

) Case No.: 10-139

1 In re the Matter of: )  
 )  
 2 State of New Hampshire Banking )  
 )  
 3 Department, )  
 )  
 4                   Petitioner, ) Order to Show Cause and  
 ) Cease and Desist  
 5 and )  
 )  
 6 Kingston Financial (d/b/a for Payment )  
 )  
 7 Direct, Inc.), and J. Michael Kenney )  
 )  
 8                   Respondents )

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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.

RESPONDENTS

16 3. Kingston Financial (d/b/a for Payment Direct, Inc.) ("Respondent  
 17 Kingston Financial") is a company located in all or either of the following  
 18 locations: Salt Lake City, Utah, Philadelphia, Pennsylvania, Wilmington,  
 19 Delaware and London, England. Respondent Kingston Financial registered as a  
 20 DBA with the Utah Department of Commerce on January 12, 2009 with a  
 21 principal office location in Philadelphia, Pennsylvania. The Utah Department  
 22 of Commerce records indicate Respondent Kingston Financial is a DBA for  
 23 Payment Direct, Inc. Payment Direct, Inc. registered as a corporation with  
 24 the Utah Department of Commerce on December 3, 2008 with a principal office  
 25 location in Wilmington, Delaware. Payment Direct, Inc. registered with the

1 Delaware Division of Corporations on February 7, 2008. Businessreporter.net  
2 has Payment Direct, Inc. located in Salt Lake City, Utah as does  
3 debtconsolidationcare.com. The Better Business Bureau has Respondent  
4 Kingston Financial located in Salt Lake City, Utah. Respondent Kingston  
5 Financial is a "Person." RSA 399-A:1,XII.

6 4. J. Michael Kenney ("Respondent Kenney"), according to the Utah  
7 Department of Commerce records for Payment Direct, Inc., is the President,  
8 Secretary, Treasurer and Director of Payment Direct, Inc. As a result,  
9 Respondent Kenney is the indirect owner of Respondent Kingston Financial (as  
10 the d/b/a for Payment Direct, Inc.). Respondent Kenney is a Person (RSA 399-  
11 A:1,XII), a Direct Owner (RSA 399-A:1,III-b), an Indirect Owner (RSA 399-  
12 A:1,V-a) and a Principal (RSA 399-A:1,XIII).

13 5. The New Hampshire Banking Department ("Department") records indicate  
14 Respondent Kingston Financial or Payment Direct, Inc. or Respondent Kenney  
15 has never held a Payday or Small Loan Lender license with the Department.

16 6. The above named Respondents shall be collectively known as  
17 "Respondents".

18 **RIGHT TO REQUEST A HEARING**

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

24 8. If any person fails to request a hearing within thirty (30) days of  
25 receiving this Order, then such person shall be deemed in default, and the

1 Order shall, on the thirty-first (31<sup>st</sup>) day, become permanent, all  
2 allegations may be deemed true, and shall remain in full force and effect  
3 until modified or vacated by the Commissioner for good cause shown. RSA 399-  
4 A:7 and RSA 399-A:8..

5 9. A default may result in administrative fines as described in Paragraph  
6 2 above.

7 **STATEMENT OF ALLEGATIONS**

8 10. On April 9, 2009, the Department received a complaint from a New  
9 Hampshire consumer ("Consumer A") against Respondent Kingston Financial for  
10 what Consumer A believes concerns a payday or small loan.

11 11. By February 2009, Respondents issued Consumer A the payday or small  
12 loan, in violation of RSA 399-A:2,I.

13 12. On September 14, 2010, the Department sent a letter via U.S. Certified  
14 Mail Return Receipt requested to Respondent Kingston Financial at the Salt  
15 Lake City, Utah address suggesting it apply for licensure with the  
16 Department, requesting documentation regarding Respondents New Hampshire  
17 consumer activity and resolution of the Consumer A complaint. Respondent  
18 Kingston Financial received the correspondence at Payment Direct, Inc. on  
19 September 22, 2010 as the green card is stamped accordingly. The  
20 correspondence was signed by a "Kelly Nichols". The Department also  
21 successfully faxed the same correspondence on September 14, 2010. Neither  
22 Respondent Kingston Financial nor its parent company Payment Direct, Inc.  
23 responded.

24 13. On March 30, 2011, the Department sent a letter via U.S. Certified  
25 Mail Return Receipt requested to Respondents at the Salt Lake City, Utah

1 address suggesting it apply for licensure with the Department, requesting  
2 documentation regarding Respondents New Hampshire consumer activity and  
3 resolution of the Consumer A complaint. A "Tara Churchwell" signed for the  
4 correspondence on April 5, 2011. Neither Respondent Kingston Financial nor  
5 its parent company Payment Direct, Inc. responded.

6 14. On June 14, 2011, the Department sent a letter via U.S. Certified Mail  
7 Return Receipt requested to Respondent Kingston Financial at the  
8 Philadelphia, Pennsylvania address suggesting it apply for licensure with  
9 the Department, requesting documentation regarding Respondents New Hampshire  
10 consumer activity and resolution of the Consumer A complaint. Respondents  
11 received the correspondence on June 20, 2011.

12 15. On June 14, 2011, the Department sent a letter via U.S. Certified Mail  
13 Return Receipt requested to Respondent Kingston Financial at the Wilmington,  
14 Delaware address suggesting it apply for licensure with the Department,  
15 requesting documentation regarding Respondents New Hampshire consumer  
16 activity and resolution of the Consumer A complaint. Respondents received  
17 the correspondence on June 20, 2011.

18 16. To date, Respondents have not obtained a payday or small loan license  
19 from the Department, provided the Department with the requested  
20 documentation or resolved the Consumer A complaint, in violation of RSA 399-  
21 A:10,II.

22  
23 \_\_\_\_\_ /s/  
24 Maryam Torben Desfosses  
Hearings Examiner

\_\_\_\_\_ 10/28/11  
Date

ORDER

17. **I hereby find as follows:**

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

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

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

d. Pursuant to RSA 399-A:7,I and II and RSA 399-A:8,I, if Respondents fail to respond to this Order and/or default then all facts as alleged herein are deemed as true.

**18. Accordingly, it is hereby ORDERED that:**

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

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

c. Respondents shall show cause why the Commissioner should not enter an order of rescission, restitution, or disgorgement of profits,

1 including at a minimum restitution for Consumer A if applicable;

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

4 (1). Respondent Kingston Financial:

5 Violation #1: Unlicensed payday or small loan activity  
6 (RSA 399-A:2,I) - 1 Count;

7 Violation #4: Failure to provide requested documents (RSA  
8 399-A:10,II) - 1 Count;

9 (2). Respondent Kenney:

10 Violation #1: Unlicensed payday or small loan activity  
11 (RSA 399-A:2,I) - 1 Count;

12 Violation #4: Failure to provide requested documents (RSA  
13 399-A:10,II) - 1 Count;

14 e. Nothing in this Order:

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

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

21  
22 **SO ORDERED.**

23 \_\_\_\_\_/s/  
24 RONALD A. WILBUR  
25 BANK COMMISSIONER

Dated: 11/01/2011