

1 State of New Hampshire Banking Department

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3 In re the Matter of:) Case No.: 10-464
)
 4 State of New Hampshire Banking)
)
 5 Department,)
) Order on Petitioner’s Motion to
 6 Petitioner,) Clarify and Compel Compliance
)
 7 Sandra L. Rowse,)
)
 8 Intervener,)
)
 9 and)
)
 10 Upper Valley Mortgage LLC, Benjamin)
)
 11 Hunter Lindberg, Justin Craig Bitler,)
)
 12 Estate of Lawrence Gene Stern, M.D.,)
)
 13 Respondents)
)

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15 I. PROCEDURAL CASE HISTORY

16 A Default Judgment (the "Order") was issued on December 17, 2010¹. The
 17 licenses of Respondents Upper Valley ("Upper Valley) and Benjamin Hunter
 18 Lindberg ("Lindberg") were revoked as a result of statutory violations
 19 regarding the acquisition and use of Consumer A’s funds. Upper Valley,
 20 Lindberg, and Respondent Estate of Lawrence Gene Stern, M.D. ("Estate") are
 21 obligated under the Order to reimburse Consumer A an exact amount to be
 22 calculated but approximately \$82,000.00.

23 Lindberg obtained a cashier’s check for \$7,000.00 payable in
 24 restitution to Consumer A. Lindberg holds funds on deposit with Mascoma
 25 Savings Bank ("Mascoma") in a certificate of deposit in the amount of

¹ The procedural history is set out in full in the Order.

1 \$62,500.00 (the "CD"). *Ex. 5f.* The CD is pledged collateral securing a
2 letter of credit issued in favor of NGM Insurance Company of Keene, New
3 Hampshire ("NGM"). Based on the letter of credit, NGM has issued a surety
4 rider in the amount of \$50,000.00 with Upper Valley as principal and the New
5 Hampshire Banking Department ("Department") as obligee. *Id.*

6 The CD is issued to "Ben Lindberg" and earns 2.713% interest annually
7 with the interest added to the balance. *Ex. 5f.*

8 Mascoma is willing to release its collateral hold on the CD if the
9 letter of credit is returned to Mascoma (undrawn). *Ex. 5f.* If the original
10 letter of credit is not returned, Mascoma will inform NGM of its
11 unwillingness to renew the letter. *Id.* Petitioner alleges that Mascoma is
12 requiring a release from the Department in order to discharge Mascoma's hold
13 against the CD. *Motion Par.10.* Lindberg alleges that NGM requires a release
14 from the Department. *Motion Par.6.*

15 There has been no suggestion that Mascoma or NGM engaged in anything
16 other than a normal business transaction nor are either entities parties to
17 this action. As a result, they cannot be required to continue the bond
18 without supporting collateral.

19

20 **II. ORDER**

21 To dispense with one point, in his objection, Lindberg argues that the
22 Order is not "final" because of the appellate process and therefore, he is
23 not obligated to take action. RSA 541:18, however, provides: no appeal or
24 other proceedings taken from an order shall suspend the operation of such
25 Order. Also, RSA 541:5 offers the Presiding Officer the option to either

1 grant or deny a motion for rehearing or suspend the Order. A motion for
2 rehearing has been filed but the Order has not been suspended and remains in
3 effect². Lindberg is obligated to obey the Order.

4 It does not appear from the record, principally Exhibit 5f, that
5 Mascoma is requiring a release from the Department. Similarly, there is no
6 support in the record for Lindberg's assertion that NGM is requiring a
7 release.

8 As a practical matter, a \$50,000.00 surety bond is required by RSA 397-
9 A, III (a), the surety at issue is based upon the letter of credit, and the
10 letter of credit is based upon the CD.

11 No recovery may be made against the bond unless the State of New
12 Hampshire (the "State") makes a claim for recovery or a person brings suit
13 naming the licensee within six (6) years after the act upon which the
14 recovery or suit is based. *RSA 397-A:5, III(c)*.

15 The Department is aware of the claim of Consumer A which exceeds the
16 bond. Leaving aside for a moment that Consumer A's funds in excess of the
17 bond were used to obtain it; the Department cannot reasonably conclude that
18 there are no other consumer claims against Upper Valley or Lindberg. In
19 addition, claims on the bond may be made by either the State or a person.
20 The Department may have the authority to release all claims by the State³ but
21 it does not have the authority to bar suits brought by a person. Therefore,
22 no release can be provided.

23 In the normal course of events, a licensee obtains the bond using its
24 own assets and if an action is commenced on the bond, the licensee is

25 ² The Motion for Rehearing was denied on January 28, 2011.

³ An issue that need not be and is not addressed here.

1 required to file a new bond. *RSA 397-A:5, III(c)*. If the action on the bond
2 results in a recovery, the licensee shall file a new bond. *Id.* Under this
3 process, in theory, a sufficient amount is held in bond to satisfy all claims
4 by the State or any person.

5 Given that the proceeds used for the CD are directly derived from
6 Consumer A's funds, it is difficult to imagine a scenario where another
7 consumer's claim against the bond would take precedence over Consumer A. It
8 is also difficult to imagine a scenario where the bond is terminated,
9 Consumer A recovers the CD and NGM or Mascoma are liable for claims against
10 the cancelled bond.

11 The requirement that Lindberg, Upper Valley and Estate immediately
12 transfer all monies in full in the CD to Consumer A is an order that
13 Lindberg, Upper Valley and Estate recover the original letter of credit
14 undrawn and return it to Mascoma. When that is accomplished, Mascoma will
15 release its collateral hold on the CD. The CD shall be liquidated and the
16 entire amount, including interest shall be returned to Consumer A.

17 The Presiding Officer requests that, to the extent practicable, the
18 payment to Consumer A is not reduced by fees, penalties, or any other
19 charges. These charges, if any, shall be the responsibility of Lindberg,
20 Estate, and Upper Valley.

21 The cancellation of the bond will potentially leave other consumers, if
22 any, without recourse to its \$50,000.00 and leave them to pursue the assets
23 of Lindberg, Upper Valley, and Estate. This is a deplorable result and
24 contrary to the statutory requirements. *RSA Chapter 397-A*. This state of
25 affairs is a direct result of the statutory violations of Lindberg, Upper

