

1 State of New Hampshire Banking Department

2

3 In re the Matter of:) Case No.: 07-008
)
 4 State of New Hampshire Banking) Notice of Hearing - Order To Show
) Cause and Cease and Desist Order
 5 Department,)
) AMENDED
 6 Petitioner,)
)
 7 and)
)
 8 Mortgage Lenders Network USA Inc,)
)
 9 Mitchell Heffernon, and James E.)
)
 10 Pedrick,
 11 Respondents

12
13 AMENDED NOTICE OF HEARING

14 Pursuant to RSA 397-A:18 II, the Banking Department of the State of New
15 Hampshire (hereinafter the "Department") has the authority to issue and cause
16 to be served an order requiring any person engaged in any act or practice
17 constituting a violation of RSA 397-A or any rule or order thereunder, to
18 cease and desist from violations of RSA 397-A.

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

22 Pursuant to the New Hampshire Banking laws, RSA 397-A:3 requires any
23 person not exempt under RSA 397-A:4 that, in its own name or on behalf of
24 other persons, engages in the business of making or brokering first mortgage
25 loans secured by real property located in this state shall be required to
obtain a license from the banking department.

1 Pursuant to RSA 383:10-d The commissioner shall have exclusive authority
2 and jurisdiction to investigate conduct that is or may be an unfair or
3 deceptive act or practice under RSA 358-A and exempt under RSA 358-A:3, I or
4 that may violate any of the provisions of Titles XXXV and XXXVI and
5 administrative rules adopted thereunder. The commissioner may hold hearings
6 relative to such conduct and may order restitution for a person or persons
7 adversely affected by such conduct.

8 The Department issued the Respondent a Cease and Desist Order and Order
9 to Show Cause on January 19, 2007 and an Amended Cease and Desist Order and
10 Order to Show Cause on February 2, 2007. The Respondent filed a timely
11 request for a hearing regarding this matter. This matter was previously
12 scheduled and continued at request of Respondents.

13 The Department alleges the following:

14 **Issue 1:** Whether respondent MLN is subject to license revocation, fines
15 and/or other penalties for violation of the bond provisions of RSA 397-A:5.

16 **Issue 2:** Whether respondent MLN is subject to license revocation, fines and/or
17 other penalties for failing to funds loans at closing pursuant to RSA 397-A:14-
18 b.

19 **Issue 3:** Whether respondent Heffernon is subject to fines and/or other
20 penalties for his role in the violations of the Chapter by respondent MLN.

21 **Issue 4:** Whether respondent Pedrick is subject to fines and/or other penalties
22 for his role in the violations of the Chapter by respondent MLN.

23 Accordingly, an adjudicative proceeding shall be commenced pursuant to
24 541-A:31 and Chapter 200 of the Department's rules (NH Code of
25 Administrative Rules BAN 200) for the purpose of permitting the Respondent to
show compliance with RSA 397-A and 383:10-d.

Each party has the right to have an attorney present to represent the
party at the party's expense, or may represent itself. Each party has the

1 right to have the Department provide a certified shorthand court reporter at
2 the requesting party's expense. Any such request must be submitted in
3 writing to the Department at least 10 days prior to a scheduled hearing date.

4 THEREFORE, IT IS ORDERED, that the Respondent appear before the New
5 Hampshire Banking Department on **July 31, 2007 at 10:00 am**, at the
6 Department's offices at 64B Old Suncook Road, Concord, New Hampshire, for the
7 purpose of participating in an adjudicative proceeding, at which time the
8 Respondent will have the opportunity to demonstrate why the cease and desist
9 order should not become permanent; and

10 IT IS FURTHER ORDERED, that if the Respondent elects to be represented
11 by Counsel, said Counsel shall file notice of appearance at the earliest
12 possible date; and

13 IT IS FURTHER ORDERED, that James Shepard, Staff Attorney, New
14 Hampshire Banking Department is designated as Hearing Counsel in this matter
15 with authority to represent the public interest within the scope of the
16 Department's authority. Hearing Counsel shall have the status of a party to
17 this proceeding; and

18 IT IS FURTHER ORDERED, that the Commissioner shall designate a member
19 of the Department, who shall serve as the Presiding Officer in this
20 proceeding and shall issue a RECOMMENDED DECISION in this matter which shall
21 be reviewed and approved, disapproved or modified by the Bank Commissioner;
22 and

23 IT IS FURTHER ORDERED, that any proposed exhibits shall be pre-marked,
24 for identification only, and filed with the Department and provided to the
25 opposing party as soon as possible. Hearing Counsel shall pre-mark the
Department's exhibits with Arabic numbers. The Respondent shall pre-mark
exhibits with capital letters. An index/list of exhibits providing a brief
description of each exhibit with its corresponding pre-marked number or

1 letter shall be filed by both parties simultaneous with the filing of
2 exhibits; and

3 IT IS FURTHER ORDERED, that the parties shall exchange a list of all
4 exhibits and witnesses to be called at the hearing with a brief summary prior
5 to **July 26, 2007**, and shall at the same time file a copy of their respective
6 witness lists with the Presiding Officer; and

7 IT IS FURTHER ORDERED, that all periods referenced in this notice shall
8 be calendar days. If the last day of the period so computed falls on a
9 Saturday, Sunday, or legal holiday, then the time period shall be extended to
10 include the first business day that is not a Saturday, Sunday, or legal
11 holiday; and

12 IT IS FURTHER ORDERED, that the Department shall burden of setting forth
13 a *prima facie* case, then the Respondent shall have the burden of showing
14 compliance with applicable law by a preponderance of the evidence;

15 IT IS FURTHER ORDERED, that Respondent's failure to appear at the time,
16 date, and place specified may result in the hearing being held *in absentia*
17 and/or default ruling in favor of the Department, without further notice or
18 opportunity to be heard; and

19 IT IS FURTHER ORDERED, that the entirety of all oral proceedings shall
20 be recorded verbatim by the Banking Department. Upon request of any party, or
21 upon the Presiding Officer's own initiative, such record shall be transcribed
22 by a certified court reporter designated by the Presiding Officer, and that
23 all costs shall be borne solely by the requesting party. Any such request
24 shall be submitted in writing to the Presiding Officer prior to hearing.

25 IT IS FURTHER ORDERED, that all documents shall be filed with the
Presiding Officer in the form of an original and one (1) copy and shall bear a
certification that a copy is being delivered to Hearing Counsel and any other
parties to this matter in accordance with NH Code of Administrative Rules Ban
204.08. All documents shall be filed by mailing or delivering them to the New

