, revoke or deny any license and to impose administrative penalties  
12 of up to \$2,500.00 for each violation of New Hampshire banking law and  
13 rules.

14 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct  
15 that is or may be an unfair or deceptive act or practice under RSA Chapter  
16 358-A and exempt under RSA 358-A:3,I or that may violate any of the  
17 provisions of Titles XXXV and XXXVI and administrative rules adopted  
18 thereunder. The Commissioner may hold hearings relative to such conduct and  
19 may order restitution for a person or persons adversely affected by such  
20 conduct.

21 **NOTICE OF RIGHT TO REQUEST A HEARING**

22 The above named Respondents have the right to request a hearing on  
23 this Order to Show Cause, as well as the right to be represented by counsel  
24 at each Respondent's own expense. All hearings shall comply with RSA Chapter  
25 541-A. Any such request for a hearing shall be in writing, and signed by the

1 Respondent or the duly authorized agent of the above named Respondent, and  
2 shall be delivered either by hand or certified mail, return receipt  
3 requested, to the Banking Department, State of New Hampshire, 53 Regional  
4 Drive, Suite 200, Concord, NH 03301. Such hearings will be scheduled within  
5 10 days of the Department's receipt of the request. If the Respondent fails  
6 to appear at the hearing after being duly notified, such person shall be  
7 deemed in default, and the proceeding may be determined against the Respondent  
8 upon consideration of the Order to Show Cause, the allegations of which may be  
9 deemed to be true.

10 If any of the above named Respondents fails to request a hearing within  
11 30 calendar days of receipt of such order or reach a formal written and  
12 executed settlement with the Department within that time frame, then such  
13 person shall likewise be deemed in default, and the orders shall, on the  
14 thirty-first day, become permanent, and shall remain in full force and effect  
15 until and unless later modified or vacated by the Commissioner, for good cause  
16 shown.

17 **STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF**

18 The Staff Petition dated December 29, 2009 (a copy of which is  
19 attached hereto) is incorporated by reference hereto.

20 **ORDER**

21 WHEREAS, finding it necessary and appropriate and in the public  
22 interest, and consistent with the intent and purposes of the New Hampshire  
23 banking laws; and

24 WHEREAS, finding that the allegations contained in the Staff Petition,  
25 if proved true and correct, form the legal basis of the relief requested;

1 It is hereby ORDERED, that:

2 1. Respondent Mortgage Trust Group Inc (d/b/a McDonald Mortgage  
3 Company) ("Respondent Mortgage Trust Group") shall show cause  
4 why penalties in the amount of \$5,000.00 should not be  
5 imposed against it;

6 2. Respondent Josephine A. McDonald (a/k/a Jo McDonald)  
7 ("Respondent McDonald") shall show cause why penalties in the  
8 amount of \$7,500.00 should not be imposed against her;

9 3. The above named Respondents shall show cause why, in addition  
10 to the penalties listed in Paragraphs 1 through 2 above, the  
11 \$2,240.00 examination fee should not be paid to the  
12 Department;

13 4. The above named Respondents shall show cause why, in addition  
14 to the penalties listed in Paragraphs 1 through 3 above, the  
15 fine for \$2,350.00 for the late filing of the financial  
16 statement should not be paid to the Department;

17 5. Nothing in this Order to Show Cause shall prevent the  
18 Department from taking any further administrative action  
19 under New Hampshire law.

20 6. The above named Respondents shall be jointly and severally  
21 liable for the above amounts alleged in Paragraphs 1 through  
22 5 above; and

23 7. The above named Respondents shall show cause why, in addition  
24 to the penalties listed in Paragraphs 1 through 6 above,  
25 Respondent Mortgage Trust Group's license should not be



1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 09-095  
3 State of New Hampshire Banking )  
4 Department, ) Staff Petition  
5 Petitioner, ) December 29, 2009  
6 and )  
7 Mortgage Trust Group Inc (d/b/a )  
8 McDonald Mortgage Company), and )  
9 Josephine A. McDonald (a/k/a Jo )  
10 McDonald), )  
11 Respondents )

12 I. STATEMENT OF ALLEGATIONS

13 The Staff of the Banking Department, State of New Hampshire (hereinafter  
14 "Department") alleges the following facts:

15 Facts Common on All Counts:

- 16 1. Respondent Mortgage Trust Group Inc (d/b/a McDonald Mortgage  
17 Company) (hereinafter "Respondent Mortgage Trust Group") has been  
18 licensed as a Mortgage Banker from at least January 1, 1997 (with  
19 an amended license date of August 22, 2008).
- 20 2. Respondent Josephine A. McDonald (a/k/a Jo McDonald) (hereinafter  
21 "Respondent McDonald") is the current 100% owner and President of  
22 Respondent Mortgage Trust Group.

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

6 4. The Department conducted an examination of Mortgage Trust Group  
7 on July 7, 2008, while Respondent Mortgage Trust Group was still  
8 licensed with the Department.

9 5. The Department sent Respondents the report of examination and  
10 examination invoice for \$2,240.00 via U.S. Certified Mail Return  
11 Receipt requested on December 8, 2008, which Respondents received  
12 December 10, 2008.

13 6. The above named Respondents failed to respond to the December 8,  
14 2008 correspondence from the Department.

15 7. The Department, via U.S. mail, mailed Respondents a second notice  
16 on January 20, 2009.

17 8. The above named Respondents did not respond to any of the notices  
18 for payment of the \$2,240.00 invoice.

19 9. To date, the above named Respondents still owe the \$2,240.00  
20 examination fee for the 4.48 day examination.

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

22 Filing of Financial Statement (1 Count):

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

25 11. Respondent Mortgage Trust Group was licensed in 2008 and



1 overdue, up to a maximum penalty of \$2,500.00 per report or  
2 statement. Respondents filed the financial statement 94 days late,  
3 which generated a reduced fine of \$2,350.00. Each of the above  
4 named Respondents violated this provision on at least one occasion  
5 as alleged above.

6 5. RSA 397-A:13,VI provides that any officer, owner, manager or agent  
7 of any licensee shall reply promptly in writing, or other  
8 designated form, to any written inquiry from the Department.  
9 Respondent McDonald violated this provision on at least one  
10 occasion as alleged above.

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

21 7. RSA 397-A:17,II(e)(1) provides that the Commissioner may issue an  
22 order or directive to remove or ban from office or employment,  
23 including license revocation, any person conducting business under  
24 RSA Chapter 397-A who violates RSA Chapter 397-A.

25 8. RSA 397-A:17,X provides an action to enforce any provision of RSA

1 Chapter 397-A shall be commenced within 6 years after the date on  
2 which the violation occurred.

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

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

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

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

7 **III. RELIEF REQUESTED**

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

- 10 1. Find as fact the allegations contained in section I of this Staff  
11 Petition;
- 12 2. Make conclusions of law relative to the allegations contained in  
13 section II of this Staff Petition;
- 14 3. Assess fines and administrative penalties in accordance with RSA  
15 397-A:21, for violations of RSA Chapter 397-A, in the number and  
16 amount equal to the violations set forth in section II of this  
17 Staff Petition; and
- 18 4. Take such other administrative and legal actions as necessary for  
19 enforcement of the New Hampshire Banking Laws, the protection of  
20 New Hampshire citizens, and to provide other equitable relief.

