

1 State of New Hampshire Banking Department

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3 In re the Matter of:) Case No.: 07-078
)
 4 State of New Hampshire Banking) Notice of Hearing - Order to Show
) Cause, Cease and Desist Order
 5 Department,)
)
 6 Petitioner,)
)
 7 and)
)
 8 Southstar Funding LLC, Southstar)
)
 9 Partners LLC, Peter R. Norden, [REDACTED])
)
 10 [REDACTED] Timbuktu Inc., Kirk Smith,
 11 and Toni Ward,
 12 Respondents

13
14 NOTICE OF HEARING

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

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

23 The Department issued the Respondent an Order to Show Cause and Cease
24 and Desist Order on April 3, 2007. A Default Judgment was issued against
25 Respondent Toni Ward on July 5, 2007. On July 6, 2007 the Department granted
a Motion to Strike Default against Toni Ward. Pursuant to *New Hampshire*

1 Administrative Rule BAN 204.14(e), the New Hampshire Banking Department is
2 giving notice of a re-scheduled hearing in accordance with *New Hampshire*
3 *Administrative Rule BAN 204.04*.

4 The Department alleges the following:

5 **Issue 1:** Failure to maintain the financial integrity necessary to warrant
6 the public confidence

7 **Issue 2:** Failure to fund outstanding loan commitments

8 **Issue 3:** Failure to respond to regulatory inquiries

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

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

18 THEREFORE, IT IS ORDERED, that the Respondent appear before the New
19 Hampshire Banking Department on **August 27, 2007 at 10:00 am**, at the
20 Department's offices at 64B Old Suncook Road, Concord, New Hampshire, for the
21 purpose of participating in an adjudicative proceeding, at which time the
22 Respondent will have the opportunity to demonstrate why the cease and desist
23 order should not become permanent; and

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

IT IS FURTHER ORDERED, that James Shepard, Staff Attorney, New
Hampshire Banking Department is designated as Hearing Counsel in this matter

1 with authority to represent the public interest within the scope of the
2 Department's authority. Hearing Counsel shall have the status of a party to
3 this proceeding; and

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

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

16 IT IS FURTHER ORDERED, that the parties shall exchange a list of all
17 exhibits and witnesses to be called at the hearing with a brief summary prior
18 to end of business on **August 23, 2007**, and shall at the same time file a copy
19 of their respective lists with the Presiding Officer; and

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

25 IT IS FURTHER ORDERED, that the Department shall have the burden of
26 setting forth a *prima facie* case, then the Respondents shall have the burden
27 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, 64-B 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 Counsel for Respondent licensee and that a copy shall also be
delivered to all other named Respondents, James Shepard, Hearing Counsel, and
to the Presiding Officer at the New Hampshire Banking Department.

