

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) *Respondent Dana H. 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 Desist Order on May 22, 2007. A Hearing was held on May 25, 2007. A
23 Default Judgment was entered on June 1, 2007 against Respondents for failure
24 to appear at the hearing. Respondent Dana H. Smith filed a Motion to Strike
25 the Default Judgment which was denied on July 6, 2007 but which resulted in a
new hearing being ordered. Pursuant to *New Hampshire Administrative Rule BAN*
204.14(e), the New Hampshire Banking Department shall give notice of a re-

1 scheduled hearing in accordance with *New Hampshire Administrative Rule BAN*
2 *204.04* to hear both whether good cause has been shown to strike the default
3 and whether or not there should be fines imposed on Mr. Dana H. Smith.

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5 The Department alleges the following:

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

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

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

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

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

11 Accordingly, an adjudicative proceeding shall be commenced pursuant to
12 541-A:31 and Chapter 200 of the Department's rules (NH Code of
13 Administrative Rules BAN 200) for the purpose of permitting the Respondent to
14 show compliance with RSA 397-A and the Rules adopted thereunder.

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

17 THEREFORE, IT IS ORDERED, that the Respondent appear before the New
18 Hampshire Banking Department on **September 6, 2007 at 10:00 am**, at the
19 Department's offices at 64B Old Suncook Road, Concord, New Hampshire, for the
20 purpose of participating in an adjudicative proceeding, at which time the
21 Respondent will have the opportunity to demonstrate why the cease and desist
order should not become permanent; and

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

25 IT IS FURTHER ORDERED, that James Shepard, Staff Attorney, New
Hampshire Banking Department is designated as Hearing Counsel in this matter
with authority to represent the public interest within the scope of the

1 Department's authority. Hearing Counsel shall have the status of a party to
2 this proceeding; and

3 IT IS FURTHER ORDERED, that the Commissioner shall designate Maryam
4 Torben-Desfosses as the Presiding Officer in this proceeding and shall issue
5 a RECOMMENDED DECISION in this matter which shall be reviewed and approved,
6 disapproved or modified by the Bank Commissioner; and

7 IT IS FURTHER ORDERED, that any proposed exhibits shall be pre-marked,
8 for identification only, and filed with the Department and provided to the
9 opposing party by **September 4, 2007**. Hearing Counsel shall pre-mark the
10 Department's exhibits with Arabic numbers. The Respondents shall pre-mark
11 exhibits with capital letters. An index/list of exhibits providing a brief
12 description of each exhibit with its corresponding pre-marked number or
13 letter shall be filed by both parties simultaneous with the filing of
14 exhibits; and

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

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

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

IT IS FURTHER ORDERED, that Respondents' failure to appear at the time,
date, and place specified may result in the hearing being held *in absentia*

1 and/or default ruling in favor of the Department, without further notice or
2 opportunity to be heard; and

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

10 IT IS FURTHER ORDERED, that all documents shall be filed with the
11 Presiding Officer in the form of an original and one (1) copy and shall bear
12 a certification that a copy is being delivered to Hearing Counsel and any
13 other parties to this matter in accordance with NH Code of Administrative
14 Rules Ban 204.08. All documents shall be filed by mailing or delivering them
15 to the New Hampshire Banking Department, ATTN: Presiding Officer 07-069, 64B
16 Old Suncook Road, Concord, NH 03301. Filing by facsimile or electronic
17 transmission shall not be accepted; and

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

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

IT IS FURTHER ORDERED, that a copy of this Notice of hearing shall be
mailed to Counsel for Respondent Smith and that a copy shall also be

1 delivered to all other named Respondents, James Shepard, Hearing Counsel, and
2 to the Presiding Officer at the New Hampshire Banking Department.

3 **SO ORDERED,**

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5 /s/
6 Peter C. Hildreth
7 Commissioner
8 State of New Hampshire
9 Banking Department

8/8/07
Date

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