

1 State of New Hampshire Banking Department

2

3 In re the Matter of: ) Case No.: 08-378  
) )  
4 State of New Hampshire Banking )  
) )  
5 Department, ) Notice of Hearing  
) )  
6 and )  
) )  
7 First Call Mortgage Company, Inc., ) November 5, 2008  
) )  
8 Kathleen L. Donovan, Carl D. )  
) )  
9 McFadden, George Vanderheiden, Peter )  
) )  
10 S. Lynch and Carolyn A. Lynch as )  
) )  
11 Joint Tenants, James Arthur )  
) )  
12 Lesmerises, David Allen Keslar, )  
) )  
13 Dennis Wright, )  
) )  
14 Respondents )  
) )

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15  
16 NOTICE OF HEARING

17 Pursuant to RSA 397-A:17, the Banking Department of the State of New  
18 Hampshire (hereinafter the "Department") has the authority to issue an order  
19 to show cause why license revocation penalties for violations of New  
20 Hampshire Banking laws should not be imposed.

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

25 Pursuant to RSA 397-A:21, every person who directly or indirectly  
controls a person liable under this section, every partner, principal

1 executive officer or director of such person, every person occupying a similar  
2 status or  
3 performing a similar function, every employee of such person who materially  
4 aids in the act constituting the violation, and every licensee or person  
5 acting as a common law agent who materially aids in the acts constituting the  
6 violation, either knowingly or negligently, may, upon notice and opportunity  
7 for hearing, and in addition to any other penalty provided for by law, be  
8 subject to suspension, revocation, or denial of any registration or license,  
9 including the forfeiture of any application fee, or the imposition of an  
10 administrative fine not to exceed \$2,500, or both.

11 On September 24, 2008, the Department issued an Order to Show Cause  
12 and Cease and Desist Order to First Call Mortgage Company, Inc., et al. All  
13 Respondents filed a timely request for a hearing.

14 The Department alleges the following:

15 **Issue 1: Violation of Title 18 U.S.C. Section 1001, et seq. (RSA 397-**  
16 **A:2,III);**

17 **Issue 2: Violation of the Equal Credit Opportunity Act and Regulation B, 12**  
18 **C.F.R. Section 202.9(a) (2) (RSA 397-A:2,III);**

19 **Issue 3: Violation of the Equal Credit Opportunity Act and Regulation B, 12**  
20 **C.F.R. Section 202.9(b) (1) (RSA 397-A:2,III);**

21 **Issue 4: Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for**  
22 **Safeguarding Customer Information, 16 C.F.R. Section 314.3 (RSA 397-A:2,III;**

23 **Issue 5: Violation of the Gramm-Leach-Bliley Act, Title V, and Standards**  
24 **for Safeguarding Customer Information, 16 C.F.R. Section 314.4(a) (RSA 397-**  
25 **A:2,III);**

1 Issue 6: Violation of the Gramm-Leach-Bliley Act, Title V, and Standards  
2 for Safeguarding Customer Information, 16 C.F.R. Section 314.4(b) (RSA 397-  
3 A:2,III);

4 Issue 7: Violation of the Gramm-Leach-Bliley Act, Title V, and Standards  
5 for Safeguarding Customer Information, 16 C.F.R. Section 314.4(c) (RSA 397-  
6 A:2,III);

7 Issue 8: Violation of the Gramm-Leach-Bliley Act, Title V, and Standards  
8 for Safeguarding Customer Information, 16 C.F.R. Section 314.4(d) (RSA 397-  
9 A:2,III);

10 Issue 9: Violation of the Gramm-Leach-Bliley Act, Title V, and Standards  
11 for Safeguarding Customer Information, 16 C.F.R. Section 314.4(e) (RSA 397-  
12 A:2,III);

13 Issue 10: Violation of the Real Estate Settlement Procedures Act, Regulation  
14 X, 24 C.F.R. Section 3500.2 (RSA 397-A:2,III);

15 Issue 11: Violation of the Real Estate Settlement Procedures Act, Regulation  
16 X, 24 C.F.R. Section 3500.7, Appendix B, Illustration 13 and Appendix C (RSA  
17 397-A:2,III);

18 Issue 12: Violation of the Real Estate Settlement Procedures Act, Regulation  
19 X, 24 C.F.R. Section 3500.7, Appendix B, Illustration 13 and Appendix C (RSA  
20 397-A:16, I);

21 Issue 13: Violation of the Real Estate Settlement Procedures Act, Regulation  
22 X, 24 C.F.R. Section 3500.8 (RSA 397-A:2,III);

23 Issue 14: Violation of the Real Estate Settlement Procedures Act, Regulation  
24 X, 24 C.F.R. Section 3500.14(b) (RSA 397-A:2,III);

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1 Issue 15: Violation of the Real Estate Settlement Procedures Act, Regulation  
2 X, 24 C.F.R. Section 3500.14(c) (RSA 397-A:2,III);  
3 Issue 16: Violation of the Real Estate Settlement Procedures Act, Regulation  
4 X, 24 C.F.R. Section 3500.14(d) (RSA 397-A:2,III);  
5 Issue 17: Failure to Notify Department of Loan Originators (RSA 397-A:5,  
6 II(d));  
7 Issue 18: Violation of RSA 397-A:5, III(a);  
8 Issue 19: Failure to Supervise (RSA 397-A:6, I);  
9 Issue 20: Conducting Business under an Unauthorized Trade Name or Name (RSA  
10 397-A:10, I);  
11 Issue 21: Failure to Update Information on File with Commissioner (RSA 397-  
12 A:10, II);  
13 Issue 22: Failure to Update Information on File with Commissioner (RSA 397-  
14 A:10, IV);  
15 Issue 23: Violation of Standard Business Practice (RSA 397-A:12, IV);  
16 Issue 24: Failure to Correct Reported Deficiencies (RSA 397-A:12, VIII);  
17 Issue 25: Failure to File Accurate Annual Report (RSA 397-A:13, I);  
18 Issue 26: Violation of NH Administrative Rule Ban 2408.03, which implements  
19 RSA 397-A:14, III Wrong Loans Contain Daily Simple Interest;  
20 Issue 27: Misleading or Deceptive Advertisements (RSA 397-A:14-a, I);  
21 Mortgage Loans Brokered Do Not Comply with Other New Hampshire State Law  
22 (RSA 397-A:14-a,I via RSA 397-A:2, II);  
23 Issue 28: Persons Subject to or Licensed by RSA Chapter 397-A Must Comply  
24 with Other New Hampshire State Law (RSA 397-A:14-a,I via RSA 397-A:2, III);  
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- 1 Issue 29: Failure of Proper and Required Disclosure (RSA 397-A:14-a, III);  
2 Issue 30: Violation of NH Administrative Rule Ban 2505.01, which implements  
3 RSA 397-A:16 Failure to Disclose Rate Lock Investor;  
4 Issue 31: Unauthorized Retention of Commissions for Services Rendered (RSA  
5 397-A:16, IV);  
6 Issue 32: Violation of Federal Laws and Rules (RSA 397-A:17, I(f)).  
7 Issue 33: Failure to Supervise (RSA 397-A:17, I(g));  
8 Issue 34: Dishonest or Unethical Practices (RSA 397-A:17, I(k)); and  
9 Issue 35: Violation of Federal Laws and Rules (RSA 397-A:17, I(l));

10 Accordingly, an adjudicative proceeding shall be commenced pursuant to  
11 RSA 541-A:31 ("Availability of Adjudicative Proceeding; Contested Cases;  
12 Notice, Hearing and Record"), and New Hampshire Code of Administrative Rules  
13 BAN 200 ("Practice and Procedure"), and Chapter 800 of the Department of  
14 Justice's rules (NH Code of Administrative Rules JUS 800) for the purpose of  
15 permitting the Respondents to show compliance with RSA 397-A and the rules  
16 adopted thereunder.

17 Each party has the right to have an attorney present to represent the  
18 party at the party's expense, or each party may represent itself. Each  
19 party has the right to have the Department provide a certified shorthand  
20 court reporter at the requesting party's expense. Any such request must be  
21 submitted in writing to the Department at least 5 days prior to a scheduled  
22 hearing date.

22 THEREFORE, IT IS ORDERED, that the above named Respondents appear  
23 before the New Hampshire Banking Department on **Tuesday, December 16,**  
24 **2008 at 10:00 am at the New Hampshire Banking Department, 53 Regional**  
25 **Drive, Suite 200, Concord, NH 03301,** for the purpose of participating  
in an adjudicative proceeding, at which time each Respondent will have

1 the opportunity to show cause as to why relief sought in the Order to  
2 Show Cause should not become permanent; and

3 IT IS FURTHER ORDERED, that Maryam Torben Desfosses, Hearings  
4 Examiner, New Hampshire Banking Department, is designated as Hearings  
5 Examiner in this matter with authority to represent the public interest  
6 within the scope of the Department's authority. Hearing Examiner shall have  
7 the status of a party to this proceeding;

8 IT IS FURTHER ORDERED, Presiding Officer Ray Heroux shall issue a  
9 RECOMMENDED DECISION in this matter which shall be reviewed and approved,  
10 disapproved or modified by the Banking Commissioner; and

11 IT IS FURTHER ORDERED, that any proposed exhibits shall be pre-marked,  
12 for identification only, and filed with the Department and provided to the  
13 opposing party **on or before Tuesday, December 9, 2008**. Hearing Examiner  
14 shall pre-mark the Department's exhibits with Arabic numbers. **Respondents**  
15 **shall pre-mark exhibits with capital letters.** An index/list of exhibits  
16 providing a brief description of each exhibit with its corresponding pre-  
17 marked number or letter shall be filed by both parties simultaneous with the  
18 filing of exhibits; and

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

23 IT IS FURTHER ORDERED, that all periods referenced in this notice  
24 shall be calendar days. If the last day of the period so computed falls on  
25 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 Banking Department shall have the  
2 burden of setting forth a *prima facie* case. Each Respondent shall have the  
3 burden of showing compliance with applicable law by a preponderance of the  
4 evidence; and

5           IT IS FURTHER ORDERED, that Respondents 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 Complainant, without further notice or  
8 opportunity to be heard; and

9           IT IS FURTHER ORDERED, that the entirety of all oral proceedings shall  
10 be recorded verbatim by the Department. Upon request of any party, or upon  
11 the Presiding Officer's own initiative, such record shall be transcribed by a  
12 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  
14 be 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  
17 a certification that a copy is being delivered to any other parties to this  
18 matter in accordance with New Hampshire Code of Administrative Rules BAN  
19 204.08 ("Filing Requirements"). All documents shall be filed by mailing or  
20 delivering them to the New Hampshire Banking Department, ATTN: Ray Heroux,  
21 Presiding Officer, 53 Regional Drive, Suite 200, Concord, NH 03301. Filing  
22 by facsimile or electronic transmission shall 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

1 IT IS FURTHER ORDERED, that routine procedural inquiries may be made  
2 by telephoning Maryam Torben Desfosses, Hearing Examiner for the New  
3 Hampshire Banking Department, at (603)271-3561 or (603)228-9009, but all  
4 other communications with the Presiding Officer and with the Department  
5 shall be in writing and shall be filed as provided above. *Ex parte*  
6 communications are forbidden by statute; and

7 IT IS FURTHER ORDERED, that a copy of this Notice of hearing shall be  
8 mailed to all Respondents by way of their Counsel of record and to Presiding  
9 Officer Ray Heroux.

10  
11 **SO ORDERED,**

12  
13 \_\_\_\_\_ /s/  
14 Peter C. Hildreth  
15 Commissioner  
16 State of New Hampshire  
17 Banking Department

11/5/08  
Date