

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 09-101  
 )  
 3 State of New Hampshire Banking )  
 )  
 4 Department, ) Order to Show Cause  
 )  
 5 Petitioner, )  
 )  
 6 and )  
 )  
 7 McCarran, Sheila Margaret (d/b/a Macwac )  
 )  
 8 Mortgage), and Sheila Margaret )  
 )  
 9 McCarran, )  
 )  
 10 Respondents )

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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 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 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 March 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 McCarran, Sheila Margaret (d/b/a Macvac Mortgage)  
20 ("Respondent Macvac Mortgage") shall show cause why penalties  
21 in the amount of \$2,500.00 should not be imposed against it;
- 22 2. Respondent Sheila Margaret McCarran ("Respondent McCarran")  
23 shall show cause why penalties in the amount of \$2,500.00  
24 should not be imposed against her;
- 25 3. The above named Respondents shall show cause why, in addition

1 to the penalties listed in Paragraphs 1 through 2 above, the  
2 remaining unpaid \$800.00 of the total examination fee of  
3 \$1,265.00 for the December 2008 examination should not be  
4 paid to the Department;

5 4. Respondents shall be jointly and severally liable for the  
6 above amounts alleged in Paragraphs 1 through 3 above;

7 5. The above named Respondents shall show cause why, in addition  
8 to the penalties listed in Paragraphs 1 through 4 above,  
9 Respondent Macwac Mortgage's license should not be revoked.

10 It is hereby further ORDERED that:

11 6. Along with the administrative penalties listed for the above  
12 named Respondents, the outstanding sum of \$800.00 shall be  
13 immediately paid; and

14 7. Failure to request a hearing within 30 days of the date of  
15 receipt or valid delivery of this Order to Show Cause shall  
16 result in a default judgment being rendered and  
17 administrative penalties imposed upon the defaulting  
18 Respondent(s).

19  
20 SIGNED,

21  
22 Dated: 03/11/10

\_\_\_\_\_ /s/\_\_\_\_\_  
PETER C. HILDRETH  
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 09-101  
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 3 State of New Hampshire Banking )  
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 4 Department, ) Staff Petition  
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 5 Petitioner, ) March 1, 2010  
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 6 and )  
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 7 McCarran, Sheila Margaret (d/b/a Macwac )  
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 8 Mortgage), and Sheila Margaret )  
 )  
 9 McCarran, )  
 )  
 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 McCarran, Sheila Margaret (d/b/a Macwac Mortgage)  
 16 (hereinafter "Respondent Macwac Mortgage") was licensed as a  
 17 Mortgage Broker from at least June 23, 2006 (with an amended  
 18 license date of July 18, 2006) until it surrendered its license  
 19 on September 16, 2009.
- 20 2. Respondent Sheila Margaret McCarran (hereinafter "McCarran") was  
 21 the owner and President of Respondent Macwac Mortgage, when  
 22 licensed by the Department.

23 December 2008 Examination:

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

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

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herein.

4. The Department conducted an examination of Respondent Macwac Mortgage on December 1, 2008, while Respondent Macwac Mortgage was still licensed with the Department.
5. On February 23, 2009, the Department mailed the report of examination and invoice for \$1,265.00 to Respondent Macwac Mortgage, via U.S. Certified Mail Return Receipt requested, which Respondents received on February 24, 2009.
6. The above named Respondents requested and received a scheduled payment plan on June 19, 2009.
7. Respondents made the first payment of \$465.00 on July 13, 2009, which leaves a balance of \$800.00.
8. The Department's Examiner in Charge made several attempts to contact Respondents on September 14, 2009; however, all telephone numbers on file with the Department were disconnected.
9. The Department's Examiner in Charge did find a cell phone number for Respondent McCarran's husband and left a voice mail. Respondents have failed to contact the Department.
10. To date, the above named Respondents still owe the \$800.00 unpaid portion of the examination fee for the 2.53 day examination.

**II. ISSUES OF LAW**

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

1. The Department realleges the above stated facts in Paragraphs 1 through 10 as fully set forth herein.

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

4 3. RSA 397-A:12,V provides that the expense of such examination shall  
5 be chargeable to and paid by the licensee. Each of the above  
6 named Respondents violated this provision on at least two  
7 occasions as alleged above. To date, the above named Respondents  
8 have failed to pay the remaining \$800.00 of the examination  
9 invoice.

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

20 5. RSA 397-A:17,I(c) provides that it is a violation of RSA Chapter  
21 397-A to accept or process loan applications transmitted or  
22 brokered by a mortgage broker who is not licensed, and is not  
23 exempt from licensing. Each of the above named Respondents  
24 violated this statute on at least five occasions as alleged above.

25 6. 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 7. RSA 397-A:21,IV provides that any person who, either knowingly or  
6 negligently, violates any provision of 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 8. 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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22 [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]  
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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

03/01/10  
Date