

1	In re the Matter of:) Case No.: 10-464
)
2	State of New Hampshire Banking)
)
3	Department,)
)
4	Petitioner,)
) Order to Show Cause with Immediate
5	and) Suspension
) and Cease and Desist Order
6	Upper Valley Mortgage LLC, Benjamin)
)
7	Hunter Lindberg, Justin Craig Bitler,)
)
8	Estate of Lawrence Gene Stern, M.D.,)
)
9	Respondents)

NOTICE OF ORDER TO SHOW CAUSE WITH IMMEDIATE SUSPENSION AND
CEASE AND DESIST ORDER ("ORDER")

1. This Order commences an adjudicative proceeding under the provisions of RSA Chapter 397-A, RSA Chapter 541-A and RSA 383:10-d.

LEGAL AUTHORITY AND JURISDICTION

2. In addition to an order to show cause for license revocation and penalties, the Commissioner may by order summarily suspend any license pending final determination of an order to show cause if the Commissioner finds that the public interest would be irreparably harmed by delay in issuing such order. RSA 397-A:17,I.

3. The Commissioner may also order an immediate suspension if the Commissioner finds that protection of consumers, lenders, or investors requires emergency action and this finding is incorporated into the order. RSA 397-A:17,III.

4. The Department may take action for immediate suspension of a license, pursuant to RSA 541-A:30,III, which allows a license suspension if the

1 public health, safety or welfare requires emergency action pending an
2 adjudicative proceeding. RSA 397-A:17,V and VI RSA 541-A:30,III and RSA 397-
3 A:21.

4 5. The Commissioner may issue orders to Respondents to cease and desist from
5 conducting business. RSA 397-A:17,II and RSA 397-A:18,II.

6 6. The Commissioner may by order remove or ban from office or employment,
7 including license revocation, any person conducting business under RSA
8 Chapter 397-A who violates RSA Chapter 397-A or rules or order promulgated
9 thereunder, federal laws or rules or regulations thereunder, or if by a
10 preponderance of evidence the Commissioner determines that Respondents no
11 longer demonstrate the financial responsibility, character, and general
12 fitness such as to command the confidence of the community and to warrant a
13 determination that Respondents subject to RSA Chapter 397-A will operate
14 honestly, fairly, and efficiently. RSA 397-A:17,II(e).

15 7. The New Hampshire Banking Department ("Department") may issue a complaint
16 setting forth charges whenever the Department is of the opinion that the
17 licensee is violating or has violated any provision of RSA Chapter 397-A or
18 any rule or order thereunder. RSA 397-A:18,I.

19 8. The Commissioner may impose administrative penalties of up to \$2,500.00
20 for each violation. RSA 397-A:21.

21 9. The Commissioner may also assess fines and penalties against a New
22 Hampshire mortgage loan originator who violates or fails to comply with the
23 S.A.F.E. Mortgage Licensing Act of 2008, Public Law 110-289, Title V or any
24 regulation or order issued thereunder in an amount not to exceed \$25,000.00
25 for each violation. RSA 397-A:17,IX.

1 10. The Commissioner may enter an order of rescission, restitution or
2 disgorgement of profits in addition to other penalties under RSA 383:10-d.
3 RSA 397-A:17,VIII.

4 11. The Commissioner may issue, amend, or rescind such orders as are
5 reasonably necessary to comply with the provisions of RSA Chapter 397-A. RSA
6 397-A:20,IV.

7 12. An action to enforce any provision of RSA Chapter 397-A shall be
8 commenced within 6 years after the date of the violation. RSA 397-A:17,X.

9 13. The Commissioner shall investigate conduct that is or may be an unfair
10 or deceptive act or practice under RSA Chapter 358-A and exempt under RSA
11 358-A:3,I or that may violate any of the provisions of Titles XXXV and XXXVI
12 and administrative rules adopted thereunder. The Commissioner may hold
13 hearings relative to such conduct and may order restitution for a person or
14 persons adversely affected by such conduct. RSA 383:10-d.

15 **RIGHT TO AN ADJUDICATIVE PROCEEDING**

16 14. The Department shall hold an adjudicative proceeding within ten (10)
17 working days after the date of this Order. Such hearing is noticed under
18 separate cover. A record of this proceeding shall be by a certified
19 shorthand court reporter provided by the Department. If any Respondent fails
20 to appear at the adjudicative proceeding after being duly notified or reach
21 a formal written and executed settlement with the Department, such person
22 shall be deemed in default, and the proceeding may be determined against the
23 Respondent upon consideration of this Order, the allegations of which may be
24 deemed to be true. All hearings shall comply with RSA Chapter 541-A. RSA 397-
25 A:17,I.

1 STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF

2 15. The Complaint dated November 24, 2010 (a copy of which is attached
3 hereto) is incorporated by reference hereto.

4 ORDER

5 16. **WHEREAS the Commissioner finds** this emergency action and all resulting
6 findings and orders herein are necessary and appropriate to and in the
7 public interest and for the protection of consumers, lenders, or investors
8 and consistent with the intent and purpose of the New Hampshire banking
9 laws;

10 17. **WHEREAS the Commissioner finds** the public health, safety or welfare
11 requires emergency action pending an adjudicative proceeding;

12 18. **WHEREAS the Commissioner finds** the allegations contained in the
13 Complaint, if proved by a preponderance of evidence that the above named
14 Respondents no longer demonstrate the financial responsibility, character,
15 and general fitness such as to command the confidence of the community and
16 to warrant a determination that Respondents subject to RSA Chapter 397-A
17 will operate honestly, fairly, and efficiently, form the legal basis of the
18 relief requested;

19 19. **WHEREAS the Commissioner finds** delay in issuing this immediate
20 suspension will cause irreparable harm to the public interest;

21 20. **WHEREAS the Commissioner finds** the allegations contained in the
22 Complaint, if proved true and correct, give reasonable cause and form the
23 legal basis of the relief requested;

24 21. **WHEREAS the Commissioner finds** the facts as alleged above, if true, show
25 Respondents Lindberg and Bitler as mortgage loan originators have not

1 continued to demonstrate financial responsibility, character and general
2 fitness such as to command the confidence of the community and to warrant a
3 determination that they will operate honestly, fairly, and efficiently
4 within the purposes of RSA Chapter 397-A;

5 **22. It is hereby ORDERED,** that:

6 a. Respondent Upper Valley Mortgage LLC's New Hampshire Mortgage Broker
7 license is immediately suspended;

8 b. Respondent Benjamin Hunter Lindberg's New Hampshire Mortgage Loan
9 Originator license is immediately suspended;

10 c. Respondent Justin Craig Bitler's New Hampshire Mortgage Loan
11 Originator license sponsored by Merrimack Mortgage Company Inc is
12 immediately suspended;

13 d. The above named Respondents ("Respondents") are hereby ordered to
14 cease and desist from conducting any business in New Hampshire and from
15 violating any laws, rules or orders;

16 e. The above named Respondents are hereby ordered to immediately provide
17 the Department a pipeline report of any pending mortgage loan applications;

18 f. The above named Respondents shall show cause why administrative fines
19 of \$2,500.00 per violation should not be imposed plus an additional
20 \$25,000.00 per violation for Respondent Lindberg and Respondent Bitler;

21 g. The above named Respondents shall show cause why they should not
22 reimburse Consumer A all monies (totaling approximately \$82,200.00 plus
23 interest) owed to Consumer A;

24 h. The above named Respondents shall show cause why Respondent Upper
25 Valley's New Hampshire Mortgage Broker license should not be revoked;

1 i. Respondent Lindberg and Respondent Bitler shall each show cause why
2 their New Hampshire Mortgage Loan Originator licenses should not be revoked;
3 and

4 j. Nothing in this Order shall prevent the Department from taking any
5 further administrative action under New Hampshire law.

6
7 **SO ORDERED.**

8 _____ /s/

Dated: 11/24/2010

9 PETER C. HILDRETH
10 BANK COMMISSIONER
11 By Robert A. Fleury, Deputy Bank Commissioner
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1 by the Department as a New Hampshire Mortgage Loan Originator since April 2,
2 2009. Respondent Bitler is now a Mortgage Loan Originator with Merrimack
3 Mortgage Company Inc.

4 4. Estate of Lawrence Gene Stern, M.D. ("Respondent Estate") is the estate
5 of the former 50% owner Lawrence G. Stern, M.D. of Respondent Upper Valley,
6 who passed away in March 2010.

7 5. Upon the Department's information and belief, Respondent Upper Valley and
8 Respondent Lindberg currently have bank accounts with Lake Sunapee Bank and
9 Mascoma Savings Bank.

10 **FACTS**

11 7. *Introduction:* In August 2010, the Lebanon, New Hampshire Police
12 Department informed the Department via a police report that Consumer A gave
13 the Respondents \$150,000.00 in exchange for what Consumer A was told would
14 be deposited as an annuity for Consumer A's benefit. Consumer A never
15 received an annuity. RSA 397-A:2,III (e.g. RSA 637:4) and RSA 397-A:14,IV(a)
16 and (n). The facts are as follows:

17 8. On November 21, 2008, Respondent Bitler via an email communicated to
18 Consumer A that Consumer A's IRA was too aggressive and needed to be
19 corrected. In the police report, Respondent Bitler claimed it was his
20 understanding the monies were to go into an annuity account.

21 9. On March 23, 2009, Consumer A gave an undated check made payable to Upper
22 Valley Mortgage, LLC for \$150,000.00 to Respondent Bitler and Respondent
23 Upper Valley. The check's memo line states "IRA funds to Upper Valley
24 Mortgage". The check endorsed by Respondent Lindberg was deposited into
25 Respondent Upper Valley's Lake Sunapee Bank bank account.

1 10. On March 23, 2009, Respondent Lindberg signed and Lawrence Stern
2 witnessed a promissory note from Respondent Upper Valley promising to repay
3 to Consumer A \$150,000.00 plus 8% interest payable in equal monthly
4 installments of \$6,784.09, commencing on May 1, 2009 and on the first day of
5 each month thereafter for 24 months. Consumer A did not sign the promissory
6 note. An email dated September 15, 2010 between Consumer A and Respondent
7 Lindberg confirms that Consumer A was not even aware of the promissory note.

8 11. In a September 15, 2010 email Respondent Lindberg asked Consumer A the
9 question of who wrote the promissory note. Yet, in a July 29, 2010 meeting
10 with the Lebanon, New Hampshire Police Department, Respondent Lindberg
11 indicates he wrote the promissory note. The document directory stamped on
12 the March 23, 2009 promissory confirms the document originates from
13 Respondent Lindberg's directory path. RSA 397-A:14,IV(n).

14 12. Consumer A received ten payments of \$6,784.09 as follows totaling
15 \$67,840.09:

- 16 a. April 29, 2009;
- 17 b. June 1, 2009;
- 18 c. July 1, 2009;
- 19 d. August 6, 2009;
- 20 e. September 8, 2009;
- 21 f. October 5, 2009;
- 22 g. November 13, 2009;
- 23 h. February 19, 2010;
- 24 i. March 31, 2010; and
- 25 j. May 2, 2010.

1 After May 2, 2010, Consumer A received no further payments. Respondents
2 still owe the remaining balance of initial \$150,000.00 plus interest.

3 13. Prior to depositing Consumer A's \$150,000.00, Respondent Upper
4 Valley's Quickbooks check registry shows it only had a \$3,344.74 balance and
5 immediately after the deposit it had \$153,344.74.

6 14. Respondent Upper Valley's Quickbooks check registry shows that on March
7 23, 2009 (the same day Consumer A's money was deposited into Respondent
8 Upper Valley's bank account) and on March 25, 2009, Respondent Lindberg's
9 First Horizon Home Mortgage was paid (one payment of \$4,315.04 and one of
10 \$2,355.94). This demonstrates Respondents were commingling business monies
11 received and personal expenses paid from a business check registry.

12 15. Respondent Upper Valley's Quickbooks check registry shows that on March
13 23, 2009 and March 24, 2009, Respondent Upper Valley made three automobile
14 lease payments (\$669.15, \$1,393.72, \$1,540.38).

15 16. Respondent Upper Valley's Quickbooks check registry shows that on March
16 24, 2009 Respondents transferred \$60,000.00 into another of Respondent Upper
17 Valley's Lake Sunapee Bank bank account. Respondent Upper Valley's
18 Quickbooks check registry shows it only received a \$10,863.58 deposit prior
19 to March 24, 2009, which demonstrates the majority of Respondents' monies
20 came from Consumer A's funds.

21 17. Additional loan payments to Respondent Lindberg's Metlife Home Loans and
22 "First Tenn Loan" were made from the Upper Valley account.

23 18. On July 30, 2009, Respondent Lindberg invested \$62,500.00 into a
24 certificate of deposit and received an Irrevocable Letter of Credit for the
25 same with Mascoma Savings Bank. This left a balance of \$3,007.31 in

1 Respondent Upper Valley's Quickbooks check registry.

2 19. Respondents used Consumer A's money in part to pay Respondent Lindberg's
3 personal expenses and Respondent Upper Valley's business expenses. RSA 397-
4 A:5,IV-d(a)(1) via RSA 397-A:5,IV-c(5), RSA 397-A:14,IV(a), RSA 397-
5 A:17,I(j), RSA 397-A:17,II(e)(4).

6 20. Respondent Upper Valley in a promissory note signed by Respondent
7 Lindberg on February 12, 2010 promised to pay Respondent Upper Valley's
8 former landlords \$23,689.36 at 6% interest for back owed rent. No payments
9 have been made. RSA 397-A:5,IV-d(a)(1) via RSA 397-A:5,IV-c(5), RSA 397-
10 A:17,I(j), RSA 397-A:17,II(e)(4).

11 21. The Department's Examiners have determined that Respondents have been
12 operating at a loss (negative net equity) for over two years. RSA 397-
13 A:5,IV-d(a)(1) via RSA 397-A:5,IV-c(5), RSA 397-A:17,I(j), RSA 397-
14 A:17,II(e)(4).

15 22. Both audited and unaudited financials submitted to the Commissioner
16 illustrate positive net equity but exclude the liability to Consumer A. RSA
17 397-A:17,I(e) and RSA 397-A:13,II.

18 23. Respondents have failed to operate with financial integrity, character
19 and general fitness as demonstrated in Paragraphs 7-22 above. 397-A:5,IV-
20 d(a)(1) via 397-A:5,IV-c(5).

21 24. Respondent Lindberg attempted to defraud Consumer A by emailing the
22 inquiry to Consumer A regarding the origin of the promissory note as
23 demonstrated in Paragraph 11 above. RSA 397-A:14,IV(n).

24 **II. RELIEF REQUESTED**

25 25. Find as fact the allegations and conclusions of law contained in Section

1 I of this Complaint;

2 26. Order the following licenses to be immediately suspended:

3 a. Respondent Upper Valley Mortgage LLC's New Hampshire Mortgage Broker
4 license;

5 b. Respondent Benjamin Hunter Lindberg's New Hampshire Mortgage Loan
6 Originator license;

7 c. Respondent Justin Craig Bitler's New Hampshire Mortgage Loan
8 Originator license sponsored by Merrimack Mortgage Company Inc;

9 27. Order the above named Respondents to cease and desist from conducting
10 any business in New Hampshire and from violating any laws, rules or orders;

11 28. Order the above named Respondents to immediately provide the Department
12 a pipeline report of any pending mortgage loan applications;

13 29. Order the above named Respondents to reimburse Consumer A all monies
14 (totaling approximately \$82,200.00 plus interest) owed to Consumer A;

15 30. Assess administrative fines in an amount not to exceed \$2,500.00 per
16 violation (and an additional \$25,000.00 per violation for Respondents
17 Lindberg and Bitler per S.A.F.E.) as follows:

18 a. **Respondent Upper Valley:**

19 Violation #1: Theft by deception (RSA 397-A:2,III via possible
20 violation of RSA 637:4 - 1 count

21 Violation #2: Property obtained by fraud or misrepresentation (397-
22 A:14,IV(a)) - 1 count

23 Violation #3: Unfair, deceptive, unethical, or fraudulent business
24 practices (RSA 397-A:14,IV(n)) - 1 count

25 Violation #4: Licensee not qualified on basis of financial integrity

1 (RSA 397-A:17,I(j)) - 1 count

2 Violation #5: Licensee no longer demonstrates financial responsibility
3 or character and general fitness (RSA 397-A:17,II(e)(4)) - 1 count

4 Violation #6: False or misleading statement/report to the Commissioner
5 (RSA 397-A:17,I(e)) - 1 count

6 Violation #7: Inaccurate financial statement filed (RSA 397-A:13,II) -
7 1 count

8 **b. Respondent Lindberg:**

9 Violation #1: Theft by deception (RSA 397-A:2,III via possible
10 Violation of RSA 637:4) - 1 count

11 Violation #2: Property obtained by fraud or misrepresentation (397-
12 A:14,IV(a)) - 1 count

13 Violation #3: Unfair, deceptive, unethical, or fraudulent business
14 practices (RSA 397-A:14,IV(n)) - 1 count

15 Violation #4: Failure to meet minimum standards for licensure (RSA
16 397-A:5,IV-d(a)(1) via 397-A:5,IV-c(5)) - 1 count

17 Violation #5: Licensee not qualified on basis of financial integrity
18 (RSA 397-A:17,I(j)) - 1 count

19 Violation #6: Licensee no longer demonstrates financial responsibility
20 or character and general fitness (RSA 397-A:17,II(e)(4)) - 1 count

21 Violation #7: False or misleading statement/report to the Commissioner
22 (RSA 397-A:17,I(e)) - 1 count

23 Violation #8: Unfair, deceptive, unethical and fraudulent business
24 practices directed at Consumer A (RSA 397-A:14,IV(n)) - 1 count

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1 c. **Respondent Bitler:**

2 Violation #1: Theft by deception (RSA 397-A:2,III via possible
3 violation of RSA 637:4 - 1 count

4 Violation #2: Property obtained by fraud or misrepresentation (397-
5 A:14,IV(a)) - 1 count

6 Violation #3: Unfair, deceptive, unethical, or fraudulent business
7 practices (RSA 397-A:14,IV(n)) - 1 count

8 Violation #4: Failure to meet minimum standards for licensure (RSA
9 397-A:5,IV-d(a)(1) via 397-A:5,IV-c(5)) - 1 count

10 d. **Respondent Estate:**

11 Violation #1: Theft by deception (RSA 397-A:2,III via possible
12 violation of RSA 637:4 - 1 count

13 Violation #2: Property obtained by fraud or misrepresentation (397-
14 A:14,IV(a)) - 1 count

15 Violation #3: Unfair, deceptive, unethical, or fraudulent business
16 practices (RSA 397-A:14,IV(n)) - 1 count

17 31. Order the above named Respondents to show cause why Respondent Upper
18 Valley's New Hampshire Mortgage Broker license should not be revoked;

19 32. Order Respondent Lindberg and Respondent Bitler to each show cause why
20 their New Hampshire Mortgage Loan Originator licenses should not be revoked;

21 33. Take such other administrative and legal actions as necessary for
22 enforcement of the New Hampshire Banking Laws, the protection of New
23 Hampshire citizens, and to provide other equitable relief.

