

1 State of New Hampshire Banking Department

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3 In re the Matter of:) Case No.: 08-BD-002
)
 4 State of New Hampshire Banking) Notice of Hearing
)
 5 Department,) July 22, 2008
)
 6 and)
)
 7 Mortgage Protection Associates (d/b/a)
)
 8 www.mortgageprotectionassociates.net))
)
 9 Respondent)
)
 10)
)
 11)
)
 12)

13 NOTICE OF HEARING

14 Pursuant to RSA 384:12-a ("Cease and Desist Order"), IV, if, in the
 15 opinion of the New Hampshire Banking Department (hereinafter, "Department"),
 16 an individual or business entity is engaging in or has engaged in any act or
 17 conduct in violation of RSA 384:67 ("Unauthorized and Deceptive Use of the
 18 name of a Financial Institution"), the Department may issue and serve an
 19 order upon the individual or business entity requiring the individual or
 20 business entity to cease and desist from such act or conduct.

21 The Department issued the Respondent a Cease and Desist Order on
 22 July 2, 2008. Respondent filed a timely request for a hearing.

23 The Department alleges the following:

24 **Issue 1: Respondent engaged in unauthorized and deceptive use of names of
 25 financial institutions. (RSA 384:67 under new law SB 315).**

Accordingly, an adjudicative proceeding shall be commenced pursuant to
 RSA 541-A:31 ("Availability of Adjudicative Proceeding; Contested Cases;

1 Notice, Hearing and Record"), and New Hampshire Code of Administrative Rules
2 BAN 200 ("Practice and Procedure"), and Chapter 800 of the Department of
3 Justice's rules (NH Code of Administrative Rules JUS 800) for the purpose of
4 permitting the Respondent to show compliance with RSA 384:67 and the rules
5 adopted thereunder.

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

12 THEREFORE, IT IS ORDERED, that the Respondent appear before the New
13 Hampshire Banking Department on **Monday, July 28, 2008 at 1:00 pm at the New
14 Hampshire Banking Department, 53 Regional Drive, Suite 200, Concord, NH
15 03301**, for the purpose of participating in an adjudicative proceeding, at
16 which time the Respondent will have the opportunity to show cause as to why
17 relief sought in the Order to Show Cause should not become permanent; and

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

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

27 IT IS FURTHER ORDERED, that any proposed exhibits shall be pre-marked,
28 for identification only, and filed with the Department and provided to the
29 opposing party **on or before Friday, July 25, 2008**. Hearing Counsel shall

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

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

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

15 IT IS FURTHER ORDERED, that the Banking Department shall have the burden
16 of setting forth a *prima facie* case. The Respondent shall have the burden of
17 showing compliance with applicable law by a preponderance of the evidence; and

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

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

1 IT IS FURTHER ORDERED, that all documents shall be filed with the
2 Presiding Officer in the form of an original and one (1) copy and shall bear a
3 certification that a copy is being delivered to any other parties to this
4 matter in accordance with New Hampshire Code of Administrative Rules BAN
5 204.08 ("Filing Requirements"). All documents shall be filed by mailing or
6 delivering them to the New Hampshire Banking Department, ATTN: Presiding
7 Officer, 53 Regional Drive, Suite 200, Concord, NH 03301. Filing by facsimile
8 or electronic transmission shall not be accepted; and

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

13 IT IS FURTHER ORDERED, that routine procedural inquiries may be made by
14 telephoning Abigail Shaine, General Counsel for the New Hampshire Banking
15 Department, at (603)271-3561 or (603)228-9009, but all other communications
16 with the Presiding Officer and with the Department shall be in writing and
17 shall be filed as provided above. *Ex parte* communications are forbidden by
18 statute; and

19 IT IS FURTHER ORDERED, that a copy of this Notice of hearing shall be
20 mailed to Mr. Thomas McDermott, President, Mortgage Protection Associates,
21 Inc., 132 Central Street, Unit 203B, P.O. Box 376, Foxboro, MA 02035 and to
22 the Presiding Officer appointed by the Banking Commissioner.

23 **SO ORDERED,**

24 _____
/s/
Peter C. Hildreth
Commissioner
State of New Hampshire
Banking Department

25 _____
7/21/08
Date

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing **Notice of Hearing**, Docket No. 08-BD-002, has been sent via certified mail on July _____, 2008 to Thomas McDermott, President, Mortgage Protection Associates, Inc., 132 Central Street, Unit 203B, P.O. Box 376, Foxboro, MA 02035.

Rebekah Becker
Paralegal, Banking Division