

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 11-001
)
 3 State of New Hampshire Banking)
)
 4 Department,)
)
 5 Petitioner,) Notice of Hearing - Order to Show
) Cause and Cease and Desist
)
 6 and)
)
 7 Inofin Incorporated, Michael Joseph)
)
 8 Cuomo, Kevin J. Mann, Sr., Donald K.)
)
 9 Heap, and Melissa M. George,)
)
 10 Respondents)
)

11 NOTICE OF ORDER TO SHOW CAUSE AND CEASE AND DESIST HEARING

12 1. The Department issued to the above named Respondents an Order to Show
 13 Cause and Cease and Desist on January 6, 2011, which Respondents received on
 14 January 10, 2011. RSA Chapter 541-A and RSA Chapter 361-A require the
 15 Department to hold a hearing on such matter within ten (10) calendar days of
 16 a written request for a hearing unless otherwise waived by the Respondents.
 17 On February 7, 2011, Respondents (with the exception of Respondent Donald K.
 18 Heap) filed a timely request for a hearing and waived their right to a
 19 hearing in ten (10) days. On February 10, 2011, Respondent Donald K. Heap
 20 defaulted on the Order to Show and Cease and Desist. Respondents Inofin
 21 Incorporated, Michael Joseph Cuomo, Kevin J. Mann, Sr. and Melissa M. George
 22 shall now be collectively known as Remaining Respondents.

23 IT IS HEREBY ORDERED that:

24 2. Remaining Respondents appear before the New Hampshire Banking Department
 25 on Tuesday, May 17, 2011 at 10:00 am, at the New Hampshire Banking

1 Department located at 53 Regional Drive, Suite 200, Concord, New Hampshire
2 03301, for the purpose of participating in an adjudicative proceeding, at
3 which time the Respondents will have the opportunity to demonstrate why the
4 relief sought in the Order to Show Cause and Cease and Desist should not
5 become permanent.

6 3. Pursuant to RSA 541-A:31,III(b), the legal authorities under which the
7 hearing is to be held are: RSA 541-A:30,III, RSA 361-A:3, RSA 361-A:3-a, RSA
8 361-A:5 and RSA 361-A:11.

9 4. The Department's alleged violations against the above named Respondents
10 in the Order to Show Cause and Cease and Desist are as follows:

11 a. Respondent Inofin Incorporated:

12 Violation #1: Failure to update information with the
13 Commissioner (RSA 361-A:2,XII) - 2 Counts;

14 Violation #2: Filing of materially false and misleading
15 statement (RSA 361-A:3-b,II) - 1 Count; and

16 Violation #3: Failure to maintain financial integrity (RSA 361-
17 A:3,I-a(g)) - 1 Count;

18 b. Respondent Michael Joseph Cuomo (as control person):

19 Violation #1: Failure to update information with the
20 Commissioner (RSA 361-A:2,XII) - 2 Counts;

21 Violation #2: Filing of materially false and misleading
22 statement (RSA 361-A:3-b,II) - 1 Count; and

23 Violation #3: Failure to maintain financial integrity (RSA 361-
24 A:3,I-a(g)) - 1 Count;

25

1 c. Respondent Kevin J. Mann, Sr. (as control person):

2 Violation #1: Failure to update information with the
3 Commissioner (RSA 361-A:2,XII) - 2 Counts;

4 Violation #2: Filing of materially false and misleading
5 statement (RSA 361-A:3-b,II) - 1 Count; and

6 Violation #3: Failure to maintain financial integrity (RSA 361-
7 A:3,I-a(g)) - 1 Count;

8 d. Respondent Melissa M. George(as control person):

9 Violation #1: Failure to update information with the
10 Commissioner (RSA 361-A:2,XII) - 2 Counts;

11 Violation #2: Filing of materially false and misleading
12 statement (RSA 361-A:3-b,II) - 1 Count; and

13 Violation #3: Failure to maintain financial integrity (RSA 361-
14 A:3,I-a(g)) - 1 Count.

15 5. The facts as alleged in the Order to Show Cause and Cease and Desist are
16 herein incorporated by reference.

17 6. An adjudicative proceeding shall be commenced pursuant to RSA 541-A:31
18 for the purpose of permitting the above named Remaining Respondents to show
19 compliance with the stated violations.

20 7. Each party has the right to have an attorney present to represent the
21 party at the party's expense, or may represent itself or himself. If the
22 Remaining Respondents elect to be represented by Counsel, said Counsel shall
23 file a notice of appearance at the earliest possible date.

24 8. Maryam Torben Desfosses, Hearings Examiner, New Hampshire Banking
25 Department is designated as Hearings Examiner in this matter with authority

1 to represent the public interest within the scope of the Department's
2 authority. The Hearings Examiner shall have the status of a party to this
3 proceeding.

4 9. A Presiding Officer will be delegated to preside over this matter
5 pursuant to RSA 383:7-a and see also RSA 541-A:1,XV.

6 10. Any proposed exhibits shall be pre-marked, for identification only, and
7 filed with the Department and provided to the opposing party by Tuesday, May
8 10, 2011. The Hearings Examiner shall pre-mark the Department's exhibits
9 with Arabic numbers. The Remaining Respondents shall pre-mark exhibits with
10 capital letters. An index/list of exhibits providing a brief description of
11 each exhibit with its corresponding pre-marked number or letter shall be
12 filed by both parties simultaneous with the filing of exhibits.

13 11. The parties shall exchange a list of all exhibits and witnesses to be
14 called at the hearing with a brief summary at the hearing, and shall at the
15 same time file a copy of their respective lists with the Presiding Officer.

16 12. All periods referenced in this notice shall be calendar days. If the
17 last day of the period so computed falls on a Saturday, Sunday, or legal
18 holiday, then the time period shall be extended to include the first
19 business day that is not a Saturday, Sunday, or legal holiday.

20 13. The Department shall have the burden of setting forth a *prima facie*
21 case, then the Remaining Respondents shall have the burden of showing
22 compliance with applicable law by a preponderance of the evidence.

23 14. Any Remaining Respondent's failure to appear at the time, date, and
24 place specified may result in the hearing being held *in absentia* and/or
25 default ruling in favor of the Department, without further notice or

1 opportunity to be heard.

2 15. The entirety of all verbal proceedings shall be recorded verbatim by the
3 Department. Upon request of any party, or upon the Presiding Officer's own
4 initiative, such record shall be transcribed by a certified court reporter
5 designated by the Presiding Officer, and that all costs shall be borne
6 solely by the requesting party.

7 16. Each party has the right to have the Department provide a certified
8 short hand reporter at the requesting party's expense. Any such request
9 shall be submitted in writing to the Presiding Officer at least 10 days
10 prior to the hearing.

11 17. All documents shall be filed with the Presiding Officer in the form of an
12 original and one (1) copy and shall bear a certification that a copy is being
13 delivered to Hearings Examiner and any other parties to this matter in
14 accordance with applicable laws. All documents shall be filed by mailing or
15 delivering them to the New Hampshire Banking Department, ATTN: Presiding
16 Officer 11-001, 53 Regional Drive, Suite 200, Concord, NH 03301. Filing by
17 facsimile or electronic transmission shall not be accepted.

18 18. The parties may submit Proposed Orders, which shall include findings of
19 fact and conclusions of law, separately stated, no later than ten (10) days
20 following conclusion of the hearing(s) in this matter.

21 19. Routine procedural inquiries may be made by telephoning Maryam Torben
22 Desfosses, Hearings Examiner at (603)271-3561, but all other communications
23 with the Presiding Officer and with the Department shall be in writing and
24 shall be filed as provided above. *Ex parte* communications are forbidden by
25 statute.

20. A copy of this Notice of Hearing shall be mailed to all named

