

1 State of New Hampshire Banking Department

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3 In re the Matter of:) Case No.: No. 07-069
)
 4 New Hampshire Banking Department,) Order to Strike the Default Judgment
) Against Respondent Dana H. Smith:
 5 Petitioner,) Denial
)
 6 and)
)
 7 Dana Capital Group, Inc., Dana H.)
)
 8 Smith, and Amanda Smith,)
)
 9 Respondents)
)

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12 Default Judgment

13 **PROCEDURAL CASE HISTORY**

14 The Bank Commissioner issued a Notice of Hearing - Order to Show Cause
 15 With Immediate Suspension and Cease and Desist Order ("Notice of Hearing")
 16 against all Respondents on May 22, 2007. The Notice of Hearing derived from
 17 the Order to Show Cause With Immediate Suspension and Cease and Desist Order
 18 ("Order to Show Cause") issued by the Bank Commissioner against all
 19 Respondents on May 22, 2007. The Order to Show Cause incorporates the May 22,
 20 2007 Staff Petition issued by New Hampshire Banking Department Staff Attorney
 21 James Shepard.

22 The adjudicative hearing was held on Friday, May 25, 2007 at 8:30 a.m.
 23 at the New Hampshire Banking Department, located at 64B Old Suncook Road,
 24 Concord, New Hampshire 03301.

25 Respondents Dana Capital Group, Inc., Dana H. Smith, and Amanda Smith
 (collectively, "the Defaulting Respondents") failed to appear in person or by
 representative at the adjudicative proceeding.

Order to Strike the Default Judgment Against Respondent Dana H. Smith

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2 **APPLICABLE RULE OF ADJUDICATORY PROCEEDINGS**

3 Failure of a licensee to appear in person or by representative at the
4 adjudicative proceeding shall constitute a default. *New Hampshire*
5 *Administrative Rule BAN 204.14(a)*.

6 Further, *New Hampshire Administrative Rule BAN 204.14 (c)* provides that
7 the presiding officer may strike a default based upon the written request of
8 the licensee and upon good cause shown. Pursuant to *New Hampshire*
9 *Administrative Rule BAN 204.14(e)*, should the presiding officer grant the
10 request to strike the default judgment, the New Hampshire Banking Department
11 shall give a notice of a re-scheduled hearing in accordance with *New*
Hampshire Administrative Rule BAN 204.04.

12 **MOTION OF DANA H. SMITH TO STRIKE THE DEFAULT ORDER**

13 Mr. Smith's attorney, Robert M. Jaworski of Reed Smith LLP suggests
14 that Mr. Smith was not given sufficient notice to physically attend the
15 hearing since he resides in California.

16 Though Respondent fails to provide proof of document receipt or late
17 receipt, Staff Attorney James Shepard does not object to granting the motion
18 to strike the default. Since Attorney Jaworski fails to clearly set out the
19 scope of said hearing and there is clarification in the Response by Staff
20 Attorney James Shepard, the presiding officer hereby recommends denying the
21 motion to strike the default judgment against Respondent Dana H. Smith and
ordering a good cause hearing on both the default and the imposed fines.

22 **FINAL ORDER**

23 Based on the Motion of Dana H. Smith (via Attorney Robert M. Jaworski)
24 to Strike Default Order against Dana H. Smith, the Affidavit of Kirk Smith
25 and the Response by Staff Attorney James Shepard, it is ORDERED, that:

Order to Strike the Default Judgment Against Respondent Dana H. Smith

