

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 08-169  
3 State of New Hampshire Banking )  
4 Department, )  
5 Petitioner, ) Notice of Hearing - Order to Show  
6 and ) Cause and Cease and Desist Order  
7 Home Express Mortgage Corp, and Dmitri )  
8 Pidvyssotski, )  
9 Respondents )

10 NOTICE OF ORDER TO SHOW CAUSE AND CEASE AND DESIST ORDER HEARING

11 1. The Department issued to the above named Respondents an Order to Show  
12 Cause and Cease and Desist Order on July 1, 2009. RSA Chapter 541-A and RSA  
13 Chapter 397-A require the Department to hold a hearing on such matter within  
14 ten (10) calendar days of a written request for a hearing unless otherwise  
15 waived by the Respondents. Respondents filed a timely request for a hearing  
16 and waived their right to a ten (10) day hearing on July 22, 2009.

17 IT IS HEREBY ORDERED that:

18 2. Respondents appear before the New Hampshire Banking Department on  
19 Tuesday, March 22 at 10:00 am, at the New Hampshire Banking Department  
20 located at 53 Regional Drive, Suite 200, Concord, New Hampshire 03301, for  
21 the purpose of participating in an adjudicative proceeding, at which time  
22 the Respondents will have the opportunity to demonstrate why the relief  
23 sought in the Order to Show Cause and Cease and Desist Order should not  
24 become permanent.

25 3. Pursuant to RSA 541-A:31,III(b), the legal authorities under which the

1 hearing is to be held are: RSA 541-A:30,III, RSA 397-A:17, RSA 397-A:18, RSA  
2 397-A:21 and RSA 383:10-d.

3 4. The Department's alleged violations against the above named Respondents  
4 in the Order to Show Cause and Cease and Desist Order are as follows:

5 a. Respondent Home Express Mortgage Corp:

6 Violation #1: Failure to supervise (RSA 397-A:6,I) - 6 Counts

7 Violation #2: Failure to supervise (RSA 397-A:17,I(g)) - 6 Counts

8 Violation #3: Dishonest or Unethical Practices (RSA 397-A:17,I(k)) - 6  
9 Counts

10 Violation #4: Violation of Title 18 U.S.C. Section 1001, et seq. (RSA  
11 397-A:2,III) - 2 Counts

12 Violation #5: Violation of Title 18 U.S.C. Section 1010, et seq. (RSA  
13 397-A:2,III) - 2 Counts

14 Violation #6: Violation of Title 18 U.S.C. Section 1344, et seq. (RSA  
15 397-A:2,III) - 2 Counts

16 Violation #7: Violation of the Real Estate Settlement Procedures Act,  
17 Regulation X, 24 C.F.R. Section 3500.7, Appendix B, Illustration 13  
18 and Appendix C (RSA 397-A:2,III) - 5 Counts

19 Violation #8: Violation of the Real Estate Settlement Procedures Act,  
20 Regulation X, 24 C.F.R. Section 3500.7, Appendix B, Illustration 13  
21 and Appendix C (RSA 397-A:16,I) - 5 Counts

22 Violation #9 Violation of the Real Estate Settlement Procedures Act,  
23 Regulation X, 24 C.F.R. Section 3500.14 (RSA 397-A:2,III) - 4 Counts

24 b. Respondent Dmitri Pidvyssotski:

25 Violation #1: Failure to supervise (RSA 397-A:6,I) - 6 Counts

1 Violation #2: Failure to supervise (RSA 397-A:17,I(g)) - 6 Counts

2 Violation #3: Dishonest or Unethical Practices (RSA 397-A:17,I(k)) - 6  
3 Counts

4 Violation #4: Violation of Title 18 U.S.C. Section 1001, et seq. (RSA  
5 397-A:2,III) - 2 Counts

6 Violation #5: Violation of Title 18 U.S.C. Section 1010, et seq. (RSA  
7 397-A:2,III) - 2 Counts

8 Violation #6: Violation of Title 18 U.S.C. Section 1344, et seq. (RSA  
9 397-A:2,III) - 2 Counts

10 Violation #7: Violation of the Real Estate Settlement Procedures Act,  
11 Regulation X, 24 C.F.R. Section 3500.7, Appendix B, Illustration 13  
12 and Appendix C (RSA 397-A:2,III) - 5 Counts

13 Violation #8: Violation of the Real Estate Settlement Procedures Act,  
14 Regulation X, 24 C.F.R. Section 3500.7, Appendix B, Illustration 13  
15 and Appendix C (RSA 397-A:16,I) - 5 Counts

16 Violation #9 Violation of the Real Estate Settlement Procedures Act,  
17 Regulation X, 24 C.F.R. Section 3500.14 (RSA 397-A:2,III) - 4 Counts

18 5. The facts as alleged in the Order to Show Cause and Cease and Desist  
19 Order are herein incorporated by reference.

20 6. An adjudicative proceeding shall be commenced pursuant to RSA 541-A:31  
21 for the purpose of permitting the above named Respondents to show compliance  
22 with the stated violations.

23 7. Each party has the right to have an attorney present to represent the  
24 party at the party's expense, or may represent itself or himself. If the  
25 Respondents elect to be represented by Counsel, said Counsel shall file a

1 notice of appearance at the earliest possible date.

2 8. Maryam Torben Desfosses, Hearings Examiner, New Hampshire Banking  
3 Department is designated as Hearings Examiner in this matter with authority  
4 to represent the public interest within the scope of the Department's  
5 authority. The Hearings Examiner shall have the status of a party to this  
6 proceeding.

7 9. A Presiding Officer will be delegated to preside over this matter  
8 pursuant to RSA 383:7-a and see also RSA 541-A:1,XV.

9 10. Any proposed exhibits shall be pre-marked, for identification only, and  
10 filed with the Department and provided to the opposing party by Tuesday,  
11 March 16, 2011. The Hearings Examiner shall pre-mark the Department's  
12 exhibits with Arabic numbers. The Respondents shall pre-mark exhibits with  
13 capital letters. An index/list of exhibits providing a brief description of  
14 each exhibit with its corresponding pre-marked number or letter shall be  
15 filed by both parties simultaneous with the filing of exhibits.

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

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

23 13. The Department shall have the burden of setting forth a *prima facie*  
24 case, then the Respondents shall have the burden of showing compliance with  
25 applicable law by a preponderance of the evidence.

1 14. Any Respondent's failure to appear at the time, date, and place  
2 specified may result in the hearing being held *in absentia* and/or default  
3 ruling in favor of the Department, without further notice or opportunity to  
4 be heard.

5 15. The entirety of all verbal proceedings shall be recorded verbatim by the  
6 Department. Upon request of any party, or upon the Presiding Officer's own  
7 initiative, such record shall be transcribed by a certified court reporter  
8 designated by the Presiding Officer, and that all costs shall be borne  
9 solely by the requesting party.

10 16. Each party has the right to have the Department provide a certified  
11 short hand reporter at the requesting party's expense. Any such request  
12 shall be submitted in writing to the Presiding Officer at least 10 days  
13 prior to the hearing.

14 17. All documents shall be filed with the Presiding Officer in the form of an  
15 original and one (1) copy and shall bear a certification that a copy is being  
16 delivered to Hearings Examiner and any other parties to this matter in  
17 accordance with applicable laws. All documents shall be filed by mailing or  
18 delivering them to the New Hampshire Banking Department, ATTN: Presiding  
19 Officer 08-169, 53 Regional Drive, Suite 200, Concord, NH 03301. Filing by  
20 facsimile or electronic transmission shall not be accepted.

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

24 19. Routine procedural inquiries may be made by telephoning Maryam Torben  
25 Desfosses, Hearings Examiner at (603)271-3561, but all other communications  
with the Presiding Officer and with the Department shall be in writing and

1 shall be filed as provided above. *Ex parte* communications are forbidden by  
2 statute.

3 20. A copy of this Notice of Hearing shall be mailed to all named  
4 Respondents at their addresses of record and that a copy shall also be  
5 delivered to Maryam Torben Desfosses, Hearings Examiner, and to the  
6 Presiding Officer at the New Hampshire Banking Department.

7

8 **SO ORDERED,**

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10 \_\_\_\_\_  
11 /s/  
12 Robert A. Fleury  
13 Deputy Bank Commissioner

14 \_\_\_\_\_  
15 February 14, 2011  
16 Date

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