

1 State of New Hampshire Banking Department

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3 In re the Matter of:) Case No.: 07-283
))
4 State of New Hampshire Banking) Notice of Hearing - Order to Show
) Cause
5 Department,)
))
6 Petitioner,)
))
7 and)
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8 Elliot A. Willard d/b/a Family)
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9 Mortgage Company, Elliot A. Willard)
))
10 and Gilbert W. Cox,
))
11 Respondents

12
13 NOTICE OF HEARING

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

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

24 Pursuant to RSA 397-A:12, persons being examined shall facilitate the
25 examination.

The Department issued the Respondents an Order to Show Cause with
Immediate Suspension on October 30, 2007. Since the Orders were issued with

1 an immediate suspension the Department must schedule a hearing to be held
2 within ten days of said order.

3 The Department alleges the following:

4 **Issue 1: Failure to facilitate an examination (RSA 397-A:12).**

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 Respondents
8 to show compliance with RSA 397-A and the Rules adopted thereunder.

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

11 THEREFORE, IT IS ORDERED, that the Respondents appear before the New
12 Hampshire Banking Department on **November 9, 2007 at 10:00 am**, at the
13 Department's offices at 64B Old Suncook Road, Concord, New Hampshire, for the
14 purpose of participating in an adjudicative proceeding, at which time the
15 Respondents will have the opportunity to demonstrate why the relief sought in
16 the show cause order should not become permanent; and

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

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

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

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

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

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

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

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

25 IT IS FURTHER ORDERED, that a record of the proceeding shall be made by
a certified shorthand court reporter provided by the Department.

IT IS FURTHER ORDERED, that all documents shall be filed with the
Presiding Officer in the form of an original and one (1) copy and shall bear a
certification that a copy is being delivered to Hearing Counsel and any other

