

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 10-083
)
 3 State of New Hampshire Banking))
)
 4 Department,)
)
 5 Department,) Response to Motion to Respondent Kalani
) Law Firm, A Law Corporation's and
 6 and) Respondent Mohammad Kalani's Motion to
) Dismiss Penalties and Motion to Vacate
 7 Guardian Capital (a/k/a Guardian) Default Judgment
)
 8 Enterprises, Inc.), et al.,)
)
 9 Respondents)
)

10 RESPONSE TO MOTION TO DISMISS PENALTIES AND MOTION TO VACATE DEFAULT JUDGMENT

11 Now comes Maryam Torben Desfosses, on behalf of New Hampshire Banking
 12 Department ("Department") in the above captioned matter, and hereby responds
 13 to Respondent Kalani Law Firm, A Law Corporation's and Respondent Mohammad
 14 Kalani's (collectively, "Law Firm Respondents") Motion to Dismiss Penalties
 15 and Motion to Vacate Default Judgment ("Motion") and states as follows:

16 Law Firm Respondents' Motion Not Timely Filed

17 1. Since the entry of the Default on July 11, 2012, Law Firm Respondents
 18 were required to submit their responses within 30 days of the Default Order
 19 (by August 10, 2012). RSA 541:3 and JUS 813.03(a). Law Firm Respondents did
 20 not respond until August 13, 2012. Law Firm Respondents failed to timely
 21 submit their Motion.

22 IMPROPER SERVICE OF PROCESS

23 2. Even if Law Firm Respondents' Motion was timely received, the Motion's
 24 assertions regarding improper service of process are wrong; service was
 25 properly perfected.

1 3. Law Firm Respondents indicate they only recently found a "copy of the
2 judgment at their address doorsteps" and that the "mail man left registered
3 mail with the guard on duty at the building."

4 4. Law Firm Respondents further allege that they were "not properly
5 served by mail or personal service of the complaint." The complaint
6 referenced by Law Firm Respondents is the April 10, 2012 Order to Cease and
7 Desist.

8 5. Law Firm Respondents are located at 3131 Michelson Drive, #1105 in
9 Irvine, California as evidenced on the envelope in which Law Firm
10 Respondents' Motion was delivered to the Department. This is the same
11 address located on the California State Bar website and on the California
12 Secretary of State website.

13 6. The April 10, 2012 Order to Cease and Desist was delivered to the
14 address in Paragraph 5 above on April 23, 2012, pursuant to the United
15 States Postal Service Track and Confirm website. The Order to Cease and
16 Desist was not returned to the Department. Law Firm Respondents offer no
17 explanation as to why they did not respond to the Order to Cease and Desist.

18 7. The July 11, 2012 Order for Default Judgment was delivered to the same
19 address in Paragraph 5 above and signed for by the guard on duty of the
20 building, according to Law Firm Respondents (see Paragraph 3 above).

21 8. According to the findings in the October 14, 2011 Adjudicative
22 Decision in Department Docket # 09-093 In Re: SunnyMTG.com 866-768-CASH,
23 LLC, and Summit Gaddh, constructive notice is deemed received when the
24 Department's correspondence is signed for by someone at the proper address
25 or location. In this case, delivery was made to the proper address and

1 signed for by the guard. Further, the Presiding Officer in Docket 09-093
2 also found that Respondents did in fact receive the communication and
3 contacted the Department, much like in the present matter wherein Law Firm
4 Respondents responded to the Department by filing the untimely Motion. The
5 Return Receipt indicated the Order for Default Judgment was received at the
6 address in Paragraph 5 on July 20, 2012, which would have given Law Firm
7 Respondents plenty of opportunity to communicate with the Department but
8 they did not respond until August 13, 2012.

9 **LACK OF JURISDICTION**

10 9. Even if Law Firm Respondents' Motion was timely received, the Motion's
11 assertions regarding the Department's lack of jurisdiction over Law Firm
12 Respondents are incorrect.

13 10. Law Firm Respondents argue that they have not established minimum
14 contacts with New Hampshire or purposefully availed themselves of the
15 privileges of New Hampshire.

16 11. Law Firm Respondents' activities are governed by New Hampshire law, as
17 set out specifically in RSA Chapter 397-A. In violation of RSA 397-A:3,I and
18 without a New Hampshire Mortgage Broker or Mortgage Loan Originator license,
19 Law Firm Respondents entered into a contract with Consumer A to perform loan
20 modification activities. Consumer A is a New Hampshire consumer with a New
21 Hampshire residential property. Law Firm Respondents' activities concerning a
22 loan secured by such New Hampshire residential property is regulated by the
23 New Hampshire Banking Department as set out by not only the federal S.A.F.E.
24 Act but by RSA 397-A:3, I in particular. Further, Law Firm Respondents
25 obtained an advance fee of \$695.00 in violation of RSA 397-A:14, IV(m).

1 ORDER

2 Finding it in the public interest:

- 3 a. The requested relief in Law Firm Respondents' Motion to Dismiss
4 Penalties and Motion to Vacate Default Judgment is hereby **DENIED**;
5 and
6 b. The July 11, 2012 Order for Default Judgment in 10-083 is hereby
7 stayed for 30 days from Law Firm Respondents' receipt of this
8 Response to allow Law Firm Respondents sufficient opportunity to
9 substantively address the underlying allegations in the April 10,
10 2012 Order to Cease and Desist and to request a hearing; and
11 c. If the underlying allegations have not been sufficiently addressed
12 within thirty (30) days, the Order for Default Judgment shall become
13 permanent.

14 SO ORDERED,

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16 _____ /s/
17 RONALD A. WILBUR
18 BANK COMMISSIONER
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