

1 State of New Hampshire Banking Department

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3 In re the Matter of: ) Case No.: 07-101  
 )  
 4 State of New Hampshire Banking ) Notice of Hearing  
 )  
 5 Department, )  
 )  
 6 and )  
 )  
 7 Thomas and Kristen Baker )  
 )  
 8 Complainant, )  
 )  
 9 and )  
 )  
 10 Tri-State Mortgage Consultants, LLC,  
 )  
 11 Respondent

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12  
13 NOTICE OF HEARING

14 Pursuant to RSA 383:10-d The commissioner shall have exclusive authority  
15 and jurisdiction to investigate conduct that is or may be an unfair or  
16 deceptive act or practice under RSA 358-A and exempt under RSA 358-A:3, I or  
17 that may violate any of the provisions of Titles XXXV and XXXVI and  
18 administrative rules adopted thereunder. The commissioner may hold hearings  
19 relative to such conduct and may order restitution for a person or persons  
20 adversely affected by such conduct.

21 On October 23, 2006 the New Hampshire Banking Department ("Department")  
22 received a complaint from Complainant regarding Respondent. On review the  
23 Commissioner has determined that a factual discrepancy exists between the  
24 parties and that a proper determination of what restitution is due, if any,  
25 will best be determined by an administrative hearing wherein each party will  
present their evidence to an appointed Presiding Officer.

1 **Issue 1:** Whether the Respondent violated a provision of the New Hampshire  
2 Banking Laws or committed an unfair or deceptive trade practice

3 **Issue 2:** What restitution may be due Complainant for Respondent's violation  
4 if established

5 Accordingly, an adjudicative proceeding shall be commenced pursuant to  
6 541-A:31 and Chapter 200 of the Department's rules (NH Code of  
7 Administrative Rules BAN 200) for the purpose of permitting the Respondent to  
8 show compliance with RSA 397-A and determine if Restitution should be ordered  
9 pursuant to RSA 383:10-d.

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. Each party has the  
12 right to have the Department provide a certified shorthand court reporter at  
13 the requesting party's expense. Any such request must be submitted in  
14 writing to the Department at least 10 days prior to a scheduled hearing date.

15 THEREFORE, IT IS ORDERED, that the Respondent appear before the New  
16 Hampshire Banking Department on May 29, 2007 at 10:00 am, at the Department's  
17 offices at 64B Old Suncook Road, Concord, New Hampshire, for the purpose of  
18 participating in an adjudicative proceeding, at which time the Respondent  
19 will have the opportunity to demonstrate why restitution should not be  
20 imposed; and

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

24 IT IS FURTHER ORDERED, that James Shepard, Staff Attorney, shall serve  
25 as the Presiding Officer in this proceeding and shall issue a RECOMMENDED

1 DECSISION in this matter which shall be reviewed and approved, disapproved or  
2 modified by the Bank Commissioner; and

3  
4 IT IS FURTHER ORDERED, that Respondent shall file an answer to each of  
5 the issues set forth in this Notice of Hearing, and any amendments hereto, by  
6 no later than 15 days from receipt. Such answer shall first admit or deny  
7 the allegation and then set forth any and all explanations or defenses to the  
8 allegation; and

9 IT IS FURTHER ORDERED, that any proposed exhibits shall be pre-marked,  
10 for identification only, and filed with the Department and provided to the  
11 opposing party not later than May 24, 2007. Complainants shall pre-mark  
12 their exhibits with Arabic numbers. Respondent shall pre-mark exhibits with  
13 capital letters. An index/list of exhibits providing a brief description of  
14 each exhibit with its corresponding pre-marked number or letter shall be  
15 filed by both parties simultaneous with the filing of exhibits; and

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

21 IT IS FURTHER ORDERED, that parties shall file answer/objections to  
22 pleadings within ten (10) calendar days of the date the pleading is deemed  
23 "filed"; and  
24  
25

1 IT IS FURTHER ORDERED, that the Complainant shall have the burden of  
2 setting forth a *prima facia* case, then the Respondent shall have the burden of  
3 showing compliance with applicable law by a preponderance of the evidence;

4  
5 IT IS FURTHER ORDERED, that Respondent's failure to appear at the time,  
6 date, and place specified may result in the hearing being held *in absentia*  
7 and/or default ruling in favor of the Complainant, without further notice or  
8 opportunity to be heard; and

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

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

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

