

1	In re the Matter of:)Case No.: 10-204
)
2	State of New Hampshire Banking Department,)
)
3	Petitioner,)
)
4	and)Order to Show Cause and
)Cease and Desist
5	K2 Capital Management Inc. (a/k/a K2 Capital)
)
6	Management Inc, d/b/a US Mortgage Bailout, d/b/a)
)
7	K2 Home Loans and d/b/a usmortgagebailout.com),)
)
8	and Lauren Kerr Layton,)
)
9	Respondents)

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

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

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

RESPONDENTS

3. K2 Capital Management Inc. (a/k/a K2 Capital Management Inc, d/b/a US Mortgage Bailout, d/b/a K2 Home Loans, and d/b/a usmortgagebailout.com) ("Respondent K2") is a corporation that registered with the California Secretary of State on February 6, 2009 with a principal office location in La Jolla, California. The State of California Department of Real Estate ("Department of Real Estate") records show that Respondent K2 is a licensed real estate company who currently has no business address but did have the principal office location in La Jolla, California. The Department of Real Estate records indicate Respondent K2 had the d/b/as of K2 Home Loans, US

1 Mortgage Bailout, and usmortgagebailout.com. Respondent K2 (by any of the
2 names above) is not registered with the New Hampshire Secretary of State.
3 Respondent K2 is a "Person." RSA 397-A:1,XVIII.

4 4. The Nationwide Mortgage Licensing System & Registry ("NMLS") does not
5 indicate that Respondent K2 (by any of the names above) has ever held a
6 license as a mortgage broker. The New Hampshire Banking Department's
7 ("Department") records do not indicate that Respondent K2 (by any of the
8 names above) has ever held a New Hampshire Mortgage Broker license. The
9 website of usmortgagebailout.com, however, offered loan modification
10 services.

11 5. Lauren Kerr Layton ("Respondent Layton") is listed with the Department
12 of Real Estate as the designated officer of Respondent K2. Respondent Layton
13 is an active real estate broker with the Department of Real Estate with
14 current d/b/as of 1st Choice Home Loan and First Choice Home Loans. The
15 Department of Real Estate lists Respondent Layton as being affiliated with a
16 number of mortgage entities, including Respondent K2 (officer cancelled as
17 of September 2, 2010). Respondent Layton is a Control person (RSA 397-
18 A:1,V-a), a Principal (RSA 397-A:1,XIX), a Direct Owner (RSA 397-A:1,VI-a),
19 and a Person (RSA 397-A:1,XVIII).

20 6. NMLS records indicate that Respondent Layton was never a licensed New
21 Hampshire Mortgage Loan Originator or Mortgage Broker. NMLS records indicate
22 Respondent Layton has been a self-employed licensed California Real Estate
23 Broker since November 10, 2010 with a trade name of First Choice Home Loan
24 in Corona del Mar, California. Respondent Layton also has a separate
25 California Real Estate Broker license for herself as an individual. The New

1 Hampshire Banking Department's ("Department") records do not indicate that
2 Respondent Layton has ever held a New Hampshire Mortgage Loan Originator or
3 New Hampshire Mortgage Broker license.

4 7. The above-named Respondents are hereinafter collectively known as
5 "Respondents".

6 **RIGHT TO REQUEST A HEARING**

7 8. Respondents have a right to request a hearing on this Order. A hearing
8 shall be held not later than ten (10) days after the Commissioner receives
9 the Respondent's written request for a hearing. Respondents may request a
10 hearing and waive the ten (10) day hearing requirement. The hearing shall
11 comply with RSA Chapter 541-A. RSA 397-A:17 and RSA 397-A:18.

12 9. If any person fails to request a hearing within thirty (30) days of
13 receiving this Order, then such person shall be deemed in default, and the
14 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
17 397-A:17,I and RSA 397-A:18.

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 October 28, 2009, the Department received a hotline call
22 from a New Hampshire consumer ("Consumer A") against Respondents concerning
23 residential mortgage loan modification services.

24 12. In October of 2009, Respondents attempted to contract with Consumer A
25 to modify Consumer A's mortgage loan without a New Hampshire mortgage broker

1 license, in violation of RSA 397-A:3,I.

2 13. Respondents attempted to collect an advance fee of \$2,000.00 from
3 Consumer A.

4 14. On April 15, 2010, the Department received a hotline call from a New
5 Hampshire consumer ("Consumer B") against Respondents concerning residential
6 mortgage loan modification services.

7 15. In November of 2010, Respondents contracted with Consumer B to modify
8 Consumer B's mortgage loan without a New Hampshire mortgage broker license,
9 in violation of RSA 397-A:3,I.

10 16. Respondents collected an advance fee of \$2,900.00 from Consumer B, in
11 violation of RSA 397-A:14,IV(m).

12 17. Respondents failed to provide a residential mortgage loan modification
13 to Consumer B, in violation of RSA 397-A:14,IV(b).

14 18. On September 17, 2010, the Department sent a letter via U.S. Certified
15 Mail return receipt requested to Respondents suggesting Respondents apply
16 for licensure with the Department and requesting documentation from the
17 Respondent. The letter was returned to the Department on October 15, 2010,
18 as "unclaimed; return to sender; unable to forward."

19 19. To date, Respondents have not provided the Department with the
20 requested documents in violation of RSA 397-A:12,I.

21 _____ /s/
22 Maryam Torben Desfosses
23 Hearings Examiner

November 15, 2011
Date

ORDER

24 20. **I hereby find as follows:**

25 a. Pursuant to RSA 397-A:17,I, the facts as alleged above, if true,

1 show Respondents are operating or have operated in violation of RSA Chapter
2 397-A and form the legal basis for this Order;

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

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

8 d. Pursuant to RSA 397-A:17,I and RSA 397-A:18,II, if any
9 Respondent fails to respond to this Order and/or defaults then all facts as
10 alleged herein are deemed as true.

11 21. **Accordingly, it is hereby ORDERED that:**

12 a. Respondents shall cease and desist from violating RSA Chapter
13 397-A and rules or orders thereunder;

14 b. Respondents shall immediately provide the Department a list of
15 all New Hampshire consumers for whom Respondents have residential mortgage
16 loan modification activity and a status of those accounts. This list must
17 include the names and contact information of the New Hampshire consumers,
18 along with monies charged, collected and waived (if applicable). The list
19 shall also be accompanied by all contracts, checks to and from the consumer
20 and any other documents in the New Hampshire consumers' files;

21 c. Respondents shall show cause why the Commissioner should not
22 enter an order of rescission, restitution, or disgorgement of profits in the
23 amount of at least \$2,900.00 (for Consumer B);

24 d. Respondents shall show cause why an administrative fine of up to
25 a maximum of \$2,500.00 per violation(as stated in Counts below) should not

1 be imposed as follows:

2 (1). Respondent K2:

3 #1: Unlicensed mortgage broker activity (RSA 397-A:3,I) -
4 2 Counts;

5 #2: Failure to provide documents (RSA 397-A:12,I) - 1
6 Count;

7 #3: Failure to provide a residential mortgage loan
8 modification (RSA 397-A:14,IV(b)) - 1 Count;

9 #4: Collecting an Advance Fee (RSA 397-A:14,IV(m)) - 1
10 Count;

11 (2). Respondent Layton (as Control Person, Direct Owner and
12 Principal):

13 #1: Unlicensed mortgage broker activity (RSA 397-A:3,I) -
14 2 Counts;

15 #2: Failure to provide documents (RSA 397-A:12,I) - 1
16 Count;

17 #3: Failure to provide a residential mortgage loan
18 modification (RSA 397-A:14,IV(b)) - 1 Count;

19 #4: Collecting an Advance Fee (RSA 397-A:14,IV(m)) - 1
20 Count;

21 e. Nothing in this Order:

22 (1). shall prevent the Department from taking any further
23 administrative and legal action as necessary under New Hampshire law; and

24 (2). shall prevent the New Hampshire Office of the Attorney
25 General from bringing an action against the above named Respondents in any

1 New Hampshire superior court, with or without prior administrative action by
2 the Commissioner.

3 **SO ORDERED.**

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5 _____ /s/

Dated: 11/16/11

6 RONALD A. WILBUR
7 BANK COMMISSIONER

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