

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.:09-119
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Capitol Mortgage Company Inc (d/b/a)
)
 8 CMCI), and Richard D. Northrop,)
)
 9 Respondents)

10 NOTICE OF ORDER

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

13 LEGAL AUTHORITY AND JURISDICTION

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

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

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

25 Pursuant to RSA 397-A:18, the Department has the authority to issue a

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

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

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

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

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

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

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

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

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

16 The Staff Petition dated January 22, 2010 (a copy of which is attached
17 hereto) is incorporated by reference hereto.

18 **ORDER**

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

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

24 It is hereby ORDERED, that:

- 25 1. Respondent Capitol Mortgage Company Inc (d/b/a CMCI)

1 ("Respondent Capitol Mortgage") shall show cause why
2 penalties in the amount of \$7,500.00 should not be imposed
3 against it;

4 2. Respondent Richard D. Northrop ("Respondent Northrop") shall
5 show cause why penalties in the amount of \$7,500.00 should
6 not be imposed against him;

7 3. The above named Respondents shall show cause why, in addition
8 to the penalties listed in Paragraphs 1 through 2 above, the
9 \$1,895.45 examination fee should not be paid to the
10 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 accrued fine of \$3,750.00 for the late filing of examination
14 materials should not be paid to the Department;

15 5. The above named Respondents shall show cause why, in addition
16 to the penalties listed in Paragraphs 1 through 4 above, the
17 fine for \$1,775.00 for the late filing of the 2008 annual
18 report should not be paid to the Department;

19 6. Nothing in this Order to Show Cause shall prevent the
20 Department from taking any further administrative action
21 under New Hampshire law.

22 7. The above named Respondents shall be jointly and severally
23 liable for the above amounts alleged in Paragraphs 1 through
24 5 above; and

25 8. The above named Respondents shall show cause why, in addition

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-119
3 State of New Hampshire Banking)
4 Department,) Staff Petition
5 Petitioner,) January 22, 2010
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7 Capitol Mortgage Company Inc (d/b/a)
8 CMCI), and Richard D. Northrop,)
9 Respondents)

10 I. STATEMENT OF ALLEGATIONS

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

13 Facts Common on All Counts:

14 1. Respondent Capitol Mortgage Company Inc (d/b/a CMCI) (hereinafter
15 "Respondent Capitol Mortgage") was licensed as a Mortgage Broker
16 from at least August 1, 1999 (with an amended license date of
17 February 8, 2006) until it surrendered its license on August 14,
18 2009.

19 2. Respondent Richard D. Northrop (hereinafter "Respondent
20 Northrop") was the 100% owner and President of Respondent Capitol
21 Mortgage, when 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 Capitol Mortgage on

1 June 15, 2009, while Respondent Capitol Mortgage was still
2 licensed with the Department.

3 5. The Department sent Respondents the report of examination and
4 examination invoice for \$1,895.45 via U.S. Certified Mail Return
5 Receipt requested on September 30, 2009, which Respondents
6 received October 2, 2009.

7 6. The above named Respondents failed to respond to the September 30,
8 2009 correspondence from the Department.

9 7. The Department, via U.S. mail, mailed Respondents a second notice
10 on October 21, 2009 and a third notice, via U.S. Certified Mail,
11 on October 26, 2009, which the Respondents received on October
12 28, 2009.

13 8. The above named Respondents did not respond to any of the three
14 notices for payment of the \$1,895.45 invoice.

15 9. To date, the above named Respondents still owe the \$1,895.45
16 examination fee for the 2.27 day examination.

17 **Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested**

18 **Files in a Timely Manner (1 Count):**

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

21 11. As mentioned above, the Department conducted an examination of
22 Respondent Lending Connection on June 15, 2009.

23 12. The Department sent the May 7, 2009 notification of examination on
24 May 8, 2009 via U.S. Certified Mail Return Receipt requested,
25 which the Respondents received on May 11, 2009.

1 13. Acknowledgement and the loan list were due 7 days after
2 Respondents' May 11, 2009 receipt of the notice of examination,
3 which would have been May 18, 2009. The Department received
4 these two items on July 22, 2009, which is 65 days late.

5 14. The Department, via U.S. Certified Mail Return Receipt requested,
6 sent correspondence on July 22, 2009 requesting loan files for
7 the past eighteen months, along with any withdrawn or denied
8 files, and other documentation. Respondents received the July
9 22, 2009 correspondence on July 24, 2009.

10 15. On or about August 13, 2009 the Department's Examiner in Charge
11 spoke with Respondent Northrop in order to obtain the requested
12 loan files. Respondent Northrop indicated he was going to
13 surrender his license. The Department's Examiner in Charge
14 reminded him he was still subject to the examination for the time
15 he was licensed with the Department.

16 16. The remaining examination material was due within 21 calendar days
17 from Respondents' May 11, 2009 receipt of the notice of
18 examination.

19 17. The Department received the remaining examination materials on
20 August 17, 2009, which was 24 days after Respondent's July 24,
21 2009 receipt of the request for the remaining examination
22 materials.

23 18. The examination materials, in total, were seventy-five (75) days
24 late, which resulted in a total fine of \$3,750.00 (75 days x
25 \$50.00 per day).

1 19. A second notice of fine was sent to the Respondents via U.S. Mail
2 on October 8, 2009.

3 20. The Department's Examiner in Charge ("EIC") has spoken with
4 Respondent Northrop, who stated he cannot pay the examination
5 invoice and the late submission of examination materials fine.

6 21. To date, the above named Respondents have failed to pay the
7 \$3,750.00 fine for the late filing of examination materials.

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

9 **Filing of Annual Report (1 Count):**

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

12 23. Respondent Capitol Mortgage was licensed in 2008 and therefore,
13 subject to the filing of the 2008 annual report of business.

14 24. Respondent Capitol Mortgage's 2008 annual report was due on or
15 before March 31, 2009.

16 25. Respondent Capitol Mortgage filed its 2008 annual report on June
17 10, 2009 (71 days late), generating a fine of \$1,775.00 (\$25.00 a
18 day x 71 days).

19 26. The Department sent the above named Respondents invoices in June,
20 August and a third and final one on September 29, 2009.

21 27. The Department's EIC spoke with Respondent Northrop regarding the
22 \$1,775.00 fine and the examination fee. Respondent Northrop
23 indicated he could probably pay both invoices within one month.

24 28. To date, Respondent Capitol Mortgage has failed to pay the
25 \$1,775.00 late filing of the 2008 annual report fee.

1 **II. ISSUES OF LAW**

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

- 3 1. The Department realleges the above stated facts in Paragraphs 1
4 through 28 as fully set forth herein.
- 5 2. The Department has jurisdiction over the licensing and regulation
6 of persons engaged in mortgage banker or broker activities
7 pursuant to RSA 397-A:2 and RSA 397-A:3.
- 8 3. RSA 397-A:11,II provides that requested files and business records
9 must be received by the Department within 21 calendar days of
10 request. The licensee will be subject to a \$50.00 a day fine
11 every day after the 21-day period the records are not produced.
12 Respondents currently owe \$3,750.00. Each of the above named
13 Respondents violated this statute on at least one occasion as
14 alleged above.
- 15 4. 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 \$1,895.45 examination invoice.
- 20 5. 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 annual report 71 days late, which
2 generated a reduced fine of \$1,775.00. Each of the above named
3 Respondents violated this provision on at least one occasion as
4 alleged above.

5 6. 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 7. 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 8. 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 9. 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 10. RSA 397-A:21,IV provides that any person who, either knowingly or
3 negligently, violates any provision of RSA Chapter 397-A, may
4 upon hearing, and in addition to any other penalty provided for
5 by law, be subject to an administrative fine not to exceed
6 \$2,500.00, or both. Each of the acts specified shall constitute
7 a separate violation, and such administrative action or fine may
8 be imposed in addition to any criminal penalties or civil
9 liabilities imposed by New Hampshire Banking laws.

10 11. 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.

