

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 Regarding Respondent Benjamin  
 6 Petitioner, ) Hunter Lindberg's Motion for  
 ) Rehearing  
 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, 2010<sup>1</sup>.  
 17 This matter is a procedural thicket. Attorney Robert Carey, Counsel for  
 18 Respondent Benjamin Hunter Lindberg ("Lindberg"), filed a Motion for  
 19 Rehearing on January 18, 2011. Attorney Patrick Hayes filed a withdrawal for  
 20 Lindberg and Respondent Upper Valley Mortgage LLC ("Upper Valley") on January  
 21 13, 2011<sup>2</sup>. The Withdrawal was not in the form of a motion and while  
 22 Administrative Rule Jus. 807.04 allows the filing of an appearance, the rules  
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25 <sup>1</sup> A complete procedural history is set out in the Order.

<sup>2</sup> Lindberg asserted in a letter dated December 7, 2010 that he and Upper Valley are represented by the Firm of Clausen, Atwood and Spaneas. This firm has taken no action in this proceeding.

1 do not appear to contemplate a withdrawal. The Intervener, Consumer A, was  
2 not copied on either the Withdrawal or Motion for Rehearing.

3 The deadline for filing a Motion for Rehearing has passed and Upper  
4 Valley has not filed a motion. Upper Valley has waived its right to such  
5 rehearing and to appeal the Order. *RSA 541:3; RSA 541:4*. The Order remains in  
6 full effect regarding Upper Valley. The same is true for the Estate of  
7 Benjamin Stern, M.D. (the "Estate"); the Order remains in full effect  
8 regarding the Estate. For the reasons that follow, the Order remains in full  
9 effect regarding Lindberg.

10 While Lindberg's Motion for Rehearing attacks the basis for the Order,  
11 it raises no issues contesting the violations of *RSA 397-A:17, I(j)* (not  
12 qualified to maintain a license on the basis of financial integrity); *RSA*  
13 *397-A:17, II(e)(4)* (no longer demonstrating financial responsibility or  
14 character and general fitness); *RSA 397-A:17, I(e)* (false or misleading  
15 statements/reports to the Commissioner); *RSA 397-A:5, IV-d(a)(1)* via *RSA 397-*  
16 *A:5m IV-c(5)* (failure to meet minimum standards for licensure). Unless an  
17 exception is made, no appeal can be taken from the Order as it relates to  
18 these violations. *RSA 541:4*.

19 In his motion, Lindberg seeks to distance himself from the activities  
20 he acknowledged at the hearing, acknowledged in a statement to the Lebanon,  
21 New Hampshire Police Department ("Lebanon Police"), and is supported by the  
22 record in this case. His effort is unavailing.

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1           **II. ORDER**

2                           A. Jurisdiction

3           Lindberg argues that the Department does not have jurisdiction over the  
4 transaction between Consumer A and Upper Valley because it was not a mortgage  
5 loan. There are two problems with this argument. First, Upper Valley has not  
6 filed a Motion for Rehearing. Lindberg does not explain how he can raise  
7 arguments which have been waived by Upper Valley. Second, Upper Valley is a  
8 licensee of the Department. As a licensee, Upper Valley is not only required  
9 to comply with RSA Chapter 397-A but also the laws and rules of New  
10 Hampshire, RSA 397-A:2,II, RSA 397-A:2, III, and the provisions of Titles  
11 XXXV and XXXVI. *RSA 383:10-d.*

12           Assuming *arguendo* that the transaction between Consumer A and Upper  
13 Valley was not a mortgage loan and further assuming that Lindberg may raise  
14 this issue, Upper Valley engaged in unfair or deceptive acts by taking  
15 Consumer A's funds with a promise to repay plus 8% interest, failing to make  
16 such payments, and using the funds, among other things, to pay Lindberg's  
17 home mortgage<sup>3</sup>. These acts were in violation of RSA Chapter 385-A, RSA 397-  
18 A:14,IV(a), and RSA 397-A:14,IV(n). While Lindberg correctly points out that  
19 the title of RSA 397-A:14 is "Lending Practices", the words of the statute  
20 take precedence over the title. Upper Valley was subject to RSA Chapter 397-A  
21 when it obtained Consumer A's property by misrepresentation and through  
22 unfair, deceptive, unethical, or fraudulent business practices. Therefore,  
23 the Department has jurisdiction over Upper Valley and this transaction.

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<sup>3</sup> Moreover, \$60,000.00 of Consumer A's funds were withdrawn with no explanation. An additional, \$62,500.00 was used to obtain a letter of credit to satisfy a statutory requirement for licensure. Consumer A is owed approximately \$80,000.00.





