

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, ) Cease and Desist Order  
 )  
 6 and )  
 )  
 7 Carteret Mortgage Corporation, Eric )  
 )  
 8 Weinstein, and Albert L. Elder, )  
 )  
 9 Respondents )  
 )  
 10 )  
 )  
 11 )

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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. The Respondent has made a timely request  
12 for hearing.

13 The Department alleges the following:

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

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

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

22 THEREFORE, IT IS ORDERED, that the Respondent appear before the New  
23 Hampshire Banking Department on **June 25, 2007 at 10:00 am**, at the  
24 Department's offices at 64B Old Suncook Road, Concord, New Hampshire, for the  
25 purpose of participating in an adjudicative proceeding, at which time the  
Respondent will have the opportunity to demonstrate why the cease and desist  
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 James Shepard, Staff Attorney, New  
5 Hampshire Banking Department is designated as Hearing Counsel in this matter  
6 with authority to represent the public interest within the scope of the  
7 Department's authority. Hearing Counsel shall have the status of a party to  
8 this proceeding; and

9 IT IS FURTHER ORDERED, that the Commissioner appoints Maryam Torben-  
10 Desfosses as the Presiding Officer in this proceeding and shall issue a  
11 RECOMMENDED DECISION in this matter which shall be reviewed and approved,  
12 disapproved or modified by the Bank Commissioner; and

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

21 IT IS FURTHER ORDERED, that the parties shall exchange a list of all  
22 exhibits and witnesses to be called at the hearing with a brief summary at  
23 the hearing, and shall at the same time file a copy of their respective lists  
24 with the Presiding Officer; and

25 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  
include the first business day that is not a Saturday, Sunday, or legal  
holiday; and

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

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

8 IT IS FURTHER ORDERED, that the entirety of all oral proceedings shall  
9 be recorded verbatim by the Banking Department. Upon request of any party,  
10 or upon the Presiding Officer's own initiative, such record shall be  
11 transcribed by a certified court reporter designated by the Presiding  
12 Officer, and that all costs shall be borne solely by the requesting party.  
13 Any such request shall be submitted in writing to the Presiding Officer prior  
14 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 Hearing Counsel and any other  
18 parties to this matter in accordance with NH Code of Administrative Rules Ban  
19 204.08. All documents shall be filed by mailing or delivering them to the New  
20 Hampshire Banking Department, ATTN: Presiding Officer 07-132, 64B Old Suncook  
21 Road, Concord, NH 03301. Filing by facsimile or electronic transmission shall  
22 not be accepted; and

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

IT IS FURTHER ORDERED, that routine procedural inquiries may be made by  
telephoning Abigail Shaine at (603)271-3561, but all other communications with

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

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

6 **SO ORDERED,**

7 \_\_\_\_\_  
8 /S/  
9 Peter C. Hildreth  
10 Commissioner  
11 State of New Hampshire  
12 Banking Department

6/11/07  
\_\_\_\_\_  
Date