

1 State of New Hampshire Banking Department

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3 In re the Matter of:) Case No.: 07-069
)
 4 State of New Hampshire Banking) Order to Show Cause
)
 5 Department,) With Immediate Suspension
)
 6 and) And
)
 7 Dana Capital Group, Inc. Dana H.) Cease and Desist Order
)
 8 Smith, and Amanda Smith)
)
 9 Respondents)
)
 10)
)
 11)

12 NOTICE OF HEARING

13 Pursuant to RSA 397-A:17, 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 suspend,
19 revoke or deny any license and to impose administrative penalties of up to
20 \$2,500.00 for each violation of New Hampshire banking law and rules.

21 The Department issued the Respondent an Order to Show Cause and Cease
22 and Deist Order on May 22, 2007. Since the Orders were issued with an
23 immediate suspension the Department must schedule a hearing to be held within
24 ten days of said order.

25 The Department alleges the following:

Issue 1: Failure to supervise (RSA 397-A:17 I(g))

1 **Issue 2: Failure to maintain records (RSA 397-A:11)**

2 **Issue 3: Failure to license branches (RSA 397-A:5)**

3 **Issue 4: Failure to report significant event (BAN 2407.01)**

4 **Issue 5: Failure to maintain financial stability (RSA 397-A:17 I(j))**

5
6 Accordingly, an adjudicative proceeding shall be commenced pursuant to
7 541-A:31 and Chapter 200 of the Department's rules (NH Code of
8 Administrative Rules BAN 200) for the purpose of permitting the Respondent to
9 show compliance with RSA 397-A and the Rules adopted thereunder.

10 Each party has the right to have an attorney present to represent the
11 party at the party's expense, or may represent itself.

12 THEREFORE, IT IS ORDERED, that the Respondent appear before the New
13 Hampshire Banking Department on **May 25, 2007 at 8:30 am**, at the Department's
14 offices at 64B Old Suncook Road, Concord, New Hampshire, for the purpose of
15 participating in an adjudicative proceeding, at which time the Respondent
16 will have the opportunity to demonstrate why the cease and desist order
17 should not become permanent; and

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

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

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

1 IT IS FURTHER ORDERED, that any proposed exhibits shall be pre-marked,
2 for identification only, and filed with the Department and provided to the
3 opposing party as soon as possible. Hearing Counsel shall pre-mark the
4 Department's exhibits with Arabic numbers. The Respondents shall pre-mark
5 exhibits with capital letters. An index/list of exhibits providing a brief
6 description of each exhibit with its corresponding pre-marked number or
7 letter shall be filed by both parties simultaneous with the filing of
8 exhibits; and

9 IT IS FURTHER ORDERED, that the parties shall exchange a list of all
10 exhibits and witnesses to be called at the hearing with a brief summary at
11 the hearing, and shall at the same time file a copy of their respective lists
12 with the Presiding Officer; and

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

18 IT IS FURTHER ORDERED, that the Department shall have the burden of
19 setting forth a *prima facie* case, then the Respondents shall have the burden
20 of showing compliance with applicable law by a preponderance of the evidence;

21 IT IS FURTHER ORDERED, that Respondents' failure to appear at the time,
22 date, and place specified may result in the hearing being held *in absentia*
23 and/or default ruling in favor of the Department, without further notice or
24 opportunity to be heard; and

25 IT IS FURTHER ORDERED, that the entirety of all oral proceedings shall
be recorded verbatim by the Banking Department. Upon request of any party,
or upon the Presiding Officer's own initiative, such record shall be
transcribed by a certified court reporter designated by the Presiding
Officer, and that all costs shall be borne solely by the requesting party.

