

1 State of New Hampshire Banking Department

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3 In re the Matter of:)Case No.: 08-384
)
 4 State of New Hampshire Banking)Notice of Hearing - Order to Show
)Cause with Immediate Suspension
 5 Department,)
)and
 6 Petitioner,)
)Cease and Desist Order
 7 and)
)
 8 Elliot A. Willard (d/b/a Family)
)
 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. The Commissioner has the
 18 further authority to impose an immediate suspension. Upon a finding of
 19 irreparable harm if revocation of the license is delayed, the Commissioner
 20 may summarily suspend any license pending final determination of the Order
 21 to Show Cause.

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

1 The Department issued to the above named Respondents an Order to Show
2 Cause with an Immediate Suspension and Cease and Desist Order of the license
3 on November 13, 2008. RSA 541-A requires the Department to hold a hearing
4 on such summary action within ten (10) working days.

5 The Department alleges the following:

6 **Issue 1: Failure to Supervise (RSA 397-A:6, I);**

7 **Issue 2: Failure to Pay Examination Fee (RSA 397-A:12, V);**

8 **Issue 3: Failure of Officers and Owners to Respond to Department Inquiries**
9 **(RSA 397-A:13, VI);**

10 **Issue 4: Violation of RSA 397-A:17, I(a) (via RSA 397-A:2, III);**

11 **Issue 5: Breach of Consent Orders by a violation of RSA 397-A:17, I(a)**
12 **(via RSA 397-A:2, III); and**

13 **Issue 6: False or Misleading Statements to Commissioner**
14 **(RSA 397-A:17, I(e)).**

15 Accordingly, an adjudicative proceeding shall be commenced pursuant to
16 541-A:31 and Chapter 200 of the Department's rules (NH Code of
17 Administrative Rules BAN 200 and JUS 800 as applicable) for the purpose of
18 permitting the Respondents to show compliance with the above state
19 violations in Issues 1 through 6.

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

22 THEREFORE, IT IS ORDERED, that the Respondents appear before the New
23 Hampshire Banking Department on **November 24, 2008 at 11:00 am**, at the
24 Department's offices at 53 Regional Drive, Suite 200, Concord, New Hampshire
25 03301, for the purpose of participating in an adjudicative proceeding, at
which time the Respondents will have the opportunity to demonstrate why the
relief sought in the show cause order with immediate suspension 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 Maryam Torben Desfosses, Hearings
5 Examiner, New Hampshire Banking Department is designated as Hearings
6 Examiner in this matter with authority to represent the public interest
7 within the scope of the Department's authority. The Hearings Examiner shall
8 have the status of a party to this proceeding; and

9 IT IS FURTHER ORDERED, a Presiding Officer (to be appointed by the
10 Banking Commissioner) shall issue a RECOMMENDED DECISION in this matter
11 which shall be reviewed and approved, disapproved or modified by the Banking
12 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 **as soon as possible**. Hearings Examiner 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 the parties shall exchange a list of all
22 exhibits and witnesses to be called at the hearing with a brief summary at
23 the hearing, and shall at the same time file a copy of their respective
24 lists with the Presiding Officer; and

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

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

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

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

10 IT IS FURTHER ORDERED, that all documents shall be filed with the
11 Presiding Officer in the form of an original and one (1) copy and shall bear
12 a certification that a copy is being delivered to Hearings Examiner and any
13 other parties to this matter in accordance with NH Code of Administrative
14 Rules Ban 204.08. All documents shall be filed by mailing or delivering them
15 to the New Hampshire Banking Department, ATTN: Presiding Officer 08-384, 53
16 Regional Drive, Suite 200, Concord, NH 03301. Filing by facsimile or
17 electronic transmission shall not be accepted; and

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

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

 IT IS FURTHER ORDERED, that a copy of this Notice of Hearing shall be
mailed to all named Respondents at their addresses of record and that a copy

