

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-125
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Decision Mortgage Company, Inc (d/b/a)
)
 8 Decision Capital Company of New)
)
 9 England), and Kurt DeVries,)
)
 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 shouldnot 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,VIII, in addition to any other penalty
24 provided for under RSA Chapter 397-A or RSA 383:10-d, after notice and
25

1 opportunity for hearing, the Commissioner may enter an order of rescission,
2 restitution, or disgorgement of profits directed to a person who has
3 violated RSA Chapter 397-A, or a rule or order thereunder.

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

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

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

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

19 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct
20 that is or may be an unfair or deceptive act or practice under RSA Chapter
21 358-A and exempt under RSA 358-A:3,I or that may violate any of the
22 provisions of Titles XXXV and XXXVI and administrative rules adopted
23 thereunder. The Commissioner may hold hearings relative to such conduct and
24 may order restitution for a person or persons adversely affected by such
25 conduct.

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-125
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 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
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 5 Petitioner,) November 30, 2009
)
 6 and)
)
 7 Decision Mortgage Company, Inc (d/b/a)
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 8 Decision Capital Company of New)
)
 9 England), and Kurt DeVries,)
)
 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
- 16 1. Respondent Decision Mortgage Company, Inc (d/b/a Decision Capital
17 Company of New England) (hereinafter "Respondent Decision
18 Mortgage") has been licensed as a Mortgage Broker from at least
19 March 6, 2004.
- 20 2. Respondent Kurt DeVries (hereinafter "Respondent DeVries") is the
21 100% owner and President of Respondent Decision Mortgage.
- 22
- 23
- 24
- 25

1 Violation of RSA 397-A:10, IV Failure to Update Information on File with

2 Commissioner (1 Count):

3 Violation of RSA 293-A:15.01 via RSA 397-A:2, III Persons Subject to or

4 Licensed by RSA Chapter 397-A Must Comply with Other New Hampshire State Law

5 (1 Count):

6 Violation of RSA 397-A:5, IV-b(a) (2) (B) Failure to Inform NMLS Information on

7 Administrative Suspension by Secretary of State (2 Counts):

8 3. Paragraphs 1 through 2 are hereby realleged as fully set forth
9 herein.

10 4. It has come to the Department's attention that Respondent
11 Decision Mortgage's ability to transact business has been
12 administratively suspended through the New Hampshire Secretary of
13 State since August 1, 2007.

14 5. Respondents have failed to inform the Department of the
15 administrative suspension, despite renewing its license both in
16 2008 and 2009 and despite Respondent DeVries' loan originator
17 license application.

18 6. Respondent Decision Mortgage, as sponsor for Respondent DeVries'
19 loan originator license, failed to answer in the affirmative to
20 any question regarding administrative suspensions or restriction
21 of activities regarding Respondent Decision Mortgage.

22 7. Respondent DeVries, in his own mortgage loan originator license
23 application, failed to respond affirmatively to any questions
24 indirectly or directly involving Respondent Decision Mortgage's
25 administrative suspension by the New Hampshire Secretary of

1 State.

2 **II. ISSUES OF LAW**

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

- 4 1. The Department realleges the above stated facts in Paragraphs 1
5 through 7 as fully set forth herein.
- 6 2. The Department has jurisdiction over the licensing and regulation
7 of persons engaged in mortgage banker or broker activities
8 pursuant to NH RSA 397-A:2 and RSA 397-A:3.
- 9 3. RSA 397-A:2, III requires persons subject to or licensed under RSA
10 Chapter 397-A to abide by applicable federal laws and regulations,
11 the laws and rules of the State of New Hampshire, and the orders
12 of the Commissioner. Any violation of such law, regulation, order,
13 or rule is a violation of RSA Chapter 397-A. Each of the above
14 named Respondents violated this statute on at least one occasion
15 as alleged above.
- 16 4. RSA 293-A:15.30 states a Certificate of Authority (to transact
17 business) may be revoked by the secretary of state if the
18 corporation has failed to file its annual report and/or failed to
19 sustain a registered agent.
- 20 5. RSA 397-A:5, IV-b(a) (2) (B) provides that each mortgage loan
21 originator operating in New Hampshire and each mortgage loan
22 originator making or brokering mortgage loans on New Hampshire
23 real property and each principal of a mortgage banker or mortgage
24 broker shall, in addition to other requirements in New Hampshire
25 law and regulations, prior to licensure, furnish to the NMLS

1 among other items, information related to any administrative by
2 any governmental jurisdiction. Each of the above named
3 Respondents violated this provision on at least two occasions as
4 alleged above.

5 6. RSA 397-A:10,IV provides that persons licensed under RSA Chapter
6 397 are under a continuing obligation to update information on
7 file with the Commissioner. Each of the above named Respondents
8 failed to update the Commissioner on at least one occasion as
9 alleged above.

10 7. RSA 397-A:17 provides the Banking Department of the State of New
11 Hampshire (hereinafter the "Department") has the authority to
12 issue an order to show cause why license revocation and penalties
13 for violations of New Hampshire Banking laws should not be
14 imposed.

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

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

5 10. RSA 397-A:17,VIII provides that in addition to any other penalty
6 provided for under RSA Chapter 397-A or RSA 383:10-d, after
7 notice and opportunity for hearing, the Commissioner may enter an
8 order of rescission, restitution, or disgorgement of profits
9 directed to a person who has violated RSA Chapter 397-A, or a
10 rule or order thereunder.

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

14 12. RSA 397-A:18,I provides that the Department may issue a complaint
15 setting forth charges whenever the Department is of the opinion
16 that the licensee or person over whom the Department has
17 jurisdiction, has violated any provision of RSA Chapter 397-A or
18 orders thereunder.

19 13. RSA 397-A:21,IV provides that any person who, either knowingly or
20 negligently, violates any provision of RSA Chapter 397-A, may
21 upon hearing, and in addition to any other penalty provided for
22 by law, be subject to an administrative fine not to exceed
23 \$2,500.00, or both. Each of the acts specified shall constitute
24 a separate violation, and such administrative action or fine may
25 be imposed in addition to any criminal penalties or civil

1 liabilities imposed by New Hampshire Banking laws.

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

18 **III. RELIEF REQUESTED**

19 The staff of the Department requests the Commissioner take the following
20 action:

- 21 1. Find as fact the allegations contained in section I of this Staff
22 Petition;
- 23 2. Make conclusions of law relative to the allegations contained in
24 section II of this Staff Petition;
- 25 3. Pursuant to RSA 397-A:17, order each of the above named

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Respondents to show cause why their licenses should not be
revoked;

4. Pursuant to RSA 397-A:17,VIII, order Respondents to rescind, give
restitution, or disgorge profits;

5. Assess fines and administrative penalties in accordance with RSA
397-A:21, for violations of RSA Chapter 397-A, in the number and
amount equal to the violations set forth in section II of this
Staff Petition; and

6. Take such other administrative and legal actions as necessary for
enforcement of the New Hampshire Banking Laws, the protection of
New Hampshire citizens, and to provide other equitable relief.

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

 11/30/09
Date