

1 State of New Hampshire Banking Department

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3 In re the Matter of:) Case No.: 07-093
)
 4 State of New Hampshire Banking) Notice of Hearing - Order to Show
) Cause with Immediate Suspension
 5 Department,)
)
 6 Petitioner,)
)
 7 and)
)
 8 Mortgages Unlimited Corporation,)
)
 9 Respondent)
)

10
11 NOTICE OF HEARING

12 Pursuant to RSA 397-A:17, the Banking Department of the State of New
13 Hampshire (hereinafter the "Department") has the authority to issue an order
14 to show cause why license revocation penalties for violations of New
15 Hampshire Banking laws should not be imposed.

16 Pursuant to RSA 397-A:21, the Commissioner has the authority to
17 suspend, revoke or deny any license and to impose administrative penalties of
18 up to \$2,500.00 for each violation of New Hampshire banking law and rules.
19 Upon a finding of irreparable harm if revocation of the license is delayed
20 the Commissioner may summarily suspend any license pending final
21 determination of the Order to Show Cause.

22 Pursuant to New Hampshire Banking law, RSA 397-A:5 III (c) each
23 mortgage banker shall post a continuous surety bond in the amount of
24 \$20,000.00 to the Department.
25

1 Pursuant to New Hampshire Banking law, RSA 397-A:13 II provides that
2 each licensee shall file a financial statement within 90 days from the date
3 of its fiscal year end.

4 Pursuant to New Hampshire Banking law, RSA 397-A:13 VI provides that
5 any officer, owner, manager or agent of any licensee shall reply promptly in
6 writing, or other designated form, to any written inquiry from the
7 Department.

8 The Department issued to the Respondent an Order to Show Cause and an
9 Immediate Suspension of the license on March 26, 2007. RSA 541-A requires
10 the Department to hold a hearing on such summary action within ten working
11 days.

12 This hearing shall address the immediate suspension issue for the
13 following allegation:

14 **Issue 1:** Failure to post a continuous surety bond.

15
16 Accordingly, an adjudicative proceeding shall be commenced pursuant to
17 541-A:31 and Chapter 200 of the Department's rules (NH Code of Administrative
18 Rules BAN 200) for the purpose of permitting the Respondent to show
19 compliance with RSA 397-A:5 and RSA 397-A:13.

20 Each party has the right to have an attorney present to represent the
21 party at the party's expense, or may represent itself. Each party has the
22 right to have the Department provide a certified shorthand court reporter at
23 the requesting party's expense. Any such request must be submitted in
24 writing to the Department at least 5 days prior to a scheduled hearing date.

25 THEREFORE, IT IS ORDERED, that the Respondent appear before the New
Hampshire Banking Department on May 9, 2007 at 10:00am, at the Department's
offices at 64B Old Suncook Road, Concord, New Hampshire, for the purpose of

1 participating in an adjudicative proceeding, at which time the Respondent
2 will have the opportunity to demonstrate why the cease and desist order
3 should not become permanent; and

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

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

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

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

25 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 May 7, 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 have the burden of
7 setting forth a *prima facie* case, then the Respondent shall have the burden
8 of showing compliance with applicable law by a preponderance of the evidence;

9 IT IS FURTHER ORDERED, that Respondents' 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,
15 or upon the Presiding Officer's own initiative, such record shall be
16 transcribed by a certified court reporter designated by the Presiding
17 Officer, and that all costs shall be borne solely by the requesting party.
18 Any such request shall be submitted in writing to the Presiding Officer prior
19 to hearing.

20 IT IS FURTHER ORDERED, that all documents shall be filed with the
21 Presiding Officer in the form of an original and one (1) copy and shall bear
22 a certification that a copy is being delivered to Hearing Counsel and any
23 other parties to this matter in accordance with NH Code of Administrative
24 Rules Ban 204.08. All documents shall be filed by mailing or delivering them
25 to the New Hampshire Banking Department, ATTN: Presiding Officer, 64B Old
Suncook Road, 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

