

1 State of New Hampshire Banking Department

2

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

11
12 NOTICE OF ORDER

13 This Order commences an adjudicative proceeding under the provisions of
14 RSA 541A:31, RSA 397-A, and BAN 204.03.

15 LEGAL AUTHORITY AND JURISDICTION

16 Pursuant to RSA 397-A:17, the Commissioner of the New Hampshire Banking
17 Department (hereinafter "the Department") may issue an Order to Show Cause
18 why a license should not be revoked. RSA 397-A:17 states that the
19 Department may issue such Order when a licensee engages in an unethical
20 business practice. RSA 397-A:21 states the Commissioner may impose penalties
of up to \$2,500 per violation of the chapter.

21 Pursuant to RSA 397-A:18 the banking department may issue a cease and
22 desist order against any licensee or person who it has reasonable cause to
23 believe is in violation of the provisions of this chapter or any rule or order
24 under this chapter.

25 Pursuant to RSA 383:10-d the Commissioner shall investigate conduct that
is or may be an unfair or deceptive act or practice under RSA 358-A and exempt

1 under RSA 358-A:3, I or that may violate any of the provisions of Titles XXXV
2 and XXXVI and administrative rules adopted thereunder. The commissioner may
3 hold hearings relative to such conduct and may order restitution for a person
4 or persons adversely affected by such conduct. The Commissioner may utilize
5 all remedies available under the Act.

6 **NOTICE OF RIGHT TO REQUEST A HEARING**

7 The above named respondents have the right to request a hearing on this
8 Order to Show Cause and Cease and Desist Order, as well as the right to be
9 represented by counsel. Any such request for a hearing shall be in writing,
10 and signed by the respondents or by the duly authorized agent of the above
11 named respondents, and shall be delivered either by hand or certified mail,
12 return receipt request, to the Banking Department, State of New Hampshire,
13 64B Old Suncook Road, Concord, NH 03301. Hearings will be conducted within 10
14 days of such request.

15 If respondents fail to request a hearing or respond to the orders
16 within 30 calendar days of receipt of these orders, respondent shall be
17 deemed in default, the penalties requested will be imposed, and the Cease and
18 Desist will be become permanent on the 31st day.

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

20 The Staff Petition dated January 18, 2007 (a copy of which is attached
21 hereto) is incorporated by reference hereto.

22 **ORDER**

23 WHEREAS, finding it necessary and appropriate and in the public
24 interest, and consistent with the intent and purposes of the New Hampshire
25 banking laws, and

WHEREAS, finding that the allegations contained in the Staff Petition,
if proved true and correct, form the legal basis of the relief requested,

1 It is hereby ORDERED, that:

- 2 1. Respondent Mortgage Lenders Network USA Inc (MLN) shall show
3 cause why penalties in the amount of \$275,000.00 should not be
4 imposed; and
5 2. Respondent Mitchell Heffernon shall show cause why penalties
6 in the amount of \$275,000.00 should not be imposed; and
7 3. Respondent MLN shall show cause why its license should not be
8 revoked; and
9 4. The Respondents shall immediately Cease and Desist from all
10 violations of New Hampshire law and the rules promulgated
11 thereunder; and

11 It is hereby ORDERED that:

- 12 5. Respondent MLN shall immediately fund the 11 outstanding
13 loans; and
14 6. Failure to request a hearing within 30 days of the date of
15 receipt of this Order shall result in a default judgment being
16 rendered, the Cease and Desist Order shall become permanent
17 and administrative penalties shall be imposed upon the
18 defaulting Respondent.

18 SIGNED,

19
20 Dated: 1/19/07

/s/
PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

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3 In re the Matter of:) Case No.: 07-008
)
 4 State of New Hampshire Banking) Staff Petition
)
 5 Department,)
)
 6 Petitioner,) January 18, 2007
)
 7 and)
)
 8 Mortgage Lenders Network USA Inc)
)
 9 And Mitchell Heffernan,)
)
 10 Owner/President/CEO,
)
 11 Respondents

12
13 STATEMENT OF ALLEGATIONS

14 I. The staff of the Banking Department, State of New Hampshire (hereinafter
15 referred to as the "Department") alleges the following facts:

- 16 1. Respondent Mortgage Lenders Network USA Inc. (MLN) is licensed as a
 17 mortgage banker doing business as Lenders Network and has held a license
 18 with the Department since at least 1997.
- 19 2. Respondent's principal office is currently located at 213 Court St.
 20 Middletown, CT 06457.
- 21 3. Respondent Mitchell Heffernon is the owner, Chief Executive Officer and
 22 President of Respondent MLN.
- 23 4. The Department received a facsimile transmission from MLN on January 2,
 24 2007 dated December 29, 2006 which notified the Department that MLN was
 25 not financially capable of closing loans in its own name effective
 immediately and that it would cease accepting mortgage applications as
 of that date.

1 5. In said letter MLN assures the Department that it will "ensure that all
2 remaining loans in its pipeline that are scheduled to close will be
3 transferred to another properly licensed lender."

4 6. On or about January 3, 2007 the Department was made aware that a certain
5 company was making arrangements to purchase MLN's outstanding
6 obligations.

7 7. On or about January 5, 2007 the Department received a list of New
8 Hampshire loans that were "closed" but not funded as of that time. This
9 list included 11 loans totaling \$2,622,400.00 and concerning 10
10 borrowers. The closing date for all of these loans was December 29, 2006
11 or thereafter.

12 8. On January 16, 2007 the Department received continued assurances from
13 MLN that the third party was still negotiating to purchase MLN's
14 outstanding New Hampshire loan obligations.

15 9. On January 17, 2007 the Department was advised by the third party lender
16 that it had informed MLN previous to January 16, 2007 that it would not
17 purchase the remaining unfunded loans.

18 10. MLN currently has a bond in the amount of \$20,000.00 in place.

19 11. As a result of the Respondents' failure to observe sound business
20 practices New Hampshire consumers have suffered financial and other
21 losses.

22 II. The staff of the Banking Department, State of New Hampshire alleges the
23 following issues of law:

- 24 1. The Banking Department ("Department"), has jurisdiction over the
25 licensing and regulation of persons engaged in first mortgage banker /
broker activities pursuant to NH RSA 397-A:3.

- 1 2. Mortgage Servicing Companies are required to be registered pursuant to
2 RSA 397-B:2.
- 3 3. Licensees under RSA 397-A are exempt from the registration provisions
4 of 397-B pursuant to 397-B:10.
- 5 4. Pursuant to RSA 397-A:5 licensees are required to have financial
6 integrity, a positive net worth and a net worth in excess of
7 \$100,000.00 in order to post a \$20,000.00 bond.
- 8 5. Pursuant to RSA 397-A:14-b licensees are required to fund loans at
9 closing.
- 10 6. RSA 397-A:21 IV provides that any person who, either knowingly or
11 negligently, violates any provision of RSA 397-A, may upon hearing, and
12 in addition to any other penalty provided for by law, be subject to
13 suspension, revocation, or denial of any registration or license, or an
14 administrative fine not to exceed \$2,500, or both. Each of the acts
15 specified shall constitute a separate violation, and such
16 administrative action or fine may be imposed in addition to any
17 criminal penalties or civil liabilities imposed by New Hampshire
18 banking laws. Respondents are subject to revocation and/or
19 administrative fines for violations of RSA 397-A.
- 20 7. RSA 397-A:21 V provides that every person who directly or indirectly
21 controls a person liable under this section, every partner, principal
22 executive officer, or director of such person, who materially aids in
23 the acts constituting the violation, either knowingly or negligently,
24 may, upon notice and opportunity for hearing, and in addition to any
25 other penalty provided for by law, be subject to suspension,
 revocation, or denial of an registration or license, including the
 forfeiture of any application fee, or the imposition of an
 administrative fine not to exceed \$2,500, or both. Each of the acts
 specified shall constitute a separate violation, and such

1 administrative action or fine may be imposed in addition to any
2 criminal penalties or civil liabilities imposed by New Hampshire
3 banking laws. Mitchell Heffernon is subject to revocation and/or
4 administrative fines for violations of RSA 397-A.

5 8. Pursuant to RSA 397-A:17 the commissioner may issue an order requiring a
6 person to whom any license has been granted or any person under the
7 commissioner's jurisdiction to show cause why the license should not be
8 revoked, suspended, or penalties imposed, or both, for violations of this
9 chapter. Pursuant to RSA 397-A:17 I(k) respondent MLN is subject to
10 license revocation for engaging in dishonest or unethical practices in
the conduct of the business of making or collecting mortgage loans.

11 9. Pursuant to RSA 397-A:18 the banking department may issue a cease and
12 desist order against any licensee or person who it has reasonable cause
13 to believe is in violation of the provisions of this chapter or any rule
14 or order under this chapter.

15 **RELIEF REQUESTED**

16 The staff of the Banking Department requests the Commissioner take the
17 following action:

- 18 1. Find as fact the allegations contained in section I of the Statement of
19 Allegations of this petition.
- 20 2. Make conclusions of law relative to the allegations contained in section
21 II of the Statement of Allegations of this petition.
- 22 3. Assess fines and administrative penalties in accordance RSA 397-A:21, for
23 violations of the New Hampshire Banking Laws, in the number and amount
24 equal to the violations set forth in section I of the Statement of
25 Allegations of this petition. Respondents are each subject to an
administrative penalty of \$2,500 for each violation of the Chapter.
4. Order Respondent to show cause why their license should not be revoked.

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5. Order respondents to cease and desist from further violation of NH Law.

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

RIGHT TO AMEND

The Department reserves the right to amend this Petition for Relief and to request that the Banking Department Commissioner take additional administrative action. Nothing herein shall preclude the Department from bringing additional enforcement action under RSA 397-A, RSA 383:10-d or the regulations thereunder.

Respectfully submitted by:

 /s/
James Shepard
Staff Attorney

 1/18/07
Date