

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-211
)
 3 State of New Hampshire Banking)
)
 4 Department,)
)
 5 Department,) Order Re Motion to Vacate *Ab Initio*
) ██████████ and ██████████
 6 and) ██████████ from the December 23, 2011 Order to
) Show Cause and Cease and Desist
 7 Express Consolidation, Inc.,)
)
 8 Randall L. Leshin, P.A. (d/b/a)
)
 9 RLL), Randall L. Leshin,)
)
 10 Esquire., Linda Lewis, Richard)
)
 11 Medlock, ██████████ Joseph)
)
 12 Morovits, ██████████ and)
)
 13 ██████████)
)
 14 Respondents

15
16 ORDER RE MOTION TO VACATE AB INITIO

17 I. INTRODUCTION

18 The New Hampshire Banking Department ("Department") has filed a Motion
 19 to Vacate *Ab Initio* in regard to Respondents ██████████, ¹ ██████████
 20 ██████████ and ██████████.² I must analyze this motion based on the file I have
 21 before me.

22
 23 _____
 24 ¹ ██████████ identifies himself as a lawyer in paragraph 14 of his
 affidavit.

25 ² I recognize that counsel for the Department has changed.

1 **II. PROCEDURAL BACKGROUND**

2 The Department asserts that Respondents [REDACTED] [REDACTED]
3 [REDACTED] and [REDACTED] were served with the Order to Show Cause and Cease and
4 Desist ("Order"). The Order I received, however, does not contain a
5 certificate of service nor is there any proof of service in my file. In the
6 future, the initial pleading in a matter shall contain a certificate of
7 service and, within a reasonable period of time, proof of service.

8 The Department further asserts that Respondents [REDACTED] [REDACTED] and
9 [REDACTED] each filed a Motion to Dismiss and provided additional
10 information which exculpates them both. I have received a Motion to Dismiss
11 as well as other pleadings from Respondent [REDACTED]. I have not received
12 any pleadings from Respondent [REDACTED].

13 Finally, the Department asserts that it has discovered exculpatory
14 information in regard to Respondent [REDACTED]. What that information may be
15 has not been divulged.

16 **III. ANALYSIS**

17 The first issue I cannot emphasize too much. An assented to motion, in
18 general, eliminates the need for a written decision and, in this case, the
19 somewhat prickly issue of proof of service.

20 The second issue is, as foreshadowed, proof of service. Based on my
21 file, there is no evidence that Respondents [REDACTED] or [REDACTED] were ever
22 served with the Order. I am reasonably confident that there was actual
23 service and I am positive that this will not be an issue in the future.
24 Nevertheless, at the risk of being repetitive, I must issue a decision based
25 on my file. The Department seeks a Motion to Dismiss Ab Initio because
 Respondents [REDACTED] and [REDACTED] are exculpated. A dismissal Ab

1 Initio puts the matter as if it never happened. I **GRANT** the motion based on
2 the Department's admission that Respondent's [REDACTED] and [REDACTED] did not
3 engage in the alleged conduct but also because they were never served. The
4 Department is ordered to remove the Order from its website as it relates to
5 Respondents [REDACTED] and [REDACTED]

6 I reach the same result in regard to Respondent [REDACTED], [REDACTED]
7 although in a more circuitous manner. While Respondent [REDACTED]
8 [REDACTED] filed a number of motions, and while this filing could be construed
9 as an implicit acceptance of service,³ under the facts of this case, I
10 determine that it is not. The Department's Motion is **GRANTED**. The
11 Department is ordered to remove the Order from its website as it relates to
12 Respondent [REDACTED] [REDACTED].

13 In regard to all those Respondents that are the subject of this order,
14 the Department is ordered to inform any consumers that were specifically⁴
15 notified of the Order by the Department that these Respondents have been
16 exculpated.

17 The issue of the application of RSA 91-A to this matter is not before
18 me. I will share my view, under the somewhat unusual circumstances of this
19 case, that the portions of the Order related to these three Respondents

20 ³ In contrast, in their filing, Respondents Express Consolidation, Inc.,
21 Randall L. Leshin, P.A. and Randal L. Leshin, Esquire, expressly accepted the
22 Notice of Order to Show Cause. Motion to Dismiss, Note Bene section.

23 ⁴ I understand that the Order was placed on the website and available for all
24 consumers to read. My order is focused only on those consumers, if any, that
25 were specifically informed by the Department of the Order.

