

1 State of New Hampshire Banking Department

2

3 In re the Matter of:) Case No.: 09-003
)
 4 State of New Hampshire Banking)
)
 5 Department,) Notice of Hearing - Order to Show
) Cause
 6 Petitioner,)
)
 7 and)
)
 8 Hendo 66, LLC (d/b/a Clearly Simple)
)
 9 Mortgage), and John F. Henderson,)
)
 10 Respondents)
)

11 NOTICE OF HEARING

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

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

20 Pursuant to RSA 397-A:21, every person who directly or indirectly
21 controls a person liable under this section, every partner, principal
22 executive officer or director of such person, every person occupying a similar
23 status or performing a similar function, every employee of such person who
24 materially aids in the act constituting the violation, and every licensee or
25 person acting as a common law agent who materially aids in the acts

1 constituting the violation, either knowingly or negligently, may, upon notice
2 and opportunity for hearing, and in addition to any other penalty provided for
3 by law, be subject to suspension, revocation, or denial of any registration or
4 license, including the forfeiture of any application fee, or the imposition of
5 an administrative fine not to exceed \$2,500, or both.

6 On January 16, 2009, the Department issued an Order to Show Cause to
7 Hendo 66, LLC (d/b/a Clearly Simple Mortgage), et al. All Respondents filed
8 a timely request for a hearing. RSA 397-A:18 requires a hearing to be held
9 not later than 10 days after the request is received by the commissioner.

10 The Department alleges the following:

11 **Issue 1: Failure to Pay Examination Fee (RSA 397-A:12, V); and**

12 **Issue 2: Failure of Officers and Owners to Respond to Department Inquiries**
13 **(RSA 397-A:13, VI);**

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

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

1 THEREFORE, IT IS ORDERED, that the above named Respondents appear
2 before the New Hampshire Banking Department on **Monday, March 2, 2009 at**
3 **10:00 am at the New Hampshire Banking Department, 53 Regional Drive, Suite**
4 **200, Concord, NH 03301**, for the purpose of participating in an adjudicative
5 proceeding, at which time each Respondent will have the opportunity to show
6 cause as to why relief sought in the Order to Show Cause should not become
7 permanent; and

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

13 IT IS FURTHER ORDERED, Presiding Officer Ingrid White shall issue a
14 RECOMMENDED DECISION in this matter which shall be reviewed and approved,
15 disapproved or modified by the Banking Commissioner; and

16 IT IS FURTHER ORDERED, that any proposed exhibits shall be pre-marked,
17 for identification only, and filed with the Department and provided to the
18 opposing party **on or before Tuesday, February 24, 2009**. Hearings Examiner
19 shall pre-mark the Department's exhibits with Arabic numbers. **Respondents**
20 **shall pre-mark exhibits with capital letters.** An index/list of exhibits
21 providing a brief description of each exhibit with its corresponding pre-
22 marked number or letter shall be filed by both parties simultaneous with the
23 filing of exhibits; and

24 IT IS FURTHER ORDERED, that the parties shall exchange a list of all
25 exhibits and witnesses to be called at the hearing with a brief summary at

1 the hearing, and shall at the same time file a copy of their respective
2 lists with the Presiding Officer; and

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

8 IT IS FURTHER ORDERED, that the Banking Department shall have the
9 burden of setting forth a *prima facie* case. Each Respondent shall have the
10 burden of showing compliance with applicable law by a preponderance of the
11 evidence; and

12 IT IS FURTHER ORDERED, that Respondents failure to appear at the time,
13 date, and place specified may result in the hearing being held *in absentia*
14 and/or default ruling in favor of the Complainant, without further notice or
15 opportunity to be heard; and

16 IT IS FURTHER ORDERED, that the entirety of all oral proceedings shall
17 be recorded verbatim by the Department. Upon request of any party, or upon
18 the Presiding Officer's own initiative, such record shall be transcribed by a
19 certified court reporter designated by the Presiding Officer, and that all
20 costs shall be borne solely by the requesting party. Any such request shall
21 be submitted in writing to the Presiding Officer prior to hearing.

22 IT IS FURTHER ORDERED, that all documents shall be filed with the
23 Presiding Officer in the form of an original and one (1) copy and shall bear
24 a certification that a copy is being delivered to any other parties to this
25 matter in accordance with New Hampshire Code of Administrative Rules BAN
204.08 ("Filing Requirements"). All documents shall be filed by mailing or

1 delivering them to the New Hampshire Banking Department, ATTN: Ingrid White,
2 Presiding Officer, 53 Regional Drive, Suite 200, Concord, NH 03301. Filing
3 by facsimile or electronic transmission shall not be accepted; and

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

8 IT IS FURTHER ORDERED, that routine procedural inquiries may be made
9 by telephoning Maryam Torben Desfosses, Hearing Examiner for the New
10 Hampshire Banking Department at (603)271-3561, but all other communications
11 with the Presiding Officer and with the Department shall be in writing and
12 shall be filed as provided above. *Ex parte* communications are forbidden by
13 statute; and

14 IT IS FURTHER ORDERED, that a copy of this Notice of hearing shall be
15 mailed to all Respondents of record and to Presiding Officer Ingrid White.

16
17
18 **SO ORDERED,**

19
20 _____
/s/
Peter C. Hildreth
Commissioner
21 State of New Hampshire
Banking Department
22

02/19/09

Date