

1 State of New Hampshire Banking Department

2

3 In re the Matter of:) Case No.: 07-054
))
4 State of New Hampshire Banking) Notice of Hearing - Order to Show
) Cause
5 Department,)
))
6 Petitioner,)
))
7 and)
))
8 Team Mortgage LLC and Joseph Davey,)
))
9 Respondents)
))

10
11 NOTICE OF HEARING

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

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

19 Pursuant to RSA 397-A:21, every person who directly or indirectly
20 controls a person liable under this section, every partner, principal executive
21 officer or director of such person, every person occupying a similar status or
22 performing a similar function, every employee of such person who materially
23 aids in the act constituting the violation, and every licensee or person acting
24 as a common law agent who materially aids in the acts constituting the
25 violation, either knowingly or negligently, may, upon notice and opportunity
for hearing, and in addition to any other penalty provided for by law, be
subject to suspension, revocation, or denial of any registration or license,

1 including the forfeiture of any application fee, or the imposition of an
2 administrative fine not to exceed \$2,500, or both.

3 The Department issued to the Respondents an Order to Show Cause on
4 April 4, 2007 and an Amended Order to Show Cause on April 13, 2007.
5 Respondents Joseph Davey and Team Mortgage LLC filed a timely request for
6 hearing regarding this matter.

7 The Department alleges the following:

- 8 **Issue 1:** Illegal co-brokering (66 Counts)
9 **Issue 2:** Failure to maintain security policy (1 Count)
10 **Issue 3:** Failure to protect consumer information (10 Counts)
11 **Issue 4:** Failure to maintain records to enable compliance determination (44
12 Counts)
13 **Issue 5:** Dishonest or unethical practices (13 Counts)

14 Accordingly, an adjudicative proceeding shall be commenced pursuant to
15 541-A:31 and Chapter 200 of the Department's rules (NH Code of Administrative
16 Rules BAN 200) for the purpose of permitting the Respondent to show
17 compliance with RSA 397-A.

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

23 THEREFORE, IT IS ORDERED, that the Respondent appear before the New
24 Hampshire Banking Department on **June 18 and June 19, 2007 at 9:00 am**, at the
25 Department's offices at 64B Old Suncook Road, Concord, New Hampshire, for the
purpose of participating in an adjudicative proceeding, at which time the

1 Respondent will have the opportunity to demonstrate why the cease and desist
2 order should not become permanent; and

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

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

11 IT IS FURTHER ORDERED, that that the Commissioner shall designate a
12 member of the Department, who shall serve as the Presiding Officer in this
13 proceeding and shall issue a RECOMMENDED DECISION in this matter which shall
14 be reviewed and approved, disapproved or modified by the Bank Commissioner;
15 and

16 IT IS FURTHER ORDERED, that any proposed exhibits shall be pre-marked,
17 for identification only, and filed with the Department and provided to the
18 opposing party as soon as possible. Hearing Counsel shall pre-mark the
19 Department's exhibits with Arabic numbers. The Respondents shall pre-mark
20 exhibits with capital letters. An index/list of exhibits providing a brief
21 description of each exhibit with its corresponding pre-marked number or
22 letter shall be filed by both parties simultaneous with the filing of
23 exhibits; and

24 IT IS FURTHER ORDERED, that the parties shall exchange a list of all
25 exhibits and witnesses to be called at the hearing with a brief summary prior
to **June 13, 2007**, and shall at the same time file a copy of their respective
witness lists with the Presiding Officer; and

IT IS FURTHER ORDERED, that all periods referenced in this notice shall
be calendar days. If the last day of the period so computed falls on a

1 Saturday, Sunday, or legal holiday, then the time period shall be extended to
2 include the first business day that is not a Saturday, Sunday, or legal
3 holiday; and

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

7 IT IS FURTHER ORDERED, that Respondents' failure to appear at the time,
8 date, and place specified may result in the hearing being held *in absentia*
9 and/or default ruling in favor of the Department, without further notice or
10 opportunity to be heard; and

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

18 IT IS FURTHER ORDERED, that all documents shall be filed with the
19 Presiding Officer in the form of an original and one (1) copy and shall bear
20 a certification that a copy is being delivered to Hearing Counsel and any
21 other parties to this matter in accordance with NH Code of Administrative
22 Rules Ban 204.08. All documents shall be filed by mailing or delivering them
23 to the New Hampshire Banking Department, ATTN: Presiding Officer, 64B Old
24 Suncook Road, Concord, NH 03301. Filing by facsimile or electronic
25 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
stated, no later than ten (10) days following conclusion of the hearing(s) in
this matter; and

