

1 State of New Hampshire Banking Department

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3 In re the Matter of:) Case No.: 07-068
)
 4 State of New Hampshire Banking) Notice of Hearing
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 5 Department,)
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 6 and)
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 7 Debbie A. Knect)
)
 8 Complainant,)
)
 9 and)
)
 10 Capital Quest Financial Services,
 11 Inc,
 12 Respondent

13
14 NOTICE OF HEARING

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

22 On January 3, 2007 the New Hampshire Banking Department ("Department")
23 received a complaint from Complainant regarding Respondent. On review the
24 Commissioner has determined that a factual discrepancy exists between the
25 parties and that a proper determination of what restitution is due, if any,

1 will best be determined by an administrative hearing wherein each party will
2 present their evidence to an appointed Presiding Officer.

3 **Issue 1:** Whether the Respondent violated a provision of the New Hampshire
4 Banking Laws or committed an unfair or deceptive trade practice

5 **Issue 2:** What restitution may be due Complainant for Respondent's violation
6 if established

7 Accordingly, an adjudicative proceeding shall be commenced pursuant to
8 541-A:31 and Chapter 200 of the Department's rules (NH Code of
9 Administrative Rules BAN 200) for the purpose of permitting the Respondent to
10 show compliance with RSA 397-A and determine if Restitution should be ordered
11 pursuant to RSA 383:10-d.

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

17 THEREFORE, IT IS ORDERED, that the Respondent appear before the New
18 Hampshire Banking Department on May 3, 2007 at 9:00 am, at the Department's
19 offices at 64B Old Suncook Road, Concord, New Hampshire, for the purpose of
20 participating in an adjudicative proceeding, at which time the Respondent
21 will have the opportunity to demonstrate why restitution should not be
22 imposed; and

23 IT IS FURTHER ORDERED, that if Respondent or Complainant elect to be
24 represented by Counsel, said Counsel shall file notice of appearance at the
25 earliest possible date; and

1 IT IS FURTHER ORDERED, that James Shepard, Staff Attorney, shall serve
2 as the Presiding Officer in this proceeding and shall issue a RECOMMENDED
3 DECISION in this matter which shall be reviewed and approved, disapproved or
4 modified by the Bank Commissioner; and

5 IT IS FURTHER ORDERED, that Respondent shall file an answer to each of
6 the issues set forth in this Notice of Hearing, and any amendments hereto, by
7 no later than 15 days from receipt. Such answer shall first admit or deny
8 the allegation and then set forth any and all explanations or defenses to the
9 allegation; and

10 IT IS FURTHER ORDERED, that any proposed exhibits shall be pre-marked,
11 for identification only, and filed with the Department and provided to the
12 opposing party not later than May 1, 2007. Complainants shall pre-mark their
13 exhibits with Arabic numbers. Respondent shall pre-mark exhibits with
14 capital letters. An index/list of exhibits providing a brief description of
15 each exhibit with its corresponding pre-marked number or letter shall be
16 filed by both parties simultaneous with the filing of exhibits; and

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

22 IT IS FURTHER ORDERED, that parties shall file answer/objections to
23 pleadings within ten (10) calendar days of the date the pleading is deemed
24 "filed"; and
25

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

4
5 IT IS FURTHER ORDERED, that Respondent's failure to appear at the time,
6 date, and place specified may result in the hearing being held *in absentia*
7 and/or default ruling in favor of the Department, without further notice or
8 opportunity to be heard; and

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

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

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

