

1 In re the Matter of:) Case No.: 08-431
)
 2 State of New Hampshire Banking)
)
 3 Department,)
)
 4 Petitioner,) Order to Show Cause and
) Cease and Desist
 5 and)
)
 6 InstantLoanToday.com, and Mark J.)
)
 7 Kane,)
)
 8 Respondents)

9 NOTICE OF ORDER TO SHOW CAUSE AND CEASE AND DESIST ("ORDER")

10 1. This Order commences an adjudicative proceeding under the provisions
 11 of RSA Chapter 399-A (including RSA 399-A:7,I and II, RSA 399-A:8,I and RSA
 12 399-A:16,IV) and RSA Chapter 541-A.

13 2. The Commissioner may impose administrative penalties of up to
 14 \$2,500.00 for each violation. RSA 399-A:18,V and VI.

15 RESPONDENTS

16 3. InstantLoanToday.com ("Respondent InstantLoan") is an online company
 17 formerly located in Salt Lake City, Utah and now in Wilmington, Delaware.
 18 with a principal office location in Wilmington, Delaware. Respondent
 19 InstantLoan is not registered with the New Hampshire Secretary of State.
 20 Respondent InstantLoan is a "Person." RSA 399-A:1,XII.

21 4. The New Hampshire Banking Department ("Department") records indicate
 22 Respondent InstantLoan has never held a PayDay or Small Loan Lender license
 23 with the New Hampshire Banking Department.

24 5. Mark J. Kane ("Respondent Kane") is the President of Respondent
 25 InstantLoan. Respondent Kane is a Principal (RSA 399-A:XIII) and Person (RSA

1 399-A:1,XII).

2 6. The above named Respondents are hereby collectively known as
3 "Respondents".

4 **RIGHT TO REQUEST A HEARING**

5 7. Respondent has a right to request a hearing on this Order. A hearing
6 shall be held not later than ten (10) days after the Commissioner receives
7 the Respondent's written request for a hearing. Respondent may request a
8 hearing and waive the ten (10) day hearing requirement. The hearing shall
9 comply with RSA Chapter 541-A. RSA 399-A:7 and RSA 399-A:8.

10 8. If any person fails to request a hearing within thirty (30) days of
11 receiving this Order, then such person shall be deemed in default, and the
12 Order shall, on the thirty-first (31st) day, become permanent, all
13 allegations may be deemed true, and shall remain in full force and effect
14 until modified or vacated by the Commissioner for good cause shown. RSA
15 399-A:7 and RSA 399-A:8.

16 9. A default may result in administrative fines as described in Paragraph
17 2 above.

18 **STATEMENT OF ALLEGATIONS**

19 10. On May 19, 2008 the Department received a Complaint from a New
20 Hampshire consumer ("Consumer A") against Respondent concerning a payday or
21 small loan.

22 11. On February 12, 2007, Respondent issued Consumer A the payday or small
23 loan in the amount of \$200.00, in violation of RSA 399-A:2,I.

24 12. Respondent deducted \$440.00 from Consumer A's bank account over the
25 course of 9 months in violation of RSA 399-A:11,XI and RSA 399-A:13,I.

1 Consumer A should be entitled to a refund of \$240.00, the amount over the
2 \$200.00 originally borrowed.

3 13. On August 5, 2008, the Department sent a letter via U.S. Certified
4 Mail return receipt requested to Respondent at the Utah address suggesting
5 it apply for licensure with the Department. Respondent received this letter
6 on August 8, 2008.

7 14. On October 3, 2008, the Department received a response from Respondent
8 Kane to the Department's August 5, 2008 letter. Respondent Kane discussed
9 concepts only dealing with conflict of law issues and not the licensure
10 requirements and specifically did not provide an explanation or defense to
11 RSA Chapter 399-A.

12 15. On November 3, 2008, the Department sent a second letter via U.S.
13 Certified Mail return receipt requested to Respondent at the Utah address
14 reminding Respondents that RSA 399-A:2,I requires licensure of Respondent
15 InstantLoan and asking Respondents for consumer information and marketing
16 materials. Respondent received this letter on November 8, 2008.

17 16. On December 12, 2008, Respondent Kane responded by indicating
18 Respondent InstantLoan is not offering, originating or making deferred
19 deposit loans in New Hampshire and that Respondent InstantLoan does not
20 currently have any customers from New Hampshire nor will Respondent
21 InstantLoan accept any customer from New Hampshire. However, New Hampshire
22 was still an option on the instantloantoday.com website loan application
23 form and Respondents had failed (as of December 2008) to include New
24 Hampshire as part of the existing list of states with which it cannot
25 conduct business.

1 17. On October 7, 2009, the Department sent a third letter via regular
2 U.S. Mail to Respondent at the Utah address again reminding Respondents that
3 RSA 399-A:2,I requires licensure of Respondent InstantLoan and again asking
4 Respondents for consumer information and marketing materials. Respondent
5 received this letter sometime before October 30, 2009.

6 18. On October 30, 2009, the Department received another correspondence
7 from Respondent Kane, indicating Respondent InstantLoan does not have any
8 current customers from New Hampshire nor will it accept any New Hampshire
9 customer. However, to date, New Hampshire is still an option on the
10 instantloantoday.com website loan application form and Respondents have
11 failed to include New Hampshire as part of the existing list of states with
12 which it cannot conduct business. Respondents currently cannot offer loans
13 in Arkansas, Arizona, Colorado, Georgia, Kansas, Massachusetts, Michigan,
14 North Carolina, Oregon, South Carolina and West Virginia.

15 19. To date, Respondent InstantLoan has an active website and has not
16 specifically excluded New Hampshire from the states in which it offers
17 payday or small loans.

18
19 _____
20 /s/ Maryam Torben Desfosses
21 Hearings Examiner

22 July 27, 2011
23 Date

24 **ORDER**

25 20. **I hereby find as follows:**

26 a. Pursuant to RSA 399-A:7,I and II, the facts as alleged above, if
27 true, show Respondents are operating or have operated in violation of RSA
28 Chapter 399-A and form the legal basis for this Order;

1 b. Pursuant to 399-A:16,VI, this Order is necessary and appropriate
2 to the public interest and for the protection of consumers and consistent
3 with the purpose and intent of New Hampshire banking laws;

4 c. The Department finds pursuant to RSA 399-A:8,I, reasonable cause
5 to issue an order to cease and desist; and

6 d. Pursuant to RSA 399-A:7,I and II and RSA 399-A:8,I, if any
7 Respondent fails to respond to this Order and/or defaults then all facts as
8 alleged herein are deemed as true.

9 **21. Accordingly, it is hereby ORDERED that:**

10 a. Respondents shall cease and desist from violating RSA Chapter
11 399-A and rules or orders thereunder;

12 b. Respondents shall immediately provide the Department a list of
13 all New Hampshire consumers for whom Respondents have given payday or small
14 loans and a status of those accounts. This list must include the names and
15 contact information of the New Hampshire consumers, along with monies
16 charged, collected and waived (if applicable). The list shall also be
17 accompanied by all contracts, checks to and from the consumer and any other
18 documents in the New Hampshire consumers' files;

19 c. Respondents shall show cause why the Commissioner should not
20 enter an order of rescission, restitution, or disgorgement of profits,
21 including at a minimum restitution of \$240.00 for Consumer A;

22 d. Respondents shall show cause why an administrative fine of up to
23 a maximum of \$2,500.00 per violation should not be imposed as follows:

24 (1). Respondent InstantLoan:

25 Violation #1: Unlicensed payday or small loan activity

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(RSA 399-A:2,I) - 1 Count;
Violation #2: Charging additional fees on a loan (RSA 399-A:11,XI)) - 1 Count;
Violation #3: Charging additional fees on a loan (RSA 399-A:13,I) - 1 Count;

(2). Respondent Kane:

Violation #1: Unlicensed payday or small loan activity (RSA 399-A:2,I) - 1 Count;
Violation #2: Charging additional fees on a loan (RSA 399-A:11,XI)) - 1 Count;
Violation #3: Charging additional fees on a loan (RSA 399-A:13,I) - 1 Count;

e. Nothing in this Order:

(1). shall prevent the Department from taking any further administrative and legal action as necessary under New Hampshire law; and

(2). shall prevent the New Hampshire Office of the Attorney General from bringing an action against the above named Respondent in any New Hampshire superior court, with or without prior administrative action by the Commissioner.

SO ORDERED.

/s/
RONALD A. WILBUR
BANK COMMISSIONER

Dated: 07/27/2011