

1 State of New Hampshire Banking Department

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3 In re the Matter of:)Case No.: 08-380
)
 4 State of New Hampshire Banking)Notice of Hearing - Order to Show
)Cause with Immediate Suspension
 5 Department,)
)
 6 Petitioner,)
)
 7 and)
)
 8 Our Town Mortgage, LLC, and Robert J.)
)
 9 Giuliana,)
)
 10 Respondents)
)

11
12 NOTICE OF HEARING

13 Pursuant to RSA 397-A:17, the Banking Department of the State of New
14 Hampshire (hereinafter the "Department") has the authority to issue an order
15 to show cause why license revocation penalties for violations of New
16 Hampshire Banking laws should not be imposed. The Commissioner has the
17 further authority to impose an immediate suspension. Upon a finding of
18 irreparable harm if revocation of the license is delayed, the Commissioner
19 may summarily suspend any license pending final determination of the Order
to Show Cause.

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

24 Pursuant to New Hampshire Banking law, RSA 397-A:5 III (c) each
25 mortgage banker shall post a continuous surety bond in the amount of

1 \$20,000.00 to the Department.

2 The Department issued to the above named Respondents an Order to Show
3 Cause with an Immediate Suspension and Cease and Desist Order of the license
4 on October 13, 2008. RSA 541-A requires the Department to hold a hearing on
5 such summary action within ten (10) working days.

6 The Department alleges the following:

7 **Issue 1: Failure to post continuous surety bond (RSA 397-A:5, III (c));**

8 **Issue 2: Failure to inform Bank Commissioner of office closure (RSA 397-
A:10, III);**

9 **Issue 3: Failure to update information on file with Bank Commissioner (RSA
10 397-A:10, IV);**

11 **Issue 4: Failure to properly surrender license (RSA 397-A:10-a, I(a));**

12 **Issue 5: Failure to Provide Requested Files (RSA 397-A:11, II);**

13 **Issue 6: Failure to provide requested files (RSA 397-A:12, III);**

14 **Issue 7: Failure to Pay Examination Fee (RSA 397-A:12, V);**

15 **Issue 8: Failure to facilitate examination (RSA 397-A:12, VII);**

16 **Issue 9: Failure to File Accurate Annual Report (RSA 397-A:13, I);**

17 **Issue 10: Failure to file financial statement (RSA 397-A:13, II);**

18 **Issue 11: Failure to File Annual Report (RSA 397-A:13, IV);**

19 **Issue 12: Failure to file additional documents (RSA 397-A:13, V);**

20 **Issue 13: Failure of officers and owners to respond to Department inquiries
(RSA 397-A:13, VI);**

21 **Issue 14: Unauthorized retention of commissions for services rendered (RSA
22 397-A:16, IV);**

23 **Issue 15: Mortgage loans brokered do not comply with RSA 293-A:15.01 (RSA
24 397-A:2, II);**

1 **Issue 16: Persons subject to or licensed by RSA Chapter 397-A must comply**
2 **with RSA 293-A:15.01 (RSA 397-A:2, III);**

3 Accordingly, an adjudicative proceeding shall be commenced pursuant to
4 541-A:31 and Chapter 200 of the Department's rules (NH Code of
5 Administrative Rules BAN 200 and JUS 800 as applicable) for the purpose of
6 permitting the Respondents to show compliance with the above state
7 violations in Issues 1 through 16.

8 Each party has the right to have an attorney present to represent the
9 party at the party's expense, or may represent itself.

10 THEREFORE, IT IS ORDERED, that the Respondents appear before the New
11 Hampshire Banking Department on **October 27, 2008 at 10:00 am**, at the
12 Department's offices at 53 Regional Drive, Suite 200, Concord, New Hampshire
13 03301, for the purpose of participating in an adjudicative proceeding, at
14 which time the Respondents will have the opportunity to demonstrate why the
15 relief sought in the show cause order with immediate suspension should not
16 become permanent; and

17 IT IS FURTHER ORDERED, that if the Respondents elect to be represented
18 by Counsel, said Counsel shall file notice of appearance at the earliest
19 possible date; and

20 IT IS FURTHER ORDERED, that Maryam Torben Desfosses, Staff Attorney,
21 New Hampshire Banking Department is designated as Hearing Counsel in this
22 matter with authority to represent the public interest within the scope of
23 the Department's authority. Hearing Counsel shall have the status of a
24 party to this proceeding; and

25 IT IS FURTHER ORDERED, that the Commissioner designates Todd Wells to
serve as the Presiding Officer in this proceeding who shall issue a
RECOMMENDED DECISION in this matter which shall be reviewed and approved,
disapproved or modified by the Bank Commissioner; and

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

9 IT IS FURTHER ORDERED, that the parties shall exchange a list of all
10 exhibits and witnesses to be called at the hearing with a brief summary at
11 the hearing, and shall at the same time file a copy of their respective
12 lists with the Presiding Officer; and

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

18 IT IS FURTHER ORDERED, that the Department shall have the burden of
19 setting forth a *prima facie* case, then the Respondents shall have the burden
20 of showing compliance with applicable law by a preponderance of the evidence;
21

22 IT IS FURTHER ORDERED, that Respondents' failure to appear at the time,
23 date, and place specified may result in the hearing being held *in absentia*
24 and/or default ruling in favor of the Department, without further notice or
25 opportunity to be heard; and

IT IS FURTHER ORDERED, that a record of the proceeding shall be made
by a certified shorthand court reporter provided by the Department.

IT IS FURTHER ORDERED, that all documents shall be filed with the
Presiding Officer in the form of an original and one (1) copy and shall bear

