

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-026
)
 3 State of New Hampshire Banking)
)
 4 Department,)
)
 5 Petitioner,) Notice of Hearing - Order to Show
) Cause and Cease and Desist
)
 6 and)
)
 7 LeadPoint, Inc. d/b/a Secure Rights and)
)
 8 d/b/a Amerivalue, Redpoint Ventures II,)
)
 9 LP, Breakwater Ventures, Inc., Estalea)
)
 10 LP, Marc Louis Diana, and Per)
)
 11 Pettersen,)
)
 12 Respondents)
)

13 NOTICE OF HEARING REGARDING ORDER TO SHOW CAUSE AND CEASE AND DESIST

14 1. The Department issued to the above named Respondents an Order to Show
 15 Cause and Cease and Desist on May 4, 2011. RSA Chapter 541-A and RSA
 16 Chapter 397-A require the Department to schedule/hold a hearing on such
 17 matter within ten (10) calendar days of a written request for hearing unless
 18 otherwise waived by the Respondents. Respondents, through their compliance
 19 representative, filed a timely request for hearing and waived their right to
 20 a ten (10) day hearing on June 8, 2011.

21 IT IS HEREBY ORDERED that:

22 2. Respondents appear before the New Hampshire Banking Department on
 23 Thursday, December 8, 2011 at 10:00 am, at the New Hampshire Banking
 24 Department located at 53 Regional Drive, Suite 200, Concord, New Hampshire
 25 03301, for the purpose of participating in an adjudicative proceeding, at

1 which time the Respondents will have the opportunity to demonstrate why the
2 relief sought in the Order to Show Cause and Cease and Desist should not
3 become permanent.

4 3. Pursuant to RSA 541-A:31,III(b), the legal authorities under which the
5 hearing is to be held are: RSA 541-A:30,III, RSA 397-A:17,I and II, RSA 397-
6 A:18,I and II and RSA 397-A:21,IV.

7 4. The Department's alleged violations against the above named Respondents
8 in the Order to Show Cause and Cease and Desist are as follows. Each Count
9 is considered a separation violation for purposes of RSA 397-A:21:

10 **a. Respondent LeadPoint:**

11 Violation #1: Unlicensed mortgage broker activity (RSA 397-
12 A:3,I) - 22,003 Counts (2005 to 2009);

13 **b. Respondent Redpoint:**

14 Violation #1: Unlicensed mortgage broker activity (RSA 397-
15 A:3,I) - 22,003 Counts (2005 to 2009);

16 **c. Respondent Breakwater:**

17 Violation #1: Unlicensed mortgage broker activity (RSA 397-
18 A:3,I) - 22,003 Counts (2005 to 2009);

19 **d. Respondent Estalea:**

20 Violation #1: Unlicensed mortgage broker activity (RSA 397-
21 A:3,I) - 22,003 Counts (2005 to 2009); and

22 **e. Respondent Diana:**

23 Violation #1: Unlicensed mortgage broker activity (RSA 397-
24 A:3,I) - 22,003 Counts (2005 to 2009);

1 **f. Respondent Pettersen:**

2 Violation #1: Unlicensed mortgage broker activity (RSA 397-
3 A:3,I) - 22,003 Counts (2005 to 2009).

4 5. The Department's alleged violations against Respondents also include:

5 a. An order to show cause why rescission, restitution, or
6 disgorgement of profits and/or commissions for services rendered
7 should not occur; and

8 b. An order to show cause why back-license fees of \$4,000.00 for
9 mortgage broker activity since 2004 should not be paid to the
10 Department.

11 6. The facts as alleged in the Order to Show Cause and Cease and Desist are
12 herein incorporated by reference.

13 7. An adjudicative proceeding shall be commenced pursuant to RSA 541-A:31
14 for the purpose of permitting the above named Respondents to show compliance
15 with the stated violations (as described in the Paragraphs above).

16 8. Each party has the right to have an attorney present to represent the
17 party at the party's expense, or may represent itself or himself. If the
18 Respondents elect to be represented by Counsel, said Counsel shall file a
19 notice of appearance at the earliest possible date.

20 9. Maryam Torben Desfosses, Hearings Examiner, New Hampshire Banking
21 Department is designated as Hearings Examiner in this matter with authority
22 to represent the public interest within the scope of the Department's
23 authority. The Hearings Examiner shall have the status of a party to this
24 proceeding.

25 10. A Presiding Officer will be delegated to preside over this matter

1 pursuant to RSA 383:7-a and see also RSA 541-A:1,XV.

2 11. Any proposed exhibits shall be pre-marked, for identification only, and
3 filed with the Department and provided to the opposing party by Thursday,
4 December 1, 2011. The Hearings Examiner shall pre-mark the Department's
5 exhibits with Arabic numbers. The Respondents shall pre-mark exhibits with
6 capital letters. An index/list of exhibits providing a brief description of
7 each exhibit with its corresponding pre-marked number or letter shall be
8 filed by both parties simultaneous with the filing of exhibits.

9 12. The parties shall exchange a list of all exhibits and witnesses to be
10 called at the hearing with a brief summary at the hearing, and shall at the
11 same time file a copy of their respective lists with the Presiding Officer.

12 13. All periods referenced in this notice shall be calendar days. If the
13 last day of the period so computed falls on a Saturday, Sunday, or legal
14 holiday, then the time period shall be extended to include the first
15 business day that is not a Saturday, Sunday, or legal holiday.

16 14. The Department shall have the burden of setting forth a *prima facie*
17 case, then the Respondents shall have the burden of showing compliance with
18 applicable law by a preponderance of the evidence.

19 15. Any Respondent's failure to appear at the time, date, and place
20 specified may result in the hearing being held *in absentia* and/or default
21 ruling in favor of the Department, without further notice or opportunity to
22 be heard.

23 16. The entirety of all verbal proceedings shall be recorded verbatim by the
24 Department. Upon request of any party, or upon the Presiding Officer's own
25 initiative, such record shall be transcribed by a certified court reporter

1 designated by the Presiding Officer, and that all costs shall be borne
2 solely by the requesting party.

3 17. Each party has the right to have the Department provide a certified
4 shorthand court reporter at the requesting party's expense. Any such request
5 shall be submitted in writing to the Presiding Officer at least 10 days
6 prior to the hearing.

7 18. All documents shall be filed with the Presiding Officer in the form of an
8 original and one (1) copy and shall bear a certification that a copy is being
9 delivered to Hearings Examiner and any other parties to this matter in
10 accordance with applicable laws. All documents shall be filed by mailing or
11 delivering them to the New Hampshire Banking Department, ATTN: Presiding
12 Officer 08-026, 53 Regional Drive, Suite 200, Concord, NH 03301. Filing by
13 facsimile or electronic transmission shall not be accepted.

14 19. The parties may submit Proposed Orders, which shall include findings of
15 fact and conclusions of law, separately stated, no later than ten (10) days
16 following conclusion of the hearing(s) in this matter.

17 20. Routine procedural inquiries may be made by telephoning Maryam Torben
18 Desfosses, Hearings Examiner at (603)271-3561, but all other communications
19 with the Presiding Officer and with the Department shall be in writing and
20 shall be filed as provided above. *Ex parte* communications are forbidden by
21 statute.

22 21. A copy of this Notice of Hearing shall be mailed to all named
23 Respondents by delivery to their named representative, Mr. Michael Crouse of
24 American Mortgage Licensing, and that a copy shall also be delivered to
25 Maryam Torben Desfosses, Hearings Examiner, and to the Presiding Officer at

1 the New Hampshire Banking Department.

2

3

4 **SO ORDERED,**

5

/s/
Ronald A. Wilbur
Bank Commissioner

11/16/11
Date

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25