

1 State of New Hampshire Banking Department

2

3 In re the Matter of:) Case No.: 08-BD-001
))
4 State of New Hampshire Banking) Notice of Hearing
))
5 Department,))
))
6 and))
))
7 David A. Maloof))
))
8 Complainant,))
))
9 and))
))
10 Franklin Savings Bank))
))
11 Respondent))
))

12
13 NOTICE OF HEARING

14 Pursuant to RSA 383:10-d ("Consumer Complaints and Restitution"), the
15 New Hampshire Bank Commissioner (hereinafter, "Commissioner") shall have
16 exclusive authority and jurisdiction to investigate conduct that is or may be
17 an unfair or deceptive act or practice under RSA 358-A ("Regulation of
18 Business Practices for Consumer Protection") and exempt under RSA 358-A:3, I
19 ("Exempt Transactions; ect.") or that may violate any of the provisions of
20 Titles XXXV ("Banks and Banking; Loan Associations; Credit Unions") and XXXVI
21 ("Pawnbrokers and Money Lenders") and administrative rules adopted thereunder.
22 The Commissioner may hold hearings relative to such conduct and may order
23 restitution for a person or persons adversely affected by such conduct.

24 On February 13, 2008 the New Hampshire Banking Department (hereinafter
25 "Department") received a complaint from David A. Maloof (hereinafter,
"Complainant") regarding Franklin Savings Bank (hereinafter, "Respondent").

1 On review, the Commissioner has determined that a factual discrepancy exists
2 between the parties and that a proper determination of what restitution is
3 due, if any, will best be determined by an administrative hearing wherein
4 each party will present their evidence to an appointed Presiding Officer.

5 **Issue 1:** Whether the Respondent violated a provision of the New Hampshire
6 and federal banking laws or committed an unfair or deceptive trade practice.

7 **Issue 2:** What restitution may be due to the Complainant for Respondent's
8 violation, if such is established.

9 Accordingly, an adjudicative proceeding shall be commenced pursuant to
10 RSA 541-A:31 ("Availability of Adjudicative Proceeding; Contested Cases;
11 Notice, Hearing and Record") and New Hampshire Code of Administrative Rules
12 BAN 200 ("Practice and Procedure") for the purpose of permitting the
13 Respondent to show compliance with RSA 358-A ("Regulation of Business
14 Practices for Consumer Protection") and internal bank policies, including the
15 Funds Availability Disclosure issued by the bank. Pursuant to RSA 383:9
16 ("Duties"), the New Hampshire Bank Commissioner has general supervision of
17 all state-chartered banks. Therefore, the New Hampshire Bank Commissioner
18 may determine if restitution should be ordered pursuant to RSA 383:10-d and
19 whether administrative penalties should be assessed.

20 Each party has the right to have an attorney present to represent the
21 party at the party's expense, or each party may represent itself. Each party
22 has the right to have the Department provide a certified shorthand court
23 reporter at the requesting party's expense. Any such request must be
24 submitted in writing to the Department at least 10 days prior to a scheduled
25 hearing date.

26 THEREFORE, IT IS ORDERED, that the Respondent appear before the New
27 Hampshire Banking Department on Thursday, April 17, 2008 at 9:00 am at the
28 New Hampshire Bar Association located at 2 Pillsbury Street, Suite 300,

1 Concord NH, 03301, for the purpose of participating in an adjudicative
2 proceeding, at which time the Respondent will have the opportunity to
3 demonstrate why restitution should not be imposed; and

4
5 IT IS FURTHER ORDERED, that if Respondent or Complainant elect to be
6 represented by Counsel, said Counsel shall file Notice of Appearance at the
7 earliest possible date; and

8 IT IS FURTHER ORDERED, that Staff Attorney, James Shepard, shall serve
9 as the Presiding Officer in this proceeding and shall issue a RECOMMENDED
10 DECISION in this matter which shall be reviewed and approved, disapproved or
11 modified by the Commissioner; and

12
13 IT IS FURTHER ORDERED, that Respondent shall file an answer to each of
14 the issues set forth in this Notice of Hearing, and any amendments hereto, no
15 later than 15 days from receipt. Such answer shall first admit or deny the
16 allegation and then set forth any and all explanations or defenses to the
17 allegation; and

18 IT IS FURTHER ORDERED, that any proposed exhibits shall be pre-marked,
19 for identification only, and filed with the Department and provided to the
20 opposing party not later than Friday, April 11, 2008. Complainants shall
21 pre-mark their exhibits with Arabic numbers. Respondent shall pre-mark
22 exhibits with capital letters. An index/list of exhibits providing a brief
23 description of each exhibit with its corresponding pre-marked number or
24 letter shall be filed by both parties simultaneous with the filing of
25 exhibits; and

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

6 IT IS FURTHER ORDERED, that parties shall file answer/objections to
7 pleadings within ten (10) calendar days of the date the pleading is deemed
8 "filed"; and

9
10 IT IS FURTHER ORDERED, that the Complainant shall have the burden of
11 setting forth a *prima facie* case. The Respondent shall have the burden of
12 showing compliance with applicable law by a preponderance of the evidence;

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

17
18 IT IS FURTHER ORDERED, that the entirety of all oral proceedings shall
19 be recorded verbatim by the Department. Upon request of any party, or upon
20 the Presiding Officer's own initiative, such record shall be transcribed by a
21 certified court reporter designated by the Presiding Officer, and that all
22 costs shall be borne solely by the requesting party. Any such request shall
23 be submitted in writing to the Presiding Officer prior to hearing.

24 IT IS FURTHER ORDERED, that all documents shall be filed with the
25 Presiding Officer in the form of an original and one (1) copy and shall bear a

1 certification that a copy is being delivered to any other parties to this
2 matter in accordance with New Hampshire Code of Administrative Rules BAN
3 204.08 ("Filing Requirements"). All documents shall be filed by mailing or
4 delivering them to the New Hampshire Banking Department, ATTN: James Shepard,
5 Presiding Officer, 64B Old Suncook Road, Concord, NH 03301. Filing by
6 facsimile or electronic transmission shall not be accepted; and

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

11
12 IT IS FURTHER ORDERED, that routine procedural inquiries may be made by
13 telephoning Presiding Officer James Shepard at (603)271-3561, but
14 all other communications with the Presiding Officer and with the Department
15 shall be in writing and shall be filed as provided above. *Ex parte*
16 communications are forbidden by statute; and

17 IT IS FURTHER ORDERED, that a copy of this Notice of hearing shall be
18 mailed to David A. Maloof, [ed note: address redacted to protect privacy],
19 and to Jeffery B. Savage, President, Franklin Savings Bank, 387 Central
20 Street, Franklin, NH 03235, and to James Shepard, Presiding Officer, at the
21 New Hampshire Banking Department.

22 **SO ORDERED,**

23
24 _____
25 /SRAF/
Peter C. Hildreth
Commissioner
State of New Hampshire
Banking Department

3/14/08
Date