

1 State of New Hampshire Banking Department

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3 In re the Matter of:) Case No.: 07-053
)
 4 State of New Hampshire Banking) Notice of Hearing - Order to Show
) Cause, Cease and Desist Order
 5 Department,)
)
 6 Petitioner,)
)
 7 and)
)
 8 Fairfield Mortgage LLC, Earl J.)
)
 9 Cheney, David Paolini,)
)
 10 Respondents)

11
12 NOTICE OF HEARING

13 Pursuant to RSA 397-A:17, the Banking Department of the State of New
14 Hampshire (hereinafter the "Department") has the authority to issue an order
15 to show cause why license revocation penalties for violations of New Hampshire
16 Banking laws should not be imposed.

17 Pursuant to RSA 397-A:18, the Commissioner may issue a cease and desist
18 order against any licensee who it has reasonable cause to believe is in
19 violation of the provisions of the Chapter.

20 Pursuant to RSA 397-A:21, the Commissioner has the authority to suspend,
21 revoke or deny any license and to impose administrative penalties of up to
22 \$2,500.00 for each violation of New Hampshire banking law and rules.

23 Pursuant to RSA 397-A:21, every person who directly or indirectly
24 controls a person liable under this section, every partner, principal executive
25 officer or director of such person, every person occupying a similar status or
performing a similar function, every employee of such person who materially
aids in the act constituting the violation, and every licensee or person acting

1 as a common law agent who materially aids in the acts constituting the
2 violation, either knowingly or negligently, may, upon notice and opportunity
3 for hearing, and in addition to any other penalty provided for by law, be
4 subject to suspension, revocation, or denial of any registration or license,
5 including the forfeiture of any application fee, or the imposition of an
6 administrative fine not to exceed \$2,500, or both.

7 Pursuant to RSA 383:10-d, the Commissioner shall have exclusive authority
8 and jurisdiction to investigate conduct that is or may be an unfair or
9 deceptive act or practice under RSA 358-A and exempt under RSA 358-A:3, I or
10 that may violate any of the provisions of Titles XXXV and XXXVI and
11 administrative rules adopted thereunder. The Commissioner may hold hearings
12 relative to such conduct and may order restitution for a person or persons
13 adversely affected by such conduct. Nothing in this cause shall impair a
14 consumer's right of recovery under 383:10-d.

15 The Department issued the Respondents an Order to Show Cause and Cease
16 and Desist Order on July 19, 2007. Respondents filed a timely request for
17 hearing.

18 The Department alleges the following:

19 **Issue 1: Failure to maintain security policy (RSA 397-A:17 I(1)) (2 Counts).**

20 **Issue 2: Failure to protect consumer information (RSA 397-A:17 I(1)) (1
21 Count).**

22 **Issue 3: Failure to maintain records to enable compliance determination (RSA
23 397-A:11) (4 Counts).**

24 **Issue 4: Dishonest or unethical business practices (RSA 397-A:17 I(k) (5
25 Counts).**

Issue 5: Failure to supervise (RSA 397-A:6 I) (1 Count)

Accordingly, an adjudicative proceeding shall be commenced pursuant to
541-A:31 and Chapter 200 of the Department's rules (NH Code of Administrative

1 Rules BAN 200) and Chapter 800 of the Department of Justice's rules (NH Code
2 of Administrative Rules JUS 800) as applicable for the purpose of permitting
3 the Respondents to show compliance with RSA 397-A and the Rules adopted
4 thereunder.

5 Each party has the right to have an attorney present to represent the
6 party at the party's expense, or may represent itself. Each party has the
7 right to have the Department provide a certified shorthand court reporter at
8 the requesting party's expense. Any such request must be submitted in writing
9 to the Department at least 10 days prior to a scheduled hearing date.

10 THEREFORE, IT IS ORDERED, that the Respondents appear before the New
11 Hampshire Banking Department on **May 9, 2008 at 10:00 am**, at the **New Hampshire**
12 **Banking Department, 64B Old Suncook Road, Concord, New Hampshire**, for the
13 purpose of participating in an adjudicative proceeding, at which time the
14 Respondents will have the opportunity to demonstrate why the relief sought in
15 the show cause order should not become permanent; and

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

21 IT IS FURTHER ORDERED, that the Commissioner designates Maryam Torben
22 Desfosses to serve as the Presiding Officer in this proceeding who shall issue
23 a RECOMMENDED DECISION in this matter which shall be reviewed and approved,
24 disapproved or modified by the Bank Commissioner; and

25 IT IS FURTHER ORDERED, that any proposed exhibits shall be pre-marked,
for identification only, and filed with the Department and provided to the
opposing party **on or before May 2, 2008**. Hearing Counsel shall pre-mark the
Department's exhibits with Arabic numbers. **The Respondents shall pre-mark**
exhibits with capital letters. An index/list of exhibits providing a brief

1 description of each exhibit with its corresponding pre-marked number or letter
2 shall be filed by both parties simultaneous with the filing of 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 at the
5 hearing, and shall at the same time file a copy of their respective lists with
6 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 have the burden of
13 setting forth a *prima facie* case, then the Respondents shall have the burden
14 of showing compliance with applicable law by a preponderance of the evidence;

15 IT IS FURTHER ORDERED, that Respondents' 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 all documents shall be filed with the
20 Presiding Officer in the form of an original and one (1) copy and shall bear a
21 certification that a copy is being delivered to Hearing Counsel and any other
22 parties to this matter in accordance with NH Code of Administrative Rules Ban
23 204.08. All documents shall be filed by mailing or delivering them to the New
24 Hampshire Banking Department, ATTN: Presiding Officer 07-053, 64B Old Suncook
25 Road, Concord, NH 03301. Filing by facsimile or electronic transmission shall
not be accepted; and

IT IS FURTHER ORDERED, that the parties may submit Proposed Orders,
which shall include findings of fact and conclusions of law, separately

