

1 State of New Hampshire Banking Department

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3 In re the Matter of:) Case No.: 07-216
)
 4 State of New Hampshire Banking) Notice of Hearing-Order to Show Cause
) And Cease and Desist Order
 5 Department,)
)
 6 Petitioner,)
)
 7 and)
)
 8 American Home Mortgage Corp, Michael)
)
 9 J. Strauss, Stephen A. Hozie, and)
)
 10 Alan B. Horn,
 11 Respondents

12
13 NOTICE OF HEARING

14 Pursuant to RSA 397-A:18 II, the Banking Department of the State of New
15 Hampshire (hereinafter the "Department") has the authority to issue and cause
16 to be served an order requiring any person engaged in any act or practice
17 constituting a violation of RSA 397-A or any rule or order thereunder, to
18 cease and desist from violations of RSA 397-A.

19 Pursuant to RSA 397-A:20, the Commissioner may issue, amend, or rescind
20 such orders as are reasonably necessary to comply with the provisions of the
21 Chapter.

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

25 Pursuant to RSA 383:10-d, the Commissioner shall have exclusive
authority and jurisdiction to investigate conduct that is or may be an unfair
or deceptive act or practice under RSA 358-A and exempt under RSA 358-A:3, I or

1 that may violate any of the provisions of Titles XXXV and XXXVI and
2 administrative rules adopted thereunder. The Commissioner may hold hearings
3 relative to such conduct and may order restitution for a person or persons
4 adversely affected by such conduct.

5 The Department issued the Respondent a Cease and Desist Order on August
6 2, 2007. The Respondent filed a timely request for a hearing regarding this
7 matter.

8 The Department alleges the following:

9 **Issue 1:** Violation of BAN 2407-01.

10 **Issue 2:** Violation of RSA 397-A:14-b.

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.

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. Each party has the
17 right to have the Department provide a certified shorthand court reporter at
18 the requesting party's expense. Any such request must be submitted in
19 writing to the Department at least 5 days prior to a scheduled hearing date.

20 THEREFORE, IT IS ORDERED, that the Respondent appear before the New
21 Hampshire Banking Department on **August 15, 2007 at 12:00 pm**, at the
22 Department's offices at 64B Old Suncook Road, Concord, New Hampshire, for the
23 purpose of participating in an adjudicative proceeding, at which time the
24 Respondents will have the opportunity to demonstrate why the cease and desist
25 order should not become permanent; and

1 IT IS FURTHER ORDERED, that if the Respondents elect to be represented
2 by Counsel, said Counsel shall file notice of appearance at the earliest
3 possible date; and

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

9 IT IS FURTHER ORDERED, that the Commissioner shall designate Maryam
10 Torben-Desfosses, who shall serve as the Presiding Officer in this proceeding
11 and shall issue a RECOMMENDED DECISION in this matter which shall be reviewed
12 and approved, disapproved or modified by the Bank Commissioner; and

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

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

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

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

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

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

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

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

27 IT IS FURTHER ORDERED, that a copy of this Notice of hearing shall be
28 mailed to all named Respondents, 538 Broadhollow Road, Melville, NY 11747 and

