

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 09-122  
 )  
 3 State of New Hampshire Banking )  
 )  
 4 Department, ) Order to Show Cause  
 )  
 5 Petitioner, )  
 )  
 6 and )  
 )  
 7 The Mortgage Guys L.L.C. (d/b/a Jay The )  
 )  
 8 Mortgage Man), Donna Portinari, and )  
 )  
 9 Joseph Portinari, )  
 )  
 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 this 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 16, 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 The Mortgage Guys L.L.C. (d/b/a Jay The Mortgage  
20 Man) ("Respondent Mortgage Guys") shall show cause why  
21 penalties in the amount of \$5,000.00 should not be imposed  
22 against it;
- 23 2. Respondent Donna Portinari ("Respondent D. Portinari") shall  
24 show cause why penalties in the amount of \$10,000.00 should  
25 not be imposed against her;

1 3. Respondent Joseph Portinari ("Respondent J. Portinari") shall  
2 show cause why penalties in the amount of \$10,000.00 should  
3 not be imposed against him;

4 4. The above named Respondents shall show cause why, in addition  
5 to the penalties listed in Paragraphs 1 through 3 above, a  
6 statutory penalty of \$2,500.00 should not be imposed for  
7 failing to file the 2008 annual report;

8 5. The above named Respondents shall show cause why, in addition  
9 to the penalties listed in Paragraphs 1 through 4 above, the  
10 \$1,586.50 examination fee should not be paid to the  
11 Department;

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

14 7. The above named Respondents shall show cause why, in addition  
15 to the penalties listed in Paragraphs 1 through 6 above,  
16 Respondent Mortgage Guys's license should not be revoked.

17 It is hereby further ORDERED that:

18 8. Along with the administrative penalties listed for the above  
19 named Respondents, the outstanding sum of \$4,086.50 shall be  
20 immediately paid; and

21  
22  
23 [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]  
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25

1 9. Failure to request a hearing within 30 days of the date of  
2 receipt or valid delivery of this Order to Show Cause shall  
3 result in a default judgment being rendered and  
4 administrative penalties imposed upon the defaulting  
5 Respondent(s).

6  
7 SIGNED,

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9 Dated: 03/18/10

\_\_\_\_\_  
10 /s/  
11 PETER C. HILDRETH  
12 BANK COMMISSIONER  
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1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 09-122  
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3 State of New Hampshire Banking )  
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4 Department, ) Staff Petition  
) )  
5 ) March 16, 2010  
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) )  
7 )  
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8 )  
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9 )  
) )  
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 The Mortgage Guys L.L.C. (d/b/a Jay The Mortgage Man)  
16 (hereinafter "Respondent Mortgage Guys") was licensed as a  
17 Mortgage Broker from at least March 14, 2006 (with an amended  
18 license date of May 8, 2006) until it surrendered its license on  
19 December 26, 2008.
- 20 2. Respondent Donna Portinari (hereinafter "Respondent D.  
21 Portinari") was the Vice-President of Respondent Mortgage Guys,  
22 when licensed by the Department.
- 23 3. Respondent Joseph Portinari (hereinafter "Respondent J.  
24 Portinari") was the 100% owner and President of Respondent  
25 Mortgage Guys, when licensed by the Department.

1 Violation of RSA 397-A:13,I Failure to File Annual Report (1 Count):

2 Violation of RSA 397-A:13,VI Failure of Officer and Owner to Respond to

3 Department Inquiries (1 Count):

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

6 5. The 2008 Annual Report was due on or before March 31, 2009.

7 6. Respondent Mortgage Guys's annual report was not filed as part of  
8 its surrender filing to the Department.

9 7. On January 9, 2009 the Department sent Respondents an email  
10 regarding the annual report filing.

11 8. On February 27, 2009, the Department received a publication notice  
12 as part of Respondents' license surrender process.

13 9. To date, the above named Respondents have failed to respond to the  
14 Department's correspondence and have failed to file the annual  
15 report.

16 10. To date, the accrued penalty for failure to file an annual report  
17 has reached the maximum cap of \$2,500.00 (\$25.00 per day/maximum  
18 of \$2,500.00).

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

20 Violation of RSA 397-A:13,VI Failure of Officer and Owner to Respond to

21 Department Inquiries (1 Count):

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

24 12. The Department conducted an examination of Respondent Mortgage  
25 Guys on September 15, 2008, while Respondent Mortgage Guys was

1 licensed with the Department.

2 13. On May 26, 2009, the Department mailed the report of examination  
3 and invoice for \$1,586.50 to Respondent Mortgage Guys, via U.S.  
4 Certified Mail Return Receipt requested, which Respondents  
5 received on May 27, 2009.

6 14. The above named Respondents failed to respond to the May 26, 2009  
7 correspondence from the Department.

8 15. The Department, via U.S. mail, mailed a second notice on September  
9 14, 2009 and a third notice on September 29, 2009.

10 16. The above named Respondents did not respond to any of the three  
11 notices for payment of the \$1,586.50 invoice.

12 17. To date, the above named Respondents still owe the \$1,586.50  
13 examination fee for the 1.9 day examination.

14 **II. ISSUES OF LAW**

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

16 1. The Department realleges the above stated facts in Paragraphs 1  
17 through 17 as fully set forth herein.

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

21 3. RSA 397-A:12,V provides that the expense of such examination shall  
22 be chargeable to and paid by the licensee. Each of the above  
23 named Respondents violated this provision on at least one occasion  
24 as alleged above. To date, the above named Respondents have  
25 failed to pay the \$1,586.50 examination invoice.



1 4. RSA 397-A:13,I provides that a licensee shall file its annual  
2 report on or before February 1 each year concerning operations for  
3 the preceding year or license period ending December 31. Each of  
4 the above named Respondents violated this provision on at least  
5 one occasion as alleged above. The maximum fine for this specific  
6 violation has reached \$2,500.00 (\$25.00 per day; maximum  
7 \$2,500.00) since no annual report was filed for 2008.

8 5. RSA 397-A:13,IV provides that any mortgage banker or mortgage  
9 broker failing to file either the annual report or the financial  
10 statement required by RSA Chapter 397-A within the time prescribed  
11 may be required to pay to the Department a penalty of \$25.00 for  
12 each calendar day the annual report or financial statement is  
13 overdue, up to a maximum penalty of \$2,500.00 per report or  
14 statement.

15 6. RSA 397-A:13,VI provides that any officer, owner, manager or agent  
16 of any licensee shall reply promptly in writing, or other  
17 designated form, to any written inquiry from the Department.  
18 Respondents D. Portinari and J. Portinari each have violated this  
19 provision on at least two (2) occasions as alleged above.

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

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

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

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

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

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

9 **III. RELIEF REQUESTED**

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

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

