

1 State of New Hampshire Banking Department

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3 In re the Matter of: ) Case No.: 07-181  
 )  
 4 State of New Hampshire Banking ) Notice of Hearing - Cease and Desist  
 ) Order  
 5 Department, )  
 )  
 6 Petitioner, )  
 )  
 7 and )  
 )  
 8 Alwayslending LLC and Michael J. )  
 )  
 9 Throneberry, )  
 )  
 10 Respondents )

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11  
12 NOTICE OF HEARING

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

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

21 Pursuant to RSA 383:10-d, the Commissioner shall have exclusive  
22 authority and jurisdiction to investigate conduct that is or may be an unfair  
23 or deceptive act or practice under RSA 358-A and exempt under RSA 358-A:3, I or  
24 that may violate any of the provisions of Titles XXXV and XXXVI and  
25 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 July  
4 30, 2007. A timely request for hearing was received in this matter.

5 The Department alleges the following:

6 **Issue 1:** Unlicensed mortgage broker activity for which the Respondent  
7 received compensation.

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

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 **September 4, 2007 at 1:00 pm**, at the  
19 Department's offices at 64B Old Suncook Road, Concord, New Hampshire, for the  
20 purpose of participating in an adjudicative proceeding, at which time the  
21 Respondent will have the opportunity to demonstrate why the cease and desist  
order should not become permanent; and

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

25 IT IS FURTHER ORDERED, that James Shepard, Staff Attorney, New  
Hampshire Banking Department is designated as Hearing Counsel in this matter  
with authority to represent the public interest within the scope of the

1 Department's authority. Hearing Counsel shall have the status of a party to  
2 this proceeding; and

3 IT IS FURTHER ORDERED, that the Commissioner designates Maryam Torben-  
4 Desfosses as the Presiding Officer in this proceeding who shall issue a  
5 RECOMMENDED DECISION in this matter which shall be reviewed and approved,  
6 disapproved or modified by the Bank Commissioner; and

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

15 IT IS FURTHER ORDERED, that the parties shall exchange a list of all  
16 exhibits and witnesses to be called at the hearing with a brief summary **as**  
17 **soon as possible**, and shall at the same time file a copy of their respective  
18 lists with the Presiding Officer; and

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

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

IT IS FURTHER ORDERED, that Respondent's failure to appear at the time,  
date, and place specified may result in the hearing being held *in absentia*

1 and/or default ruling in favor of the Department, without further notice or  
2 opportunity to be heard; and

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

10 IT IS FURTHER ORDERED, that all documents shall be filed with the  
11 Presiding Officer in the form of an original and one (1) copy and shall bear a  
12 certification that a copy is being delivered to Hearing Counsel and any other  
13 parties to this matter in accordance with NH Code of Administrative Rules Ban  
14 204.08. All documents shall be filed by mailing or delivering them to the New  
15 Hampshire Banking Department, ATTN: Presiding Officer, 64B Old Suncook Road,  
16 Concord, NH 03301. Filing by facsimile or electronic transmission shall not  
17 be accepted; and

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

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

IT IS FURTHER ORDERED, that a copy of this Notice of hearing shall be  
mailed to Michael J. Throneberry, individually and as Agent for  
Alwayslending, LLC, 884 Woods Mill Road Suite 205, Town & Country, MO 63011,

