

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-026
)
 3 State of New Hampshire Banking Department,)
)
 4 Petitioner,)
)
 5 And) Order to Show Cause
) and Cease and Desist
 6 LeadPoint, Inc. d/b/a Secure Rights and d/b/a)
)
 7 Amerivalue, Redpoint Ventures II, LP,)
)
 8 Breakwater Ventures, Inc., Estalea LP, Marc)
)
 9 Louis Diana, and Per Pettersen,)
)
 10 Respondents)

11 NOTICE OF ORDER TO SHOW CAUSE AND CEASE AND DESIST ("ORDER")

12 1. This Order commences an adjudicative proceeding under the provisions
13 of RSA 397-A (including RSA 397-A:17,I and II, RSA 397-A:18,I and II and RSA
14 397-A:20,IV) and RSA Chapter 541-A.

15 2. The Commissioner may impose administrative penalties of up to
16 \$2,500.00 for each violation. RSA 397-A:21,IV and V.

17 RESPONDENTS

18 3. LeadPoint, Inc. d/b/a Secure Rights and d/b/a Amerivalue ("Respondent
19 Leadpoint") is a Delaware corporation formed on June 25, 2004. Respondent
20 LeadPoint registered with the New Hampshire Secretary of State on January
21 31, 2005 with its principal office location in Los Angeles, California.
22 Respondent LeadPoint is a "Person." RSA 397-A:1,XVIII.

23 4. Respondent LeadPoint has never been licensed as a Mortgage Broker with
24 the New Hampshire Banking Department ("Department"). Respondent LeadPoint
25 did file an application as a Mortgage Broker with the Department in 2005 but

1 withdrew its application on September 1, 2005 and did not cite any specific
2 reason.

3 5. The Nationwide Mortgage Licensing System & Registry ("NMLS") indicates
4 Respondent LeadPoint is currently licensed in 17 other states as either a
5 Mortgage Broker or Mortgage Lender. The NMLS also indicates Respondent
6 LeadPoint was licensed by the Massachusetts Division of Banks as a Mortgage
7 Broker, but the Division has issued a Temporary Cease and Desist against
8 Respondent LeadPoint for failing to submit financial statement as required
9 by Massachusetts law.

10 6. Redpoint Ventures II, LP ("Respondent Redpoint") is listed on NMLS as
11 a 38.4% shareholder and control person of Respondent LeadPoint. Respondent
12 Redpoint is a Direct Owner (RSA 397-A:1,VI-a), a Control person (RSA 397-
13 A:21,V-a), a Principal (RSA 397-A:1,XIX) and a Person (RSA 397-A:1,XVIII).

14 7. Breakwater Ventures, Inc. ("Respondent Breakwater") is listed on NMLS
15 as a 16.9% shareholder and control person of Respondent LeadPoint. The 100%
16 owner of Respondent Breakwater is Respondent Marc Louis Diana. Respondent
17 Breakwater is a Direct Owner (RSA 397-A:1,VI-a), a Control person (RSA 397-
18 A:21,V-a), a Principal (RSA 397-A:1,XIX) and a Person (RSA 397-A:1,XVIII).

19 8. Estalea LP ("Respondent Estalea") is listed on NMLS as a 16.7%
20 shareholder and control person of Respondent LeadPoint. The 61% owner of
21 Respondent Estalea is Respondent Per Pettersen. Respondent Estalea is a
22 Direct Owner (RSA 397-A:1,VI-a), a Control person (RSA 397-A:21,V-a), a
23 Principal (RSA 397-A:1,XIX) and a Person (RSA 397-A:1,XVIII).

24 9. Marc Louis Diana ("Respondent Diana") is, in addition to being the
25 100% owner of Respondent Breakwater, the President, Chief Executive Officer,

1 Director and control person of Respondent LeadPoint. Respondent Diana is an
2 Indirect Owner (RSA 397-A:1,VIII-a), Control person (RSA 397-A:21,V-a), a
3 Principal (RSA 397-A:1,XIX) and a Person (RSA 397-A:1,XVIII).

4 10. Per Pettersen ("Respondent Pettersen") is, in addition to being the
5 61% owner of Respondent Estalea, the Chief Technology Officer and control
6 person of Respondent LeadPoint. Respondent Pettersen is an Indirect Owner
7 (RSA 397-A:1,VIII-a), Control person (RSA 397-A:21,V-a), a Principal (RSA
8 397-A:1,XIX) and a Person (RSA 397-A:1,XVIII).

9 11. The above-named Respondents are hereinafter known as "Respondents".

10 **RIGHT TO REQUEST A HEARING**

11 12. Respondents have a right to request a hearing on this Order. A hearing
12 shall be held not later than ten (10) days after the Commissioner receives
13 the Respondents' written request for a hearing. Respondents may request a
14 hearing and waive the ten (10) day hearing requirement. The hearing shall
15 comply with RSA Chapter 541-A, RSA 397-A:17,I and II and RSA 397-A:18, I and
16 II.

17 13. If any person fails to request a hearing within thirty (30) days of
18 receiving this Order, then such person shall be deemed in default, and the
19 Order shall, on the thirty-first (31st) day, become permanent, all
20 allegations may be deemed true, and shall remain in full force and effect
21 until modified or vacated by the Commissioner for good cause shown. RSA 397-
22 A:17,I and II and RSA 397-A:18,I and II.

23 14. A default may result in administrative fines as described in Paragraph
24 2 above.

STATEMENT OF ALLEGATIONS

15. On or about January 30, 2008, the Department began an investigation of Respondent LeadPoint by emailing one of Respondent LeadPoint's clients for information.

16. On January 31, 2008, the Department's Investigator sent a licensure inquiry letter to Respondent Diana and Respondent LeadPoint.

17. On March 17, 2008, the Department received a response letter from Respondent Diana on behalf of Respondent LeadPoint. The response included the following:

a. Respondent LeadPoint "forwards consumer information submitted via online forms to [] [its] network lenders";

b. Respondent LeadPoint "does not solicit or accept loan applications or accept enough information to make a credit determination (such as a social security number)"; and

c. Respondent LeadPoint "does not verify any submitted information".

18. On or about June 4, 2008, as part of the Department's continuing investigation, the Department's Investigator printed the list of licenses Respondent LeadPoint allegedly has in other states from Respondent's LeadPoint's website www.securerights.org. As of June 4, 2008, Respondent LeadPoint appears to have held licenses predominately as either a mortgage broker or mortgage banker with 39 states. As of January 14, 2011, the list of state licenses remains the same.

a. In Illinois, Respondent LeadPoint's license description states in part "LeadPoint, Inc. d/b/a Secure Rights is a mortgage broker and

1 not a lender.

2 b. In Idaho, Respondent LeadPoint's license description states in
3 part "Secure Rights will link Prospective Borrowers to our Qualified
4 Network of lenders, one or more lenders will contact the Prospective
5 Borrower directly with loan product offerings. Secure Rights
6 represents the interests of Prospective Borrower while performing
7 these services; the services are consultative only."

8 c. In Massachusetts, Respondent LeadPoint's license description
9 states in part "Secure Rights acts as your mortgager broker. Secure
10 Rights does not make mortgage loans and cannot guarantee acceptance
11 into any particular loan program or promise specific loan terms or
12 conditions."

13 19. On June 4, 2008 and on November 18, 2008, the Department's
14 Investigator sent a response via U.S. Certified Mail Return Receipt
15 requested to Respondent Diana requesting an explanation of why Respondents
16 felt they did not meet the definition of a mortgage broker under RSA Chapter
17 397-A. The Department received the return receipts on June 23, 2008 and
18 December 1, 2008, respectively, but Respondents failed to respond.

19 20. On March 26, 2009, the Department sent a third letter via U.S.
20 Certified Mail Return Receipt requested to Respondent Diana asking for a
21 response to both the June 4 and November 18, 2008 Department letters.

22 21. On March 31, 2009, the Department received a response from
23 Respondents. The response indicates "LeadPoint is licensed as a mortgage
24 broker (or money broker, or mortgage lender) in states where such a license
25 is required based on our operations...When faced with an inquiry from a state

1 such as yours, our standard protocol is to explain our operations and comply
2 with any follow-up requirements, which may include obtaining the appropriate
3 license."

4 22. On June 17, 2009, the Department wrote to Respondent Diana asking for
5 specific information related Respondent LeadPoint's activities in New
6 Hampshire.

7 23. On August 18, 2009, the Department received a response from Respondent
8 LeadPoint, which indicated the following:

9 a. Respondent LeadPoint began accepting consumer information via
10 its online forms in May 2004;

11 b. The number of valid leads with a New Hampshire property address
12 is as follows:

- 13 (1). 3 in 2004;
- 14 (2). 563 in 2005;
- 15 (3). 4,232 in 2006;
- 16 (4). 5,874 in 2007;
- 17 (5). 7,448 in 2008; and
- 18 (6). 3,886 in 2009.

19 24. As with consumers in other states, Respondent LeadPoint does not
20 charge New Hampshire consumers directly, but rather obtains a fee from the
21 lenders or partner brokers to whom Respondent LeadPoint has provided its
22 services in relation to such leads.

23 25. Contrary to RSA 397-A:3,I and as described in Paragraphs 15 through 24
24 above, Respondents have conducted unlicensed mortgage broker activity in New
25 Hampshire since 2004.

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 /s/
Maryam Torben Desfosses
Hearings Examiner

 May 4, 2011
Date

ORDER

26. I hereby find as follows:

a. Pursuant to RSA 397-A:17,I, the facts as alleged above, if true, show Respondents are operating or have operated in violation of RSA Chapter 397-A and form the legal basis for this Order;

b. Pursuant to RSA 397-A:20,VI, this Order is necessary and appropriate to the public interest and for the protection of consumers and consistent with the intent and purpose of New Hampshire banking laws;

c. The Department finds pursuant to RSA 397-A:17,II and RSA 397-A:18,II, reasonable cause to issue an order to cease and desist; and

d. Pursuant to RSA 397-A:17,I and RSA 397-A:18,II, if Respondents fail to respond to this Order and/or defaults then all facts as alleged herein are deemed as true.

27. Accordingly, it is hereby ORDERED that:

a. Respondents shall cease and desist from violating RSA Chapter 397-A and rules or orders thereunder;

b. Respondents shall within 14 days of the date of this Order provide the Department a list of all New Hampshire consumers for whom Respondents have conducted mortgage loan modification and mortgage broker activity 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

1 accompanied by all contracts, checks to and from the consumer and any other
2 documents in the New Hampshire consumers' files;

3 c. Respondents shall show cause why the Commissioner should not
4 enter an order of rescission, restitution, or disgorgement of profits and/or
5 commissions for services rendered;

6 d. Respondents shall show cause why back-license fees of \$4,000.00
7 for mortgage broker activity since 2004 should not be paid to the
8 Department;

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

11 (1). Respondent LeadPoint:

12 Violation #1: Unlicensed mortgage broker activity (RSA
13 397-A:3,I) - 22,003 Counts (2005 to 2009);

14 (2). Respondent Redpoint (as Direct Owner, Principal and
15 Control person):

16 Violation #1: Unlicensed mortgage broker activity (RSA
17 397-A:3,I) - 22,003 Counts (2005 to 2009);

18 (3). Respondent Breakwater (as Direct Owner, Principal and
19 Control person):

20 Violation #1: Unlicensed mortgage broker activity (RSA
21 397-A:3,I) - 22,003 Counts (2005 to 2009);

22 (4). Respondent Estalea (as Direct Owner, Principal and Control
23 person):

24 Violation #1: Unlicensed mortgage broker activity (RSA
25 397-A:3,I) - 22,003 Counts (2005 to 2009);

