

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 09-133  
) )  
3 State of New Hampshire Banking ) Notice of Hearing  
) )  
4 Department, ) )  
) )  
5 and ) )  
) )  
6 Consumer A, ) )  
) )  
7 Complainant, ) )  
) )  
8 and ) )  
) )  
9 Countrywide Home Loans Inc, ) )  
) )  
10 Respondent ) )  
) )

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12 NOTICE OF CONFIDENTIAL HEARING

13 Pursuant to RSA 383:10-d ("Consumer Complaints and Restitution"), the  
14 New Hampshire Bank Commissioner (hereinafter, "Commissioner") shall have  
15 exclusive authority and jurisdiction to investigate conduct that is or may be  
16 an unfair or deceptive act or practice under RSA 358-A ("Regulation of  
17 Business Practices for Consumer Protection") and exempt under RSA 358-A:3,I  
18 ("Exempt Transactions; ect.") or that may violate any of the provisions of  
19 Title XXXV ("Banks and Banking; Loan Associations; Credit Unions") and  
20 administrative rules adopted thereunder. The Commissioner may hold hearings  
21 relative to such conduct and may order restitution for a person or persons  
22 adversely affected by such conduct.

23 On August 28, 2008 the Department received a complaint from Consumer A  
24 (hereinafter, "Complainant") regarding Countrywide Home Loans, Inc.  
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1 (hereinafter, "Countrywide" or "Respondent"). The Department followed the  
2 statutory procedure for processing such complaints and issued a letter of  
3 finding. Complainant filed a follow-up complaint with the Department on  
4 October 17, 2008 also regarding Countrywide. The matter was investigated as  
5 required and the Department issued a letter of finding. Respondent was a RSA  
6 397-A licensee of the Department at all times relevant to both complaints.  
7 Pursuant to RSA 397-A:2 and 383:9, the New Hampshire Bank Commissioner has  
8 supervision of state licensed mortgage bankers and brokers.

9 To initiate the license surrender process, the Department received  
10 Respondent's paper license on April 7, 2009. The surrender is effective  
11 upon thirty (30) days after receipt of the paper license, unless a  
12 proceeding to impose conditions on such surrender is instituted within those  
13 thirty (30) days pursuant to RSA 397-A:10-a,I(b).

14 By letter dated October 26, 2009, Complainant requested a hearing on  
15 the merits of the matter pursuant to RSA 383:10-d. The Commissioner denied  
16 the request for hearing on November 25, 2009. On December 23, 2009,  
17 Complainant filed a Motion for Rehearing for the Commissioner's  
18 consideration. The Commissioner reviewed the Motion for Rehearing and  
19 determined that good reason for the hearing is stated in the Motion.  
20 Accordingly, an adjudicative hearing is deemed necessary and appropriate.  
21 See RSA 541:3 ("Motion for Rehearing"), RSA 541:4 ("Specifications") and RSA  
22 541:5 ("Action on Motion").

23 It shall be noted that the Complainant's Motion for Rehearing lists  
24 several respondents including individual employees of Countrywide along with  
25 a number of other companies. Whereas the Complainant filed two consumer  
complaints against Countrywide only and the original request for a hearing

1 only listed Countrywide, no other company or individual has been listed as a  
2 respondent in this matter. Further, there has been no allegation that  
3 Countrywide employees listed in the Complainant's Motion for Rehearing are  
4 principals or control persons of Countrywide as defined under RSA 397-A:1  
5 ("Definitions") and RSA 397-A:17 ("License Revocation; Suspension").

6 The adjudicative proceeding shall be commenced pursuant to RSA 541-  
7 A:31 ("Availability of Adjudicative Proceeding; Contested Cases; Notice,  
8 Hearing and Record") and New Hampshire Model Rules of Practice and Procedure  
9 JUS 800.

10 The issues presented are as follows:

11 **Issue 1:** Whether the Respondent violated any applicable New Hampshire or  
12 federal laws, regulations or orders, or committed an unfair or deceptive  
13 trade practice.

14 **Issue 2:** What restitution may be due to the Complainant for Respondent's  
15 violations, if a violation is established.

16 Each party has the right to have an attorney present to represent the  
17 party at the party's expense, or each party may represent itself. Each  
18 party has the right to have the Department provide a certified shorthand  
19 court reporter at the requesting party's expense. Any such request must be  
20 submitted in writing to the Department at least 10 days prior to a scheduled  
21 hearing date.

22 THEREFORE, IT IS ORDERED, that the Respondent appear before the New  
23 Hampshire Banking Department on **Tuesday, February 9, 2010 at 10:00 a.m.** at  
24 the New Hampshire Banking Department located at 53 Regional Drive, Suite  
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1 200, Concord NH, 03301, for the purpose of participating in an adjudicative  
2 proceeding, at which time the Respondent will have the opportunity to  
3 demonstrate that no violation of applicable law occurred and why restitution  
4 should not be imposed;

5 IT IS FURTHER ORDERED, that if Respondent or Complainant elects to be  
6 represented by Counsel, said Counsel shall file Notice of Appearance at the  
7 earliest possible date;

8 IT IS FURTHER ORDERED, that Bank Commissioner, Peter C. Hildreth or  
9 his designee, shall serve as the Presiding Officer in this proceeding;

10 IT IS FURTHER ORDERED, that Respondent shall file an answer to each of  
11 the issues set forth in this Notice of Hearing, and any amendments hereto,  
12 no later than 15 days from receipt. Such answer shall first admit or deny  
13 the allegation and then set forth any and all explanations or defenses to  
14 the allegation;

15 IT IS FURTHER ORDERED, that any proposed exhibits shall be pre-marked,  
16 for identification only, and filed with the Department and provided to the  
17 opposing party not later than Tuesday, February 2, 2010. Complainant shall  
18 pre-mark exhibits with Arabic numbers. Respondent shall pre-mark exhibits  
19 with capital letters. An index/list of exhibits providing a brief  
20 description of each exhibit with its corresponding pre-marked number or  
21 letter shall be filed by both parties simultaneous with the filing of  
22 exhibits;

23 IT IS FURTHER ORDERED, that all periods referenced in this notice shall be  
24 calendar days. If the last day of the period so computed falls on a  
25 Saturday, Sunday, or legal holiday, then the time period shall be extended

1 to include the first business day that is not a Saturday, Sunday, or legal  
2 holiday;

3 IT IS FURTHER ORDERED, that parties shall file answer/objections to  
4 pleadings within ten (10) calendar days of the date the pleading is deemed  
5 "filed"; and

6 IT IS FURTHER ORDERED, that the Complainant shall have the burden of  
7 setting forth a *prima facie* case. The Respondent shall have the burden of  
8 showing compliance with applicable law by a preponderance of the evidence;

9 IT IS FURTHER ORDERED, that Respondent's failure to appear at the time,  
10 date, and place specified may result in the hearing being held *in absentia*  
11 and/or default ruling in favor of the Complainant, without further notice or  
12 opportunity to be heard;

13 IT IS FURTHER ORDERED, that the entirety of all oral proceedings shall  
14 be recorded verbatim by the Department. Upon request of any party, or upon  
15 the Presiding Officer's own initiative, such record shall be transcribed by a  
16 certified court reporter designated by the Presiding Officer, and that all  
17 costs shall be borne solely by the requesting party. Any such request shall  
18 be submitted in writing to the Presiding Officer;

19 IT IS FURTHER ORDERED, that all documents shall be filed with the  
20 Presiding Officer in the form of an original and one (1) copy and shall bear  
21 a certification that a copy is being delivered to any other parties to this  
22 matter. All documents shall be filed by mailing or delivering them to the  
23 New Hampshire Banking Department, ATTN: Peter C. Hildreth, Presiding Officer,  
24 53 Regional Drive, Suite 200, Concord, NH 03301. Filing by facsimile or  
25 electronic transmission shall not be accepted;

1           IT IS FURTHER ORDERED, that the parties may submit Proposed Orders,  
2 which shall include findings of fact and conclusions of law, separately  
3 stated, no later than ten (10) days following conclusion of the hearing(s) in  
4 this matter;

5           IT IS FURTHER ORDERED, that routine procedural inquiries may be made by  
6 telephoning General Counsel Celia K. Leonard at (603)271-3561, but all other  
7 communications with the Presiding Officer and with the Department shall be in  
8 writing and shall be filed as provided above. *Ex parte* communications are  
9 forbidden by statute; and

10           IT IS FURTHER ORDERED, that a copy of this Notice of hearing shall be  
11 mailed to Complainant by service on their Attorney of record, and to  
12 Respondent by service on its Attorney of record, and to Presiding Officer,  
13 at the New Hampshire Banking Department.

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16 **SO ORDERED, as of January 5, 2010,**

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18           \_\_\_\_\_/s/  
19 Peter C. Hildreth  
20 Commissioner  
21 State of New Hampshire  
22 Banking Department  
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