

) Case No.: 11-168

1 In re the Matter of:)
)
 2 State of New Hampshire Banking)
)
 3 Department,)
)
 4 Petitioner,) Order to Show Cause and Cease and
) Desist
 5 and)
)
 6 Berkley Capital Corp., Jonathan Marc)
)
 7 Globerman, and Joyce F. Rubin,)
)
 8 Respondents)

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

10 1. This Order commences an adjudicative proceeding under the provisions
 11 of RSA Chapter 397-A (including RSA 397-A:17,I and II, RSA 397-A:16,IV, RSA
 12 397-A:18,I and II, and RSA 397-A:20,IV) and RSA Chapter 541-A.

13 2. The Commissioner may impose administrative penalties of up to \$2,500
 14 for each violation. RSA 397-A:21,IV and V.

RESPONDENTS

16 3. Berkley Capital Corp. ("Respondent Berkley Capital") is a corporation
 17 duly formed in the State of Florida on February 1, 2008 and registered to
 18 conduct business in New Hampshire with the New Hampshire Secretary of State
 19 on June 23, 2008 with a principal office location in Boca Raton, Florida.
 20 Respondent Berkley Capital is a Person (RSA 397-A:1,XVIII).

21 4. Respondent Berkley Capital has been licensed as a Mortgage Broker with
 22 the New Hampshire Banking Department ("Department") from January 6, 2009
 23 until January 3, 2011, when it surrendered its license.

24 5. Jonathan Marc Globerman ("Respondent Globerman") is the 51% direct
 25 owner, control person and President of Respondent Berkley Capital.

1 Respondent Globerman is also an active New Hampshire Mortgage Loan
2 Originator. The Nationwide Mortgage Licensing System & Registry ("NMLS")
3 records indicate Respondent Globerman has been a licensed New Hampshire
4 Mortgage Loan Originator since March 25, 2010 and is currently licensed in 9
5 other states. Respondent Globerman is a Direct Owner (RSA 397-A:1,VI-a), a
6 Principal (RSA 397-A:1,XIX), a Person (RSA 397-A:1,XVIII), a Control Person
7 (RSA 397-A:1,V-a) and a Mortgage Loan Originator (RSA 397-A:1,XVII).

8 6. Joyce F. Rubin ("Respondent Rubin") is the 44% direct owner, control
9 person, Vice-President and Secretary of Respondent Berkley Capital. NMLS
10 records indicate Respondent Rubin an expired mortgage loan originator
11 license in Idaho and Iowa. Respondent Rubin is a Direct Owner (RSA 397-
12 A:1,VI-a), a Principal (RSA 397-A:1,XIX), a Person (RSA 397-A:1,XVIII), and
13 a Control Person (RSA 397-A:1,V-a).

14 7. The above named Respondents are hereby collectively known as
15 "Respondents".

16 **RIGHT TO REQUEST A HEARING**

17 8. Respondents have a right to request a hearing on this Order. A hearing
18 shall be scheduled not later than ten (10) days after the Commissioner
19 receives the Respondent's written request for a hearing. Respondents may
20 request a hearing and waive the ten (10) day hearing requirement. The
21 hearing shall comply with RSA Chapter 541-A, RSA 397-A:17,I, and II, and RSA
22 397-A:18,I and II.

23 9. If any person fails to request a hearing within thirty (30) days of
24 receiving this Order, then such person shall be deemed in default, and the
25 Order shall, on the thirty-first (31st) day, become permanent, all

1 allegations may be deemed true, and shall remain in full force and effect
2 until modified or vacated by the Commissioner for good cause shown. RSA 397-
3 A:17,I and II, and RSA 397-A:18,I and II.

4 10. A default may result in administrative fines as described in Paragraph
5 2 above.

6 **STATEMENT OF ALLEGATIONS**

7 11. On February 17, 2011, the Department sent Respondents a notice of
8 examination via U.S. Certified Mail Return Receipt requested, to the
9 attention of Respondent Globerman. Respondents received the notice of
10 examination on February 23, 2011.

11 12. On February 23, 2011, a former associate from Respondent Berkley
12 Capital emailed the Department's Examiner in Charge to request the
13 examination not be performed.

14 13. On March 4, 2011, the same former associate from Respondent Berkley
15 Capital telephoned and emailed the Department's Examination Division
16 Assistant to dispute the examination to be conducted by the Department. The
17 email indicated that Respondent Berkley Capital stopped conducting business
18 in New Hampshire on October 15, 2010; however, the email failed to validate
19 that Respondents did not surrender the Respondent Berkley Capital New
20 Hampshire Mortgage Broker license until January 3, 2011.

21 14. The examination of Respondent Berkley Capital was scheduled to begin
22 on April 18, 2011 but the Department's Examiner in Charge had not received
23 any examination materials as required by RSA 397-A:12,VII and the February
24 17, 2011 notice of examination.

25 15. On April 18, 2011, another Department Examiner telephoned Respondent

1 Globerman regarding the examination and overdue examination materials.
2 Respondent Globerman inquired of the repercussions for failing to facilitate
3 and upon receiving the response that the Department could revoke the
4 license, agreed to comply. The Department forwarded an Officer Questionnaire
5 to Respondent Globerman via email to complete and return to the Department.

6 16. On April 19, 2011, Respondent Globerman confirmed receipt of the
7 Officer Questionnaire.

8 17. On May 5, 2011, the Department Examiner who had sent Respondent
9 Globerman the Officer Questionnaire emailed Respondent Globerman to indicate
10 that examination materials and a response to the Officer Questionnaire had
11 not been received by the Department.

12 18. To date, no examination materials have been received by the
13 Department.

14 19. To date, Respondents have failed to facilitate the examination of
15 Respondent Berkley Capital, in violation of RSA 397-A:12,VII.

16
17
18 _____
19 /s/ Maryam Torben Desfosses
Hearings Examiner

July 26, 2011
Date

20 **ORDER**

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

22 a. Pursuant to RSA 397-A:17,I, the facts as alleged above, if true,
23 show Respondents are operating or have operated in violation of RSA Chapter
24 397-A and form the legal basis for this Order;

25 b. Pursuant to RSA 397-A:20,VI, this Order is necessary and

1 appropriate to the public interest and for the protection of consumers and
2 consistent with the purpose and intent of New Hampshire banking laws;

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

5 d. Pursuant to RSA 397-A:17 and RSA 397-A:18, if Respondents fail
6 to respond to this Order and/or defaults then all facts as alleged herein
7 are deemed as true.

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

9 a. Respondents shall cease and desist from violating RSA Chapter
10 397-A and rules or orders thereunder;

11 b. Respondents shall show cause why Respondent Berkley Capital's
12 New Hampshire Mortgage Broker license should not be revoked;

13 c. Respondents shall show cause why Respondent Globerman's New
14 Hampshire Mortgage Loan Originator license should not be revoked;

15 d. Respondents shall show cause why an administrative fine of up to
16 a maximum of \$2,500.00 per violation should not be imposed as follows:

17 (1). Respondent Berkley Capital:

18 Violation #1: Failure to Facilitate Examination (RSA 397-
19 A:12,VII) - 1 Count;

20 (2). Respondent Globerman (as Direct Owner, Principal and
21 Control Person):

22 Violation #1: Failure to Facilitate Examination (RSA 397-
23 A:12,VII) - 1 Count;

24 (3). Respondent Rubin (as Direct Owner, Principal and Control
25 Person):

1 Violation #1: Failure to Facilitate Examination (RSA 397-
2 A:12,VII) - 1 Count;

3 e. Nothing in this Order:

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

6 (2). shall prevent the New Hampshire Office of the Attorney General
7 from bringing an action against the above named Respondents in any New
8 Hampshire superior court, with or without prior administrative action by the
9 Commissioner.

10 **SO ORDERED.**

11 _____
12 /s/
13 RONALD A. WILBUR
14 BANK COMMISSIONER

Dated: 07/27/2011