

1 State of New Hampshire Banking Department

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3 In re the Matter of:) Case No.: 08-048
)
 4 State of New Hampshire Banking) Notice of Hearing - Order to Show
) Cause
 5 Department,)
)
 6 Petitioner,)
)
 7 and)
)
 8 Birt and Briggs Mortgage Consultants)
)
 9 LLC, Charles J. Birt and Donna)
)
 10 Briggs,
 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 Hampshire
17 Banking laws should not be imposed.

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

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

23 The Department issued the Respondents an Order to Show Cause on February
24 4, 2008. Respondents filed a timely request for hearing.

25 The Department alleges the following:

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

1 Accordingly, an adjudicative proceeding shall be commenced pursuant to
2 541-A:31 and Chapter 200 of the Department's rules (NH Code of Administrative
3 Rules BAN 200) and Chapter 800 of the Department of Justice's rules (NH Code
4 of Administrative Rules JUS 800) as applicable for the purpose of permitting
5 the Respondents to show compliance with RSA 397-A and the Rules adopted
6 thereunder.

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

12 THEREFORE, IT IS ORDERED, that the Respondents appear before the New
13 Hampshire Banking Department on **March 27, 2008 at 10:30 am**, at the **New
14 Hampshire Bar Association, 2 Pillsbury Street, Concord, New Hampshire**, for the
15 purpose of participating in an adjudicative proceeding, at which time the
16 Respondents will have the opportunity to demonstrate why the relief sought in
17 the show cause order should not become permanent; and

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

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

 IT IS FURTHER ORDERED, that any proposed exhibits shall be pre-marked,
for identification only, and filed with the Department and provided to the
opposing party **on or before March 24, 2008**. Hearing Counsel shall pre-mark

1 the Department's exhibits with Arabic numbers. **The Respondents shall pre-mark**
2 **exhibits with capital letters.** An index/list of exhibits providing a brief
3 description of each exhibit with its corresponding pre-marked number or letter
4 shall be filed by both parties simultaneous with the filing of exhibits; and

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

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

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

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

21 IT IS FURTHER ORDERED, that all documents shall be filed with the
22 Presiding Officer in the form of an original and one (1) copy and shall bear a
23 certification that a copy is being delivered to Hearing Counsel and any other
24 parties to this matter in accordance with NH Code of Administrative Rules Ban
25 204.08. All documents shall be filed by mailing or delivering them to the New
Hampshire Banking Department, ATTN: Presiding Officer 08-048, 64B Old Suncook
Road, Concord, NH 03301. Filing by facsimile or electronic transmission shall
not be accepted; and

