

1 State of New Hampshire Banking Department

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3 In re the Matter of:) Case No.: 07-059
)
 4 State of New Hampshire Banking) Notice of Hearing - Cease and Desist
) Order
 5 Department,)
)
 6 Petitioner,)
)
 7 and)
)
 8 New Century Mortgage Corporation,)
)
 9 Respondent)
)

10
11 NOTICE OF HEARING

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

17 Pursuant to RSA 397-A:20, the Commissioner may issue, amend, or rescind
18 such orders as are reasonably necessary to comply with the provisions of the
19 Chapter.

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

23 Pursuant to RSA 383:10-d, the Commissioner shall have exclusive
24 authority and jurisdiction to investigate conduct that is or may be an unfair
25 or deceptive act or practice under RSA 358-A and exempt under RSA 358-A:3, I or
that may violate any of the provisions of Titles XXXV and XXXVI and
administrative rules adopted thereunder. The Commissioner may hold hearings

1 relative to such conduct and may order restitution for a person or persons
2 adversely affected by such conduct.

3 The Department issued the Respondent a Cease and Desist Order on March
4 13, 2007. The Respondent filed a timely request for a hearing regarding this
5 matter.

6 The Department alleges the following:

7 **Issue 1:** Violation of BAN 2407-01.

8 **Issue 2:** Violation of RSA 397-A:14-b.

9 **Issue 3:** Unfair and deceptive trade practices pursuant to RSA 397-A:17.

10 **Issue 4:** Unfair and deceptive trade practices pursuant to RSA 383-10:d.

11 Accordingly, an adjudicative proceeding shall be commenced pursuant to
12 541-A:31 and Chapter 200 of the Department's rules (NH Code of
13 Administrative Rules BAN 200) for the purpose of permitting the Respondent to
14 show compliance with RSA 397-A.

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

20 THEREFORE, IT IS ORDERED, that the Respondent appear before the New
21 Hampshire Banking Department on April 23, 2007 at 10:00 am, at the
22 Department's offices at 64B Old Suncook Road, Concord, New Hampshire, for the
23 purpose of participating in an adjudicative proceeding, at which time the
24 Respondent will have the opportunity to demonstrate why the cease and desist
25 order should not become permanent; and

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

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

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

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

22 IT IS FURTHER ORDERED, that the parties shall exchange a list of all
23 exhibits and witnesses to be called at the hearing with a brief summary prior
24 to April 19, 2007, and shall at the same time file a copy of their respective
25 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
Saturday, Sunday, or legal holiday, then the time period shall be extended to

1 include the first business day that is not a Saturday, Sunday, or legal
2 holiday; and

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

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

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

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

24 IT IS FURTHER ORDERED, that the parties may submit Proposed Orders,
25 which shall include findings of fact and conclusions of law, separately
26 stated, no later than ten (10) days following conclusion of the hearing(s) in
27 this matter; and

28 IT IS FURTHER ORDERED, that routine procedural inquiries may be made by
29 telephoning Maryam Torben-Desfosses at (603)-271-3561, but all other

1 communications with the Presiding Officer and with the Department shall be in
2 writing and shall be filed as provided above. *Ex parte* communications are
3 forbidden by statute; and

4 IT IS FURTHER ORDERED, that a copy of this Notice of hearing shall be
5 mailed to Matthew J. Matule, on behalf of New Century Mortgage Corporation,
6 Skadden, Arps, Slage, Meagher & Flom LLP, One Beacon Street, Boston, MA
7 02108-3194 and that a copy shall also be delivered to Maryam Torben-
8 Desfosses, Hearing Counsel, and to the Presiding Officer, at the New
9 Hampshire Banking Department.

9 **SO ORDERED,**

11 /S/

12 Peter C. Hildreth
13 Commissioner
State of New Hampshire
Banking Department

 4/13/07

Date