

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-226
)
 3 State of New Hampshire Banking Department,)
)
 4 Petitioner,)
)
 5 And) Order to Show Cause
) and Cease and Desist
 6 Cash Advance USA (a/k/a and d/b/a for Liberty)
)
 7 Capital Investments, LLC), and Robert E.)
)
 8 Schwier,)
)
 9 Respondents)

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

11 1. This Order commences an adjudicative proceeding under the provisions
12 of Chapter RSA 399-A (including RSA 399-A:7, II; RSA 399-A:8, I and RSA 399-
13 A:16, IV) and RSA 541-A.

14 2. The Commissioner may impose administrative fines up to a maximum of
15 \$2,500.00 for each violation. RSA 399-A:18, V and VI.

16 RESPONDENTS

17 3. Cash Advance USA (a/k/a and d/b/a for Liberty Capital Investments,
18 LLC) ("Respondent Cash Advance") is a limited liability company duly
19 organized in the State of Florida with a principal office location in
20 Orlando, Florida. Respondent Cash Advance is a "Person" (RSA 399-A:1, XII)
21 and a "lender" (RSA 399-A:1, VIII).

22 4. Respondent Cash Advance has never held a New Hampshire small loan
23 lender license pursuant to RSA Chapter 399-A.

24 5. Robert E. Schwier ("Respondent Schwier") is the sole LLC Member and
25 Manager of Cash Advance. Respondent Schwier is a "Direct Owner" (RSA 399-

1 A:1, III-b) and a "Person" (RSA 399-A:1, XII).

2 6. Respondent Schwier has never held a New Hampshire small loan lender
3 license pursuant to RSA Chapter 399-A.

4 7. Respondent Cash Advance and Respondent Schwier are hereinafter
5 collectively known as "Respondents".

6 **RIGHT TO A HEARING**

7 8. Respondents have the right to request a hearing of this Order. A
8 hearing shall be held not later than ten (10) days after the Commissioner
9 receives the Respondents' written request for a hearing. The Respondents
10 may request a hearing and waive the ten (10) day hearing requirement. The
11 hearing shall comply with RSA 541-A, RSA 399-A:7, II and RSA 399-A:8, I.

12 9. If any person fails to request a hearing within thirty (30) days of
13 receiving this Order, then such person shall likewise be deemed in default,
14 and the Order shall, on the thirty-first (31st) day, become permanent, all
15 allegations may be deemed true, and shall remain in full force and effect
16 until modified or vacated by the Commissioner for good cause shown. RSA
17 399-A:7, II and RSA 399-A:8, I.

18 10. A default may result in administrative fines as described in Paragraph
19 2 above.

20 **STATEMENT OF ALLEGATIONS**

21 11. On or about April 16, 2008, the Department received a complaint from a
22 New Hampshire consumer ("Consumer A") against Respondent Cash Advance
23 regarding a payday loan borrowed by Consumer A in April 2007.

24 12. The Department investigated and found that Cash Advance operated a
25 website at "www.cashadvanceusa.com" offering payday loans to consumers.

1 13. The URL registration from a www.whois.com search listed "Liberty
2 Capital Investments" as Respondent Cash Advance's registrant.

3 14. As a result of the investigation, on August 4, 2008, the Department
4 sent a letter via U.S. Certified Mail (return receipt) to Respondent Cash
5 Advance, requesting that it provide the Department with information
6 concerning its New Hampshire clients and noticing them of the necessity to
7 obtain licensure pursuant to RSA 399-A:2. The Department received no
8 response.

9 15. On October 31, 2008, the Department sent a letter via U.S. Certified
10 Mail (return receipt) to Respondent Cash Advance, again requesting
11 information concerning its New Hampshire operations. The Department received
12 no response.

13 16. On November 2, 2009, the Department once again sent a third letter via
14 U.S. Certified Mail (return receipt) to Respondent Cash Advance, again
15 requesting information concerning its New Hampshire operations. The
16 Department received no response.

17 17. On February 3, 2011, the Department sent a letter via U.S. First Class
18 Mail to Respondent Cash Advance, through Liberty Capital Investments, LLC,
19 notifying them of the consumer complaint against Cash Advance, requesting
20 resolution of the complaint and, again, information concerning its New
21 Hampshire operations.

22 18. To date, the Department has received no response to any of these
23 letters as required by RSA 399-A:10, II.

24 19. To date, Respondents have not responded to Consumer A's complaint and
25 have made no attempt to resolve the complaint.

1 RSA Chapter 399-A and rules or orders thereunder;

2 b. Respondents shall within fourteen (14) days of the date of this
3 Order provide to the Department a list of all New Hampshire consumers for
4 whom Respondents have conducted or contracted to conduct payday loan or
5 other small loan activities. This list must include the names and contact
6 information of the New Hampshire consumers, along with all monies charged,
7 collected and waived (if applicable). The list shall also be accompanied by
8 all contracts, checks to and from the consumer and any other documents in
9 the New Hampshire consumers' files;

10 c. Respondents shall show cause as to why, pursuant to RSA 399-
11 A:18, II, the Commissioner should not enter an order for reimbursement to
12 Consumer A of any and all finance charges, delinquency charges, or
13 collection charges paid on the contract;

14 d. Respondents shall show cause as to why, pursuant to RSA 399-
15 A:18, V, administrative fines up to the maximum amount of \$2,500.00 for each
16 violation should not be imposed as follows:

17 (1). Respondent Cash Advance:

18 Violation #1: Unlicensed activity as a payday loan
19 lender (RSA 399-A:2, I) - 1 count; and

20 Violation #2: Failure to produce requested documents
21 relevant to an investigation (399-A:10, II) - 1 count.

22 (2). Respondent Robert E. Schwier (as direct owner):

23 Violation #1: Unlicensed activity as a payday loan
24 lender (RSA 399-A:2,I) - 1 count, and

25 Violation #3: Failure to produce requested documents

1 relevant to an investigation (RSA 399-A:10, II) - 1
2 count.

3 e. Nothing in this Order shall prevent either 1) the Department
4 from taking any further administrative and legal action as necessary under
5 New Hampshire law or 2) the New Hampshire Office of the Attorney General
6 from bringing an action against the above-named Respondents in any New
7 Hampshire superior court, with or without prior administrative action by the
8 Commissioner.

9
10 **SO ORDERED.**

11
12 _____ /s/

Dated: 07/07/11

13 RONALD A. WILBUR
14 BANK COMMISSIONER