

1 State of New Hampshire Banking Department

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3 In re the Matter of: )Case No.: 10-001  
 )  
 4 State of New Hampshire Banking )  
 )  
 5 Department, )  
 )  
 6 Petitioner, )Notice of Hearing - Order to Show  
 )Cause and Cease and Desist Order  
 )  
 7 and )  
 )  
 8 Joseph William Patrick Clancey, )  
 )  
 9 Discount Mortgage Warehouse Inc, (d/b/a )  
 )  
 10 Globelend Mortgage), and Oleg Lusher, )  
 )  
 11 Respondents )  
 )

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 and penalties for violations of New  
16 Hampshire Banking laws should not be imposed. The Commissioner has the  
17 further authority to issue a cease and desist order.

18 Pursuant to RSA 397-A:21, the Commissioner has the authority to  
19 suspend, revoke or deny any license and to impose administrative penalties  
20 of up to \$2,500.00 for each violation of New Hampshire banking laws and  
21 rules. Pursuant to RSA 397-A:17,IX, the Commissioner has the authority to  
22 impose penalties against a mortgage loan originator in an amount not to  
23 exceed \$25,000.00 if the Commissioner finds that such mortgage loan  
24 originator has violated or failed to comply with any requirement of the  
25 S.A.F.E. Mortgage Licensing Act of 2008, Public Law 110-289, Title V or any

1 regulation or order issued thereunder. Each of the acts specified shall  
2 constitute a separate violation.

3 The Department issued to the above named Respondents an Order to Show  
4 Cause and Cease and Desist Order on January 22, 2010. RSA Chapter 541-A  
5 requires the Department to hold a hearing on such summary action within ten  
6 (10) working days unless otherwise waived by the  
7 Respondents. All Respondents filed timely requests for a hearing.  
8 Respondent Discount Mortgage Warehouse Inc (d/b/a Globelend Mortgage) and  
9 Respondent Oleg Lusher waived their right to a hearing in ten (10) days on  
10 February 11, 2010. Respondent Joseph William Patrick Clancey waived his  
11 right to a hearing in ten (10) days on February 22, 2010.

12 The Department alleges the following:

13 **Issue 1: Violation of Gramm-Leach-Bliley Act, Title V, Section 501(a)**  
14 **(via RSA 397-A:2,III)**

15 **Issue 2: Representing More Than One Mortgage Banker or Mortgage Broker**  
16 **(via RSA 397-A:3,III)**

17 **Issue 3: Violation of Failure to Supervise (via RSA 397-A:6,I)**

18 **Issue 4: Failure to Properly Maintain Records (via RSA 397-A:11,I)**

19 **Issue 5: Persons Subject to or Licensed by RSA Chapter 397-A Must Comply**  
20 **with Other New Hampshire State Law (via RSA 397-A:11,I via RSA**  
21 **397-A:2,III)**

22 **Issue 6: Violation of Record Keeping: Failure to Preserve Original**  
23 **Records (via RSA 397-A:11,IV)**

24 **Issue 7: Fraudulent and Knowing Removal of Records and Computer Records**  
25 **(via RSA 397-A:12,XV)**

- 1 **Issue 8: Violation of Obtained Property by Fraud (RSA 397-A:14:IV(a) via**  
2 **RSA 397-A:12,XV)**
- 3 **Issue 9: Failure to Comply with RSA Chapter 397-A or Other New Hampshire**  
4 **State Law (via RSA 397-A:14,IV(f))**
- 5 **Issue 10: Engaged in Unfair, Deceptive, Unethical or Fraudulent Business**  
6 **Practices (via RSA 397-A:14,IV(n))**
- 7 **Issue 11: Violation of RSA Chapter 397-A Generally (via RSA 397-A:17,I(a))**
- 8 **Issue 12: Failing to Meet Standards Established by RSA Chapter 397-A (via**  
9 **397-A:17,I(b))**
- 10 **Issue 13: Engaged in Dishonest or Unethical Practices (via RSA 397-**  
11 **A:17,I(k))**

12 Accordingly, an adjudicative proceeding shall be commenced pursuant to  
13 RSA 541-A:31 for the purpose of permitting the Respondents to show  
14 compliance with the above stated violations in Issues 1 through 13.

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

17 THEREFORE, IT IS ORDERED, that the Respondents appear before the New  
18 Hampshire Banking Department on **Wednesday, November 17, 2010 at 10:00 am**, at  
19 the Department's offices at 53 Regional Drive, Suite 200, Concord, New  
20 Hampshire 03301, for the purpose of participating in an adjudicative  
21 proceeding, at which time the Respondents will have the opportunity to  
22 demonstrate why the relief sought in the Order to Show Cause and Cease and  
23 Desist Order should not become permanent; and

24 IT IS FURTHER ORDERED, that if the Respondents elect to be represented  
25 by Counsel, said Counsel shall file a notice of appearance at the earliest

1 possible date; and

2 IT IS FURTHER ORDERED, that Maryam Torben Desfosses, Hearings  
3 Examiner, New Hampshire Banking Department is designated as Hearings  
4 Examiner in this matter with authority to represent the public interest  
5 within the scope of the Department's authority. The Hearings Examiner shall  
6 have the status of a party to this proceeding; and

7 IT IS FURTHER ORDERED, Presiding Officer Ingrid E. White shall issue a  
8 RECOMMENDED DECISION in this matter which shall be reviewed and approved,  
9 disapproved or modified by the Banking Commissioner; and

10 IT IS FURTHER ORDERED, that any proposed exhibits shall be pre-marked,  
11 for identification only, and filed with the Department and provided to the  
12 opposing party **by November 10, 2010**. The Hearings Examiner shall pre-mark  
13 the Department's exhibits with Arabic numbers. The Respondents shall pre-  
14 mark exhibits with capital letters. An index/list of exhibits providing a  
15 brief description of each exhibit with its corresponding pre-marked number  
16 or letter shall be filed by both parties simultaneous with the filing of  
17 exhibits; and

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

22 IT IS FURTHER ORDERED, that all periods referenced in this notice  
23 shall be calendar days. If the last day of the period so computed falls on  
24 a Saturday, Sunday, or legal holiday, then the time period shall be extended  
25 to include the first business day that is not a Saturday, Sunday, or legal

1 holiday; and

2 IT IS FURTHER ORDERED, that the Department shall have the burden of  
3 setting forth a *prima facie* case, then the Respondents shall have the burden  
4 of showing compliance with applicable law by a preponderance of the  
5 evidence;

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

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

17 IT IS FURTHER ORDERED, that all documents shall be filed with the  
18 Presiding Officer in the form of an original and one (1) copy and shall bear  
19 a certification that a copy is being delivered to Hearings Examiner and any  
20 other parties to this matter in accordance with applicable laws. All  
21 documents shall be filed by mailing or delivering them to the New Hampshire  
22 Banking Department, ATTN: Presiding Officer 10-001, 53 Regional Drive, Suite  
23 200, Concord, NH 03301. Filing by facsimile or electronic transmission shall  
24 not be accepted; and

25

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; and

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

10 IT IS FURTHER ORDERED, that a copy of this Notice of Hearing shall be  
11 mailed to all named Respondents at their addresses of record and that a copy  
12 shall also be delivered to Maryam Torben Desfosses, Hearings Examiner, and  
13 to the Presiding Officer at the New Hampshire Banking Department.  
14

15 **SO ORDERED,**

17 /s/ Robert A. Fleury for  
18 Peter C. Hildreth  
19 Commissioner  
State of New Hampshire  
Banking Department

09/29/10  
Date