

1 State of New Hampshire Banking Department

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3 In re the Matter of:)Case No.: 08-381
)
 4 State of New Hampshire Banking)Notice of Hearing - Order to Show
)Cause with Immediate Suspension
 5 Department,)
)
 6 Petitioner,)
)
 7 and)
)
 8 Empire Equity Group, Inc. (d/b/a 1st)
)
 9 Metropolitan of NY), Corporate Office)
)
 10 Management Providers, Inc., Daniel)
)
 11 Howard Jacobs, Joshua Israel Lieber,)
)
 12 Ezra S. Beyman, William Dean Warren,)
)
 13 and Christopher Derek Max,)
)
 14 Respondents)
)

15
16 NOTICE OF HEARING

17 Pursuant to RSA 397-A:17, the Banking Department of the State of New
18 Hampshire (hereinafter the "Department") has the authority to issue an order
19 to show cause why license revocation penalties for violations of New
20 Hampshire Banking laws should not be imposed. The Commissioner has the
21 further authority to impose an immediate suspension. Upon a finding of
22 irreparable harm if revocation of the license is delayed, the Commissioner
23 may summarily suspend any license pending final determination of the Order
to Show Cause.

24 Pursuant to RSA 397-A:21, the Commissioner has the authority to
25 suspend, revoke or deny any license and to impose administrative penalties

1 of up to \$2,500.00 for each violation of New Hampshire banking laws and
2 rules.

3 The Department issued to the above named Respondents an Order to Show
4 Cause with an Immediate Suspension and Cease and Desist Order of the license
5 on November 6, 2008. RSA 541-A requires the Department to hold a hearing on
6 such summary action within ten (10) working days.

7 The Department alleges the following:

8 **Issue 1: Violation of the Gramm-Leach-Bliley Act, Title 5, Section 501(a)**
9 **(via RSA 397-A:2,III);**

10 **Issue 2: Violation of Title 18 U.S.C. Section 1001, et seq. (via RSA 397-**
11 **A:2,III);**

12 **Issue 3: Violation of Title 18 U.S.C. Section 1010 (via RSA 397-A:2, III);**

13 **Issue 4: Violation of Title 18 U.S.C. Section 1344 (via RSA 397-A:2, III);**

14 **Issue 5: Failure to inform Bank Commissioner of office closure (RSA 397-**
15 **A:10,III);**

16 **Issue 6: Failure to update information on file with Bank Commissioner (RSA**
17 **397-A:10,IV);**

18 **Issue 7: Failure to Maintain Records (RSA 397-A:11,I);**

19 **Issue 8: Destruction of Records (RSA 397-A:11,IV);**

20 **Issue 9: Failure to facilitate examination (RSA 397-A:12, VII);**

21 **Issue 10: Failure to Correct Reported Deficiencies (RSA 397-A:12,VIII);**

22 **Issue 11: Violation of Federal Laws and Rules (RSA 397-A:17,I(f));**

23 **Issue 12: Failure to Supervise (RSA 397-A:17,I(g));**

24 **Issue 13: Dishonest or Unethical Practices (RSA 397-A:17,I(k));**

25 **Issue 14: Violation of Federal Laws and Rules (RSA 397-A:17,I(l));**

Accordingly, an adjudicative proceeding shall be commenced pursuant to
541-A:31 and Chapter 200 of the Department's rules (NH Code of
Administrative Rules BAN 200 and JUS 800 as applicable) for the purpose of

1 permitting the Respondents to show compliance with the above state
2 violations in Issues 1 through 16.

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

5 THEREFORE, IT IS ORDERED, that the Respondents appear before the New
6 Hampshire Banking Department on **November 21, 2008 at 10:00 am**, at the
7 Department's offices at 53 Regional Drive, Suite 200, Concord, New Hampshire
8 03301, for the purpose of participating in an adjudicative proceeding, at
9 which time the Respondents will have the opportunity to demonstrate why the
10 relief sought in the show cause order with immediate suspension should not
11 become permanent; and

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

15 IT IS FURTHER ORDERED, that Maryam Torben Desfosses, Hearings
16 Examiner, New Hampshire Banking Department is designated as Hearings
17 Examiner in this matter with authority to represent the public interest
18 within the scope of the Department's authority. The Hearings Examiner shall
19 have the status of a party to this proceeding; and

20 IT IS FURTHER ORDERED, a Presiding Officer (to be appointed by the
21 Banking Commissioner) shall issue a RECOMMENDED DECISION in this matter
22 which shall be reviewed and approved, disapproved or modified by the Banking
23 Commissioner; and

24 IT IS FURTHER ORDERED, that any proposed exhibits shall be pre-marked,
25 for identification only, and filed with the Department and provided to the
opposing party **as soon as possible**. Hearings Examiner shall pre-mark the
Department's exhibits with Arabic numbers. The Respondents shall pre-mark
exhibits with capital letters. An index/list of exhibits providing a brief
description of each exhibit with its corresponding pre-marked number or

1 letter shall be filed by both parties simultaneous with the filing of
2 exhibits; and

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

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

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

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

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

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
23 a certification that a copy is being delivered to Hearings Examiner and any
24 other parties to this matter in accordance with NH Code of Administrative
25 Rules Ban 204.08. All documents shall be filed by mailing or delivering them
to the New Hampshire Banking Department, ATTN: Presiding Officer 08-381, 53
Regional Drive, Suite 200, Concord, NH 03301. Filing by facsimile or
electronic transmission shall not be accepted; and

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

5 IT IS FURTHER ORDERED, that routine procedural inquiries may be made
6 by telephoning Mary Jurta at (603)271-3561, but all other communications
7 with the Presiding Officer and with the Department shall be in writing and
8 shall be filed as provided above. *Ex parte* communications are forbidden by
statute; and

9 IT IS FURTHER ORDERED, that a copy of this Notice of Hearing shall be
10 mailed to all named Respondents at their addresses of record and that a copy
11 shall also be delivered to Maryam Torben Desfosses, Hearings Examiner, and
12 to the Presiding Officer at the New Hampshire Banking Department.

13 **SO ORDERED,**

14 _____
15 /s/
16 Peter C. Hildreth
17 Commissioner
18 State of New Hampshire
19 Banking Department
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11/6/08
Date