

1 State of New Hampshire Banking Department

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3 In re the Matter of: ) Case No.: 08-BD-005  
) )  
4 State of New Hampshire Banking ) Notice of Hearing  
) )  
5 Department, ) October 20, 2008  
) )  
6 Petitioner, ) )  
) )  
7 and ) )  
) )  
8 Family Direct Insurance Services, ) )  
) )  
9 Inc. (d/b/a ) )  
) )  
10 www.mortgageprotection.com), ) )  
) )  
11 Respondent

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14 NOTICE OF HEARING

15 Pursuant to RSA 384:12-a ("Cease and Desist Order"), IV, if, in the  
16 opinion of the New Hampshire Banking Department (hereinafter,  
17 "Department"), an individual or business entity is engaging in or has  
18 engaged in any act or conduct in violation of RSA 384:67 ("Unauthorized and  
19 Deceptive Use of the name of a Financial Institution"), the Department may  
20 issue and serve an order upon the individual or business entity requiring  
21 the individual or business entity to cease and desist from such act or  
conduct.

22 The Department issued the Respondent a Cease and Desist Order on  
23 September 8, 2008. Respondent filed a timely request for a hearing.

24 The Department alleges the following:

25 **Issue 1: Respondent engaged in unauthorized and deceptive use of names of  
financial institutions. (RSA 384:67 under new law SB 315).**

1           Accordingly, an adjudicative proceeding shall be commenced pursuant  
2 to RSA 541-A:31 ("Availability of Adjudicative Proceeding; Contested Cases;  
3 Notice, Hearing and Record"), and New Hampshire Code of Administrative  
4 Rules BAN 200 ("Practice and Procedure"), and Chapter 800 of the Department  
5 of Justice's rules (NH Code of Administrative Rules JUS 800) for the  
6 purpose of permitting the Respondent to show compliance with RSA 384:67 and  
7 the rules adopted thereunder.

8           Each party has the right to have an attorney present to represent the  
9 party at the party's expense, or each party may represent itself. Each  
10 party has the right to have the Department provide a certified shorthand  
11 court reporter at the requesting party's expense. Any such request must be  
12 submitted in writing to the Department at least 5 days prior to a scheduled  
13 hearing date.

14           THEREFORE, IT IS ORDERED, that the Respondent appear before the New  
15 Hampshire Banking Department on **Thursday, November 13, 2008 at 10:00 am at**  
16 **the New Hampshire Banking Department, 53 Regional Drive, Suite 200,**  
17 **Concord, NH 03301,** for the purpose of participating in an adjudicative  
18 proceeding, at which time the Respondent will have the opportunity to show  
19 cause as to why relief sought in the Order to Show Cause should not become  
20 permanent; and

21           IT IS FURTHER ORDERED, that Maryam Torben Desfosses, Hearings  
22 Examiner, New Hampshire Banking Department, is designated as Hearings  
23 Counsel in this matter with authority to represent the public interest  
24 within the scope of the Department's authority. Hearings Examiner shall  
25 have the status of a party to this proceeding;

          IT IS FURTHER ORDERED, a Presiding Officer (to be appointed by the  
Banking Commissioner) shall issue a RECOMMENDED DECISION in this matter  
which shall be reviewed and approved, disapproved or modified by the  
Banking Commissioner; and

1 IT IS FURTHER ORDERED, that any proposed exhibits shall be pre-  
2 marked, for identification only, and filed with the Department and provided  
3 to the opposing party **on or before Monday, November 10, 2008**. Hearing  
4 Counsel shall pre-mark the Department's exhibits with Arabic numbers.  
5 **Respondent shall pre-mark exhibits with capital letters.** An index/list of  
6 exhibits providing a brief description of each exhibit with its  
7 corresponding pre-marked number or letter shall be filed by both parties  
8 simultaneous with the filing of exhibits; and

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

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

18 IT IS FURTHER ORDERED, that the Banking Department shall have the  
19 burden of setting forth a *prima facie* case. The Respondent shall have the  
20 burden of showing compliance with applicable law by a preponderance of the  
21 evidence; and

22 IT IS FURTHER ORDERED, that Respondent failure to appear at the time,  
23 date, and place specified may result in the hearing being held *in absentia*  
24 and/or default ruling in favor of the Complainant, without further notice or  
25 opportunity to be heard; and

IT IS FURTHER ORDERED, that the entirety of all oral proceedings  
shall be recorded verbatim by the Department. Upon request of any party,  
or upon the Presiding Officer's own initiative, such record shall be  
transcribed by a certified court reporter designated by the Presiding

1 Officer, and that all costs shall be borne solely by the requesting party.  
2 Any such request shall be submitted in writing to the Presiding Officer  
3 prior to hearing.

4 IT IS FURTHER ORDERED, that all documents shall be filed with the  
5 Presiding Officer in the form of an original and one (1) copy and shall bear  
6 a certification that a copy is being delivered to any other parties to this  
7 matter in accordance with New Hampshire Code of Administrative Rules BAN  
8 204.08 ("Filing Requirements"). All documents shall be filed by mailing or  
9 delivering them to the New Hampshire Banking Department, ATTN: Presiding  
10 Officer, 53 Regional Drive, Suite 200, Concord, NH 03301. Filing by  
11 facsimile or electronic transmission shall not be accepted; and

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

16 IT IS FURTHER ORDERED, that routine procedural inquiries may be made  
17 by telephoning Hearings Examiner Maryam Torben Desfosses at (603)271-3561,  
18 but all other communications with the Presiding Officer and with the  
19 Department shall be in writing and shall be filed as provided above. *Ex*  
20 *parte* communications are forbidden by statute; and

21 IT IS FURTHER ORDERED, that a copy of this Notice of hearing shall be  
22 mailed to Attorney Irving D. Gordon, Sulloway & Hollis, Counsel for  
23 Respondent, 9 Capital Street, PO Box 1256, Concord, NH 03302, and to the  
24 Presiding Officer appointed by the Banking Commissioner.  
25

1 SO ORDERED,

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3 \_\_\_\_\_ /s/  
Peter C. Hildreth  
Commissioner  
4 State of New Hampshire  
Banking Department

10/20/08  
Date

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