

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 07-194
)
 3 State of New Hampshire Banking) Order to Show Cause
)
 4 Department,)
)
 5 Petitioner,)
)
 6 and)
)
 7 National Lending Corporation,)
)
 8 Katherine Le,)
)
 9 Respondents

10 NOTICE OF ORDER

11 This Order commences an adjudicative proceeding under the provisions of
12 RSA 397-A, RSA 541-A, BAN 200 and JUS 800 as applicable.

13 LEGAL AUTHORITY AND JURISDICTION

14 Pursuant to RSA 397-A:17, the Commissioner has the authority to order
15 any person under his jurisdiction to show cause why a license should not be
16 revoked and fines paid as a result of violations of the Chapter.

17 Pursuant to RSA 397-A:18, the Commissioner may issue a cease and desist
18 order against any licensee who it has reasonable cause to believe is in
19 violation of the provisions of the Chapter.

20 Pursuant to RSA 397-A:21, the Commissioner has the authority to
21 suspend, revoke or deny any license and to impose administrative penalties of
22 up to \$2,500.00 for each violation of New Hampshire banking law and rules.

23 Pursuant to RSA 397-A:21, every person who directly or indirectly
24 controls a person liable under this section, every partner, principal executive
25 officer or director of such person, every person occupying a similar status or
performing a similar function, every employee of such person who materially
aids in the act constituting the violation, and every licensee or person acting

1 as a common law agent who materially aids in the acts constituting the
2 violation, either knowingly or negligently, may, upon notice and opportunity
3 for hearing, and in addition to any other penalty provided for by law, be
4 subject to suspension, revocation, or denial of any registration or license,
5 including the forfeiture of any application fee, or the imposition of an
6 administrative fine not to exceed \$2,500, or both.

7 Pursuant to RSA 383:10-d, the Commissioner shall have exclusive
8 authority and jurisdiction to investigate conduct that is or may be an unfair
9 or deceptive act or practice under RSA 358-A and exempt under RSA 358-A:3, I or
10 that may violate any of the provisions of Titles XXXV and XXXVI and
11 administrative rules adopted thereunder. The Commissioner may hold hearings
12 relative to such conduct and may order restitution for a person or persons
13 adversely affected by such conduct. Nothing in this cause shall impair a
14 consumer's right of recovery under 383:10-d.

15 **NOTICE OF RIGHT TO REQUEST A HEARING**

16 The above named respondents have the right to request a hearing on this
17 Order to Show Cause, as well as the right to be represented by counsel. A
18 hearing shall be held not later than 10 days after the request for such hearing
19 is received by the commissioner. Any such request for a hearing shall be in
20 writing, and signed by the respondent(s) or by the duly authorized agent of
21 the above named respondent(s), and shall be delivered either by hand or
22 certified mail, return receipt request, to the Banking Department, State of
23 New Hampshire, 64B Old Suncook Road, Concord, NH 03301.

24 If respondents fail to request a hearing or respond to the show cause
25 order within 30 calendar days of receipt of this order, respondent shall be
deemed in default, and the penalties requested will be imposed.

26 **STATEMENT OF ALLEGATIONS**

The allegations contained in the Staff Petition for Relief dated May

1 20, 2008 (a copy of which is attached hereto) are incorporated by reference
2 hereto.

3 ORDER

4 WHEREAS, finding it necessary and appropriate and in the public
5 interest, and consistent with the intent and purposes of the New Hampshire
6 banking laws, and

7 WHEREAS, finding that the allegations contained in the Staff Petition,
8 if proved true and correct, form the legal basis of the relief requested,

9 It is hereby ORDERED, that:

- 10 1. Respondent National Lending Corporation shall show cause why
11 penalties in the amount of \$12,500.00 should not be imposed;
12 and
13 2. Respondent Katherine Le shall show cause why penalties in the
14 amount of \$12,500.00 should not be imposed; and
15 3. Respondent National Lending Corporation shall show cause why
16 statutory fines in the amount of \$9,250.00 should not be
17 imposed.
18 4. Respondent National Lending Corporation shall show cause why
19 its license should not be revoked.

20 SIGNED,

21 Dated: 5/28/08

22 /s/
23 PETER C. HILDRETH
24 BANK COMMISSIONER
25

1 State of New Hampshire Banking Department

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10
11 STATEMENT OF ALLEGATIONS

12 I. The staff of the Banking Department, State of New Hampshire (hereinafter
13 referred to as the "Department") alleges the following facts:

14 FACTS COMMON TO ALL COUNTS

- 15 1. National Lending Corporation (hereinafter "Respondent NLC" or "NLC" or
- 16 "licensee") was a mortgage banker licensed by the Department until the
- 17 expiration of its license on December 31, 2007.
- 18 2. During all times relevant to this petition they were either licensed or
- 19 otherwise subject to the jurisdiction of the Commissioner.
- 20 3. Respondent Katherine Le (hereinafter "Respondent Le" or "Le") is or was
- 21 the President of NLC and a 100% owner.
- 22 4. Respondent NLC had a licensed principal office in Houston, Texas and a
- licensed branch office in Manchester, NH.

23 THE 2006 EXAMINATION

- 24 5. The Department examined the business affairs of Respondents starting
- 25 August 2006 and concluding November 2006.

1 **FAILURE TO MAINTAIN SECURITY POLICY (RSA 397-A:17 I(1)) (1 Counts)**

2 6. Paragraphs 1-5 are hereby realleged as if fully set forth herein.

3 7. As a result of their business activity Respondents regularly have in
4 their possession consumer information of a confidential nature.

5 8. The licensee does not have a written policy on safeguarding consumer
6 information.

7 9. A lack of such a policy represents the potential for ongoing public
8 harm.

9 **LATE EXAMINATION MATERIALS (RSA 397-A:11) (2 Counts)**

10 10. Paragraphs 1-9 are hereby realleged as if fully set forth herein.

11 11. Respondent received the notice of examination on July 12, 2006.

12 12. Twenty-one days from July 12, 2006 is August 2, 2006.

13 13. In response to examination requests respondent did not provide tax
14 returns, annual report work papers or a list of officers and directors
15 as requested until September 28, 2006. Said materials were therefore
16 57 days late.

17 14. In response to examination requests respondent did not provide the most
18 recent year-end financial statement until October 19, 2006. Said
19 materials were therefore 78 days late.

20 **THE 2008 EXAMINATION**

21 15. Paragraphs 1-14 are hereby realleged as if fully set forth herein.

22 16. Respondent allowed their license to expire on December 31, 2008.

23 17. As of February 2, 2008 Respondent had not communicated with the
24 Department in any way regarding outstanding matters that may need to be
25 addressed as a result of their lapse in licensure.

18. As a result notice of an examination was sent to Respondent on
February 2, 2008.

FAILURE TO FACILITATE AN EXAMINATION (RSA 397-A:12) (1 Counts)

19. Paragraphs 1-18 are hereby realleged as if fully set forth herein.

1 20. The Respondent has not responded to the multiple attempts to complete
2 the examination process.

3 **OTHER MATTERS**

4 **FAILURE TO SUBMIT ANNUAL REPORT (RSA 397-A:13) (1 COUNT)**

5 21. Paragraphs 1-20 are hereby realleged as if fully set forth herein.

6 22. Respondent has not submitted an annual report for calendar year 2007 as
7 of the petition date.

8 23. It has been in excess of 100 days since February 1, 2008.

9
10 II. The staff of the Banking Department, State of New Hampshire alleges the
11 following issues of law:

12 1. The Banking Department ("Department"), has jurisdiction over the
13 licensing and regulation of persons engaged in mortgage banker / broker
14 activities pursuant to New Hampshire Revised Statutes Annotated (RSA)
15 397-A:3.

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

21 3. Pursuant to RSA 397-A:17, the Department has the power to issue and to
22 serve an order requiring persons to show cause why their license
23 shouldn't be revoked or suspended and penalties imposed for violations
24 of the Chapter. As alleged above Respondents have committed numerous
25 violations of the Chapter.

26 4. Pursuant to RSA 397-A:17 I(1) licensees must abide by all applicable
27 federal laws or rules thereunder. 16 C.F.R. §314.3 requires companies

1 such as licensee to maintain a written comprehensive security policy.
2 Respondents violated this federal rule and therefore violated the
3 Chapter as alleged above.

4 5. Pursuant to RSA 397-A:11 licensees must maintain such records as will
5 allow the Department to determine compliance with the Chapter and the
6 rules adopted pursuant to it including a provision that the licensee
7 must return files and other requested records to the Department within
8 21 days. Respondents violated the Chapter on at least 2 occasions by
9 not submitting information in a timely manner as alleged above.

10 6. Pursuant to NH RSA 397-A:11 failure to respond to certain business
11 records requests within 21 days renders licensees subject to a
12 statutory penalty of \$50 per day until such time as the documents are
13 produced.

14 7. Pursuant to NH RSA 397-A:12 the Department may examine the affairs of a
15 licensee or any other person, whether licensed or not, as it deems
16 necessary to determine compliance with this Chapter. Respondents have
17 violated the statute by ignoring all examination attempts.

18 8. Pursuant to NH RSA 397-A:13 each person who was licensed must file an
19 annual report by February 1 of the year following such licensure. The
20 Respondent violated this statute by failing to submit an annual report.

21 9. Pursuant to NH RSA 397-A:13 each person who fails to timely submit an
22 annual report shall pay a statutory penalty of \$25 per day its late
23 until the fine reaches \$2,500.00

24 10. RSA 397-A:21 IV provides that any person who, either knowingly or
25 negligently, violates any provision of RSA 397-A, may upon notice and
opportunity for hearing, be subject to suspension, revocation, and
administrative fines not to exceed \$2,500. Each of the acts specified
shall constitute a separate violation, and such administrative action
or fine may be imposed in addition to any criminal penalties or civil

1 liabilities imposed by New Hampshire banking laws. Respondent is
2 subject to revocation and administrative fines for violations as
3 alleged above.

4 11.RSA 397-A:21 V provides that every person who directly or indirectly
5 controls a person liable under this section, every partner, principal
6 executive officer or director of such person, every person occupying a
7 similar status or performing a similar function, every employee of such
8 person who materially aids in the act constituting the violation, and
9 every licensee or person acting as a common law agent who materially aids
10 in the acts constituting the violation, either knowingly or negligently,
11 may, upon notice and opportunity for hearing, and in addition to any
12 other penalty provided for by law, be subject to suspension, revocation,
13 or denial of any registration or license, including the forfeiture of any
14 application fee, or the imposition of an administrative fine not to
15 exceed \$2,500, or both.

16 **RELIEF REQUESTED**

17 The staff of the Banking Department requests the Commissioner take the
18 following action:

- 19 1. Find as fact the allegations contained in section I of the Statement of
20 Allegations of this petition.
- 21 2. Make conclusions of law relative to the allegations contained in section
22 II of the Statement of Allegations of this petition.
- 23 3. Pursuant to NH RSA 397-A:21, immediately Order Respondent NLC to Show
24 Cause why his license should not be revoked.
- 25 4. Assess fines and administrative penalties in accordance RSA 397-A:22, for
violations of the New Hampshire Banking Laws, in the number and amount
equal to the violations set forth in section II of the Statement of
Allegations of this petition. Each Respondent is subject to an

1 administrative penalty of \$12,500 for violations as enumerated above.

2 5. Pursuant to NH RSA 397-A:11, Order Respondents to Show Cause why they
3 should not have to pay a statutory penalty of \$2,850.00 for the violation
4 alleged at I.13.

5 6. Pursuant to NH RSA 397-A:11, Order Respondents to Show Cause why they
6 should not have to pay a statutory penalty of \$3,900.00 for the violation
7 alleged at I.14.

8 7. Pursuant to NH RSA 397-A:13, Order Respondents to Show Cause why they
9 should not have to pay a statutory penalty of \$2,500.00 for the violation
10 alleged at I.22-23.

11 8. Make such other administrative and legal actions as are necessary for
12 enforcement of the New Hampshire Banking laws, the protection of New
13 Hampshire citizens, and to provide other equitable relief.

14 **RIGHT TO AMEND**

15 The Department reserves the right to amend this Petition for Relief and
16 to request that the Banking Department Commissioner take additional
17 administrative action. Nothing herein shall preclude the Department from
18 bringing additional enforcement action under RSA 397-A or the regulations
19 thereunder.

20 Respectfully submitted by:

21
22 _____/s/
23 James Shepard
24 Staff Attorney

25 _____ 5/20/08
Date