

1 State of New Hampshire Banking Department

)Case No.: 09-123

2 In re the Matter of: )

3 State of New Hampshire Banking )

4 Department, )

5 Petitioner, )

6 and )

7 Blackhorse Mortgage Corporation, David )

8 McDaniel Horn, II, and Lawrence Scott )

9 Clark, )

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 Commissioner of the New Hampshire  
16 Banking Department (hereinafter "Department") has the authority to issue an  
17 order to show cause why license revocation and penalties for violations of  
18 New Hampshire Banking laws should not be imposed.

19 Pursuant to RSA 397-A:18,I 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 RSA Chapter 397-A.

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 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 Order to Show Cause shall,  
6 on the thirty-first day, become permanent, and shall remain in full force and  
7 effect until and unless later modified or vacated by the Commissioner, for  
8 good cause shown.

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

10 The Staff Petition dated February 3, 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 Blackhorse Mortgage Corporation ("Respondent  
20 Blackhorse") shall show cause why penalties in the amount of  
21 \$5,000.00 should not be imposed against it;

22 2. Respondent David McDaniel Horn, II ("Respondent Horn") shall  
23 show cause why penalties in the amount of \$5,000.00 should  
24 not be imposed against him for failing to communicate with  
25 the Department;

1           3. Respondent Lawrence Scott Clark ("Respondent Clark") shall  
2           show cause why penalties in the amount of \$7,500.00 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,  
6           statutory penalties 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          \$835.00 examination fee should not be paid to the Department;

11          6. Nothing in this Order to Show Cause shall prevent the  
12          Department from taking any further administrative action  
13          under New Hampshire law;

14          7. The above named Respondents shall be jointly and severally  
15          liable for the above amounts alleged in Paragraphs 1 through  
16          6 above.

17          8. The above named Respondent shall show cause why, in addition  
18          to the penalties listed in Paragraphs 1 through 7 above,  
19          Respondent Blackhorse's license should not be revoked;

20          It is hereby further ORDERED that:

21          9. Along with the administrative penalties listed for the above  
22          named Respondents, the outstanding sum of \$3,335.00 shall be  
23          immediately paid; and

1 10. 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 SIGNED,

7  
8 Dated: 02/08/10

/s/

PETER C. HILDRETH  
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of: )Case No.: 09-123  
 )  
 3 State of New Hampshire Banking )  
 )  
 4 Department, )Staff Petition  
 )  
 5 Petitioner, )February 3, 2010  
 )  
 6 and )  
 )  
 7 Blackhorse Mortgage Corporation, David )  
 )  
 8 McDaniel Horn, II, and Lawrence Scott )  
 )  
 9 Clark, )  
 )  
 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 Blackhorse Mortgage Corporation (hereinafter  
16 "Respondent Blackhorse") was licensed as a Mortgage Broker from  
17 June 9, 2008 until it surrendered its license on May 18, 2009.
- 18 2. Respondent David McDaniel Horn, II (hereinafter "Respondent  
19 Horn") was the 50% owner and President of Respondent Blackhorse,  
20 when licensed by the Department.
- 21 3. Respondent Lawrence Scott Clark (hereinafter "Respondent Clark")  
22 was the 50% owner and Vice-President of Respondent Blackhorse,  
23 when licensed by the Department.

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

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

1           herein.

2           5. The 2008 annual report was due on or before March 31, 2009.

3           6. On January 9, 2009, the Department emailed a reminder letter that  
4           the annual report was due on March 31, 2009.

5           7. The email delivery was successful but the Department was notified  
6           of an email change so the Department sent the reminder letter to  
7           the new email on January 23, 2009. A third email was sent  
8           January 26, 2009.

9           8. To date, the above named Respondents have failed to provide the  
10          2008 annual report.

11          9. To date, the accrued penalty for failure to file an annual report  
12          has reached the maximum cap of \$2,500.00.

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

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

15          **Department Inquiries (1 Count):**

16          10. Paragraphs 1 through 9 are hereby realleged as fully set forth  
17          herein.

18          11. The Department conducted an examination of Respondent Blackhorse  
19          on May 26, 2009, for activities that occurred while Respondent  
20          Blackhorse was licensed with the Department.

21          12. On July 22, 2009, the Department mailed the report of examination  
22          and invoice for \$835.00 to Respondent Blackhorse, via U.S.  
23          Certified Mail Return Receipt requested, which Respondents  
24          received on August 12, 2009.

25          13. The above named Respondents failed to respond to the July 22, 2009

1 correspondence from the Department.

2 14. The Department, via U.S. mail, mailed a second notice on September  
3 14, 2009 and a third notice on September 29, 2009.

4 15. The above named Respondents did not respond to any of the three  
5 notices for payment of the \$835.00 invoice.

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

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 NH 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,I provides that a licensee shall file its annual  
21 report on or before February 1 each year concerning operations for  
22 the preceding year or license period ending December 31. Each of  
23 the above named Respondents violated this provision on at least  
24 one occasion as alleged above. The fine is calculated as stated in  
25 RSA 397-A:13,IV below.



1 5. RSA 397-A:13,IV provides that any mortgage banker or mortgage  
2 broker failing to file either the annual report or the financial  
3 statement required by RSA Chapter 397-A within the time prescribed  
4 may be required to pay to the Department a penalty of \$25.00 for  
5 each calendar day the annual report or financial statement is  
6 overdue, up to a maximum penalty of \$2,500.00 per report or  
7 statement. To date, the statutory penalty is now \$2,500.00.

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

13 7. RSA 397-A:17 provides the Commissioner has the authority to issue  
14 an order to show cause why license revocation and penalties for  
15 violations of New Hampshire Banking laws should not be imposed.

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

19 9. Pursuant to RSA 397-A:18,I the Department has the authority to  
20 issue a complaint setting forth charges whenever the Department is  
21 of the opinion that the licensee or person over whom the  
22 Department has jurisdiction is violating or has violated any  
23 provision of RSA Chapter 397-A, or any rule or order thereunder.

24 10. RSA 397-A:20,IV provides that the Commissioner may issue, amend,  
25 or rescind such orders as are reasonably necessary to comply with

1 the provisions of RSA Chapter 397-A.

2 11. 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 12. 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.

