

1 State of New Hampshire Banking Department

2	In re the Matter of:	) Case No.:09-118
		)
3	State of New Hampshire Banking	)
4	Department,	) Order to Show Cause
		)
5	Petitioner,	)
		)
6	and	)
		)
7	Boston Mortgage Funding Corporation	)
		)
8	(d/b/a Concord Mortgage), and James	)
		)
9	Sardina,	)
		)
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 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:17,II(e)(1) the Commissioner has the authority  
20 to remove or ban from office or employment, including license revocation,  
21 any person conducting business under RSA Chapter 397-A who violates RSA  
22 Chapter 397-A.

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

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

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

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

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

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

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

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

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

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

17 The Staff Petition dated December 9, 2009 (a copy of which is attached  
18 hereto) is incorporated by reference hereto.

19 **ORDER**

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

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

25 It is hereby ORDERED, that:

- 1           1. Respondent Boston Mortgage Funding Corporation (d/b/a Concord  
2           Mortgage) ("Respondent Boston Mortgage") shall show cause why  
3           penalties in the amount of \$5,000.00 should not be imposed  
4           against it;
- 5           2. Respondent James Sardina ("Respondent Sardina") shall show  
6           cause why penalties in the amount of \$5,000.00 should not be  
7           imposed against him;
- 8           3. The above named Respondents shall show cause why, in addition  
9           to the penalties listed in Paragraphs 1 through 2 above, the  
10          \$835.00 examination fee should not be paid to the Department;
- 11          4. The above named Respondents shall show cause why, in addition  
12          to the penalties listed in Paragraphs 1 through 3 above, the  
13          fine for \$1,425.00 for the late filing of the 2008 financial  
14          statement should not be paid to the Department;
- 15          5. Nothing in this Order to Show Cause shall prevent the  
16          Department from taking any further administrative action  
17          under New Hampshire law.
- 18          6. The above named Respondents shall be jointly and severally  
19          liable for the above amounts alleged in Paragraphs 1 through  
20          5 above; and
- 21          7. The above named Respondents shall show cause why, in addition  
22          to the penalties listed in Paragraphs 1 through 6 above,  
23          Respondent Boston Mortgage's license should not be revoked.

24          It is hereby further ORDERED that:

- 25          8. Along with the administrative penalties listed for the above



1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 09-118  
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 3 State of New Hampshire Banking )  
 )  
 4 Department, ) Staff Petition  
 )  
 5 Petitioner, ) December 09, 2009  
 )  
 6 and )  
 )  
 7 Boston Mortgage Funding Corporation )  
 )  
 8 (d/b/a Concord Mortgage), and James )  
 )  
 9 Sardina, )  
 )  
 10 Respondents )

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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 Boston Mortgage Funding Corporation (d/b/a Concord  
16 Mortgage) (hereinafter "Respondent Boston Mortgage") has been  
17 licensed as a Mortgage Broker from at least September 29, 2004  
18 (with an amended license date of July 22, 2008).
- 19 2. Respondent James Sardina (hereinafter "Respondent Northrop") was  
20 the 100% owner and President of Respondent Boston Mortgage, when  
21 licensed by the Department.

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

- 23 3. Paragraphs 1 through 2 are hereby realleged as fully set forth  
24 herein.
- 25 4. The Department conducted an examination of Boston Mortgage on May

1 4, 2009.

2 5. The Department sent Respondents the report of examination and  
3 examination invoice for \$835.00 via U.S. Certified Mail Return  
4 Receipt requested on July 10, 2009, which the post office  
5 returned to the Department on July 31, 2009 as "unclaimed".

6 6. The Department sent the report of examination and examination  
7 invoice via UPS on August 3, 2009, which Respondents received on  
8 August 4, 2009.

9 7. The above named Respondents failed to respond to the August 3,  
10 2009 correspondence from the Department.

11 8. The Department, via U.S. mail, mailed Respondents a second notice  
12 on August 18, 2009 and a third notice on September 14, 2009.

13 9. The above named Respondents did not respond to any of the three  
14 notices for payment of the \$835.00 invoice.

15 10. To date, the above named Respondents still owe the \$835.00  
16 examination fee for the one day examination.

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

18 **Filing of the Financial Statement (1 Count):**

19 11. Paragraphs 1 through 10 are hereby realleged as fully set forth  
20 herein.

21 12. Respondent Boston Mortgage was licensed in 2008 (and is currently  
22 licensed) and therefore, subject to the filing of the 2008  
23 financial statement.

24 13. Respondent Boston Mortgage's 2008 annual report was due on or  
25 before March 31, 2009 by uploading to the NMLS.

1 14. On April 4, 2009, the NMLS notified Respondents of its failure to  
2 file the financial statement.

3 15. Respondent Boston Mortgage uploaded its 2008 financial statement  
4 to the NMLS on May 27, 2009 (57 days late), generating a fine of  
5 \$1,425.00 (\$25.00 a day x 57 days).

6 16. To date, Respondent Boston Mortgage has failed to pay the  
7 \$1,425.00 late filing of the 2008 financial statement fine.

## 8 **II. ISSUES OF LAW**

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

10 1. The Department realleges the above stated facts in Paragraphs 1  
11 through 16 as fully set forth herein.

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

15 3. RSA 397-A:12,V provides that the expense of such examination shall  
16 be chargeable to and paid by the licensee. Each of the above  
17 named Respondents violated this provision on at least one occasion  
18 as alleged above. To date, the above named Respondents have  
19 failed to pay the \$835.00 examination invoice.

20 4. RSA 397-A:13,IV provides that any mortgage banker or mortgage  
21 broker failing to file either the annual report or the financial  
22 statement required by RSA Chapter 397-A within the time prescribed  
23 may be required to pay to the Department a penalty of \$25.00 for  
24 each calendar day the annual report or financial statement is  
25 overdue, up to a maximum penalty of \$2,500.00 per report or

1 statement. Respondents filed the financial statement 57 days late,  
2 which generated a reduced fine of \$1,425.00. Each of the above  
3 named Respondents violated this provision on at least one occasion  
4 as alleged above.

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

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

19 7. RSA 397-A:17,X provides an action to enforce any provision of RSA  
20 Chapter 397-A shall be commenced within 6 years after the date on  
21 which the violation occurred.

22 8. RSA 397-A:18,I provides that the Department may issue a complaint  
23 setting forth charges whenever the Department is of the opinion  
24 that the licensee or person over whom the Department has  
25 jurisdiction, has violated any provision of RSA Chapter 397-A or

1 orders thereunder.

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

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

