

1 State of New Hampshire Banking Department

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3 In re the Matter of:) Case No.: 06-087
))
4 State of New Hampshire Banking) Notice of Hearing - Cease and Desist
) Order
5 Department,)
))
6 Petitioner,)
))
7 and)
))
8 MAK Investments LLC, Brian Colsia,)
))
9 Gabe Cohen and Laura Cohen,)
))
10 Respondents)

11
12 NOTICE OF HEARING

13 Pursuant to RSA 397-A:18 II, the Banking Department of the State of New
14 Hampshire (hereinafter the "Department") has the authority to issue and cause
15 to be served an order requiring any person engaged in any act or practice
16 constituting a violation of RSA 397-A or any rule or order thereunder, to
17 cease and desist from violations of RSA 397-A.

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 of
20 up to \$2,500.00 for each violation of New Hampshire banking law and rules.

21 Pursuant to the New Hampshire Banking laws, RSA 397-A:3 requires any
22 person not exempt under RSA 397-A:4 that, in its own name or on behalf of
23 other persons, engages in the business of making or brokering first mortgage
24 loans secured by real property located in this state shall be required to
obtain a license from the banking department.

25 Pursuant to RSA 383:10-d The commissioner shall have exclusive authority
and jurisdiction to investigate conduct that is or may be an unfair or

1 deceptive act or practice under RSA 358-A and exempt under RSA 358-A:3, I or
2 that may violate any of the provisions of Titles XXXV and XXXVI and
3 administrative rules adopted thereunder. The commissioner may hold hearings
4 relative to such conduct and may order restitution for a person or persons
5 adversely affected by such conduct.

6 The Department issued the Respondent a Cease and Desist Order on June
7 29, 2006 and an Amended Cease and Desist Order on November 14, 2006. The
8 Respondent filed a timely request for a hearing regarding this matter. Most
9 matters within the original cease and desist orders have been resolved by
10 agreement leaving only the following to resolve:

11
12 **Issue 1:** Whether MAK Investements et al are required to obtain licensure in
13 order to take mortgage deeds as security for consumer loans.

14 **Issue 2:** Whether MAK Investments et al must permanently Cease and Desist
15 from engaging in mortgage banking activities.

16 **Issue 5:** Whether Restitution should issue regarding consumer E and in what
17 amount.

18 Accordingly, an adjudicative proceeding shall be commenced pursuant to
19 541-A:31 and Chapter 200 of the Department's rules (NH Code of
20 Administrative Rules BAN 200) for the purpose of permitting the Respondent to
21 show compliance with RSA 397-A:3 and 383:10-d.

22 Each party has the right to have an attorney present to represent the
23 party at the party's expense, or may represent itself. Each party has the
24 right to have the Department provide a certified shorthand court reporter at
25 the requesting party's expense. Any such request must be submitted in
writing to the Department at least 10 days prior to a scheduled hearing date.

THEREFORE, IT IS ORDERED, that the Respondent appear before the New
Hampshire Banking Department on **July 19, 2007 at 9:00 am**, at the Department's

1 offices at 64B Old Suncook Road, Concord, New Hampshire, for the purpose of
2 participating in an adjudicative proceeding, at which time the Respondent
3 will have the opportunity to demonstrate why the cease and desist order
4 should not become permanent; and

5 IT IS FURTHER ORDERED, that if the Respondent elects to be represented
6 by Counsel, said Counsel shall file notice of appearance at the earliest
7 possible date; and

8 IT IS FURTHER ORDERED, that James Shepard, Staff Attorney, New
9 Hampshire Banking Department is designated as Hearing Counsel in this matter
10 with authority to represent the public interest within the scope of the
11 Department's authority. Hearing Counsel shall have the status of a party to
12 this proceeding; and

13 IT IS FURTHER ORDERED, that the Commissioner shall designate a member
14 of the Department, who shall serve as the Presiding Officer in this
15 proceeding and shall issue a RECOMMENDED DECISION in this matter which shall
16 be reviewed and approved, disapproved or modified by the Bank Commissioner;
17 and

18 IT IS FURTHER ORDERED, that any proposed exhibits shall be pre-marked,
19 for identification only, and filed with the Department and provided to the
20 opposing party as soon as possible. Hearing Counsel shall pre-mark the
21 Department's exhibits with Arabic numbers. The Respondent People shall pre-
22 mark exhibits with capital letters. An index/list of exhibits providing a
23 brief description of each exhibit with its corresponding pre-marked number or
24 letter shall be filed by both parties simultaneous with the filing of
25 exhibits; and

IT IS FURTHER ORDERED, that the parties shall exchange a list of all
exhibits and witnesses to be called at the hearing with a brief summary prior
to **July 17, 2007**, and shall at the same time file a copy of their respective
witness lists with the Presiding Officer; and

1 IT IS FURTHER ORDERED, that all periods referenced in this notice shall
2 be calendar days. If the last day of the period so computed falls on a
3 Saturday, Sunday, or legal holiday, then the time period shall be extended to
4 include the first business day that is not a Saturday, Sunday, or legal
5 holiday; and

6 IT IS FURTHER ORDERED, that the Department shall burden of setting forth
7 a *prima fascia* case, then the Respondent shall have the burden of showing
8 compliance with applicable law by a preponderance of the evidence;

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

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

19 IT IS FURTHER ORDERED, that all documents shall be filed with the
20 Presiding Officer in the form of an original and one (1) copy and shall bear a
21 certification that a copy is being delivered to Hearing Counsel and any other
22 parties to this matter in accordance with NH Code of Administrative Rules Ban
23 204.08. All documents shall be filed by mailing or delivering them to the New
24 Hampshire Banking Department, ATTN: Presiding Officer, 64B Old Suncook Road,
25 Concord, NH 03301. Filing by facsimile or electronic transmission shall not
be accepted; and

 IT IS FURTHER ORDERED, that the parties may submit Proposed Orders,
which shall include findings of fact and conclusions of law, separately

1 stated, no later than ten (10) days following conclusion of the hearing(s) in
2 this matter; and

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

7 IT IS FURTHER ORDERED, that a copy of this Notice of hearing shall be
8 mailed to Joseph Foster, Esquire on behalf of all Respondents, 900 Elm
9 Street, PO Box 326, Manchester, NH, 03105-0326 and that a copy shall also be
10 delivered to James Shepard, Hearing Counsel, and to the Presiding Officer, at
11 the New Hampshire Banking Department. In addition copies of the Notice of
12 Hearing shall also be delivered to Consumer E who shall have the right of
13 intervention pursuant to BAN 204.06.

14 **SO ORDERED,**

15 _____
16 /s/ Peter C. Hildreth
17 Commissioner
18 State of New Hampshire
19 Banking Department

20 _____
21 6/6/07
22 Date