

1 State of New Hampshire Banking Department

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3 In re the Matter of:) Case No.: 07-132
))
4 State of New Hampshire Banking) Order to Show Cause
))
5 Department,) With Immediate Suspension
))
6 and) And
))
7 Carteret Mortgage Corporation, Eric) Cease and Desist Order
))
8 Weinstein, and Albert L. Elder,)
))
9 Respondents)
))
10)
))
11)

12 NOTICE OF HEARING

13 Pursuant to RSA 397-A:17, the Commissioner of the New Hampshire Banking
14 Department (hereinafter "the Department") may issue an Order to Show Cause
15 why a license should not be revoked. RSA 397-A:17 states that the
16 Department may issue such Order when a licensee engages in an unethical
17 business practice or violates the Chapter. RSA 397-A:21 states the
18 Commissioner may impose penalties of up to \$2,500 per violation of the
19 chapter.

20 Pursuant to RSA 397-A:18 the banking department may issue a cease and
21 desist order against any licensee or person who it has reasonable cause to
22 believe is in violation of the provisions of this chapter or any rule or order
23 under this chapter.

24 Pursuant to RSA 397-A:18 the Commissioner may by order summarily postpone
25 or suspend any license or application pending final determination of any order
to show cause, or other order, or of any other proceeding under this section,

1 provided the commissioner finds that the public interest would be irreparably
2 harmed by delay in issuing such order

3 Pursuant to RSA 383:10-d the Commissioner shall investigate conduct that
4 is or may be an unfair or deceptive act or practice under RSA 358-A and exempt
5 under RSA 358-A:3, I or that may violate any of the provisions of Titles XXXV
6 and XXXVI and administrative rules adopted thereunder. The commissioner may
7 hold hearings relative to such conduct and may order restitution for a person
8 or persons adversely affected by such conduct. The Commissioner may utilize
9 all remedies available under the Act.

10 The Department issued the Respondent an Order to Show Cause and Cease
11 and Desist Order on June 5, 2007. Since the Orders were issued with an
12 immediate suspension the Department must schedule a hearing on the suspension
13 to be held within ten days of said order.

14 The Department alleges the following:

15 **Issue 1: Failure to comply with examination requests (RSA 397-A:12)**

16
17 Accordingly, an adjudicative proceeding shall be commenced pursuant to
18 541-A:31 and Chapter 200 of the Department's rules (NH Code of
19 Administrative Rules BAN 200) for the purpose of permitting the Respondent to
20 show compliance with RSA 397-A and the Rules adopted thereunder.

21 Each party has the right to have an attorney present to represent the
22 party at the party's expense, or may represent itself.

23 THEREFORE, IT IS ORDERED, that the Respondent appear before the New
24 Hampshire Banking Department on **June 12, 2007 at 10:00 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 the Commissioner shall designate a member
12 of the Department who shall serve as the Presiding Officer in this proceeding
13 and shall issue a RECOMMENDED DECISION in this matter which shall be
14 reviewed and approved, disapproved or modified by the Bank Commissioner; and

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

23 IT IS FURTHER ORDERED, that the parties shall exchange a list of all
24 exhibits and witnesses to be called at the hearing with a brief summary at
25 the hearing, and shall at the same time file a copy of their respective 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 have the burden of
4 setting forth a *prima facie* case, then the Respondents shall have the burden
5 of showing compliance with applicable law by a preponderance of the evidence;

6 IT IS FURTHER ORDERED, that Respondents' 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,
12 or upon the Presiding Officer's own initiative, such record shall be
13 transcribed by a certified court reporter designated by the Presiding
14 Officer, and that all costs shall be borne solely by the requesting party.
15 Any such request shall be submitted in writing to the Presiding Officer prior
16 to hearing.

17 IT IS FURTHER ORDERED, that all documents shall be filed with the
18 Presiding Officer in the form of an original and one (1) copy and shall bear a
19 certification that a copy is being delivered to Hearing Counsel and any other
20 parties to this matter in accordance with NH Code of Administrative Rules Ban
21 204.08. All documents shall be filed by mailing or delivering them to the New
22 Hampshire Banking Department, ATTN: Presiding Officer 07-132, 64B Old Suncook
23 Road, Concord, NH 03301. Filing by facsimile or electronic transmission shall
24 not be accepted; and

25 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

1 IT IS FURTHER ORDERED, that routine procedural inquiries may be made by
2 telephoning Abigail Shaine at (603)271-3561, but all other communications with
3 the Presiding Officer and with the Department shall be in writing and shall be
4 filed as provided above. *Ex parte* communications are forbidden by statute; and

5 IT IS FURTHER ORDERED, that a copy of this Notice of hearing shall be
6 mailed to Respondents, James Shepard, Hearing Counsel, and to the Presiding
7 Officer at the New Hampshire Banking Department.

8 **SO ORDERED,**

9 _____
10 /s/ Peter C. Hildreth
11 Commissioner
12 State of New Hampshire
13 Banking Department

6/5/07

Date