

1 State of New Hampshire Banking Department

2

3 In re the Matter of:) Case No.: 10-464
)
 4 State of New Hampshire Banking)
)
 5 Department,)
)
 6 Petitioner,) Amended Notice of Hearing - Order to
) Show Cause with Immediate Suspension
) and Cease and Desist Order
 7 Upper Valley Mortgage LLC, Benjamin)
)
 8 Hunter Lindberg, Justin Craig Bitler,)
)
 9 Estate of Lawrence Gene Stern, M.D.,)
)
 10 Respondents)
)

11 AMENDED NOTICE OF ORDER TO SHOW CAUSE HEARING

12 (Amended language appears in bold)

13 1. The Department issued to the above named Respondents an Order to Show
14 Cause with Immediate Suspension and Cease and Desist Order on November 24,
15 2010. RSA Chapter 541-A requires the Department to hold a hearing on such
16 summary action within ten (10) working days unless otherwise waived by the
17 Respondents.

18 IT IS HEREBY ORDERED that:

19 2. Respondents appear before the New Hampshire Banking Department on
20 Thursday, December 9, 2010 at 10:00 am, at the New Hampshire Banking
21 Department located at 53 Regional Drive, Suite 200, Concord, New Hampshire
22 03301, for the purpose of participating in an adjudicative proceeding, at
23 which time the Respondents will have the opportunity to demonstrate why the
24 relief sought in the Order to Show Cause with Immediate Suspension and Cease
25 and Desist Order should not become permanent.

3. Pursuant to RSA 541-A:31,III(b), the legal authorities under which the

1 hearing is to be held are: RSA 541-A:30,III, RSA 397-A:17, RSA 397-A:18, RSA
2 397-A:21 and RSA 383:10-d.

3 4. The Department's alleged violations against the above named Respondents
4 in the Order to show Cause with Immediate Suspension and Cease and Desist
5 Order are as follows:

6 a. Respondent Upper Valley:

7 Violation #1: Theft by deception (RSA 397-A:2,III via possible
8 violation of RSA 637:4 - 1 count

9 Violation #2: Property obtained by fraud or misrepresentation (397-
10 A:14,IV(a)) - 1 count

11 Violation #3: Unfair, deceptive, unethical, or fraudulent business
12 practices (RSA 397-A:14,IV(n)) - 1 count

13 Violation #4: Licensee not qualified on basis of financial integrity
14 (RSA 397-A:17,I(j)) - 1 count

15 Violation #5: Licensee no longer demonstrates financial responsibility
16 or character and general fitness (RSA 397-A:17,II(e)(4)) - 1 count

17 Violation #6: False or misleading statement/report to the Commissioner
18 (RSA 397-A:17,I(e))- 1 count

19 Violation #7: Inaccurate financial statement filed (RSA 397-A:13,II) -
20 1 count

21 b. Respondent Lindberg:

22 Violation #1: Theft by deception (RSA 397-A:2,III via possible
23 Violation of RSA 637:4) - 1 count

24 Violation #2: Property obtained by fraud or misrepresentation (397-
25 A:14,IV(a)) - 1 count

Violation #3: Unfair, deceptive, unethical, or fraudulent business

1 practices (RSA 397-A:14,IV(n)) - 1 count

2 Violation #4: Failure to meet minimum standards for licensure (RSA
3 397-A:5,IV-d(a) (1) via 397-A:5,IV-c(5)) - 1 count

4 Violation #5: Licensee not qualified on basis of financial integrity
5 (RSA 397-A:17,I(j)) - 1 count

6 Violation #6: Licensee no longer demonstrates financial responsibility
7 or character and general fitness (RSA 397-A:17,II(e) (4)) - 1 count

8 Violation #7: False or misleading statement/report to the Commissioner
9 (RSA 397-A:17,I(e)) - 1 count

10 Violation #8: Unfair, deceptive, unethical and fraudulent business
11 practices directed at Consumer A (RSA 397-A:14,IV(n)) - 1 count

12 c. Respondent Bitler:

13 Violation #1: Theft by deception (RSA 397-A:2,III via possible
14 violation of RSA 637:4 - 1 count

15 Violation #2: Property obtained by fraud or misrepresentation (397-
16 A:14,IV(a)) - 1 count

17 Violation #3: Unfair, deceptive, unethical, or fraudulent business
18 practices (RSA 397-A:14,IV(n)) - 1 count

19 Violation #4: Failure to meet minimum standards for licensure (RSA
20 397-A:5,IV-d(a) (1) via 397-A:5,IV-c(5)) - 1 count

21 d. Respondent Estate:

22 Violation #1: Theft by deception (RSA 397-A:2,III via possible
23 violation of RSA 637:4 - 1 count

24 Violation #2: Property obtained by fraud or misrepresentation (397-
25 A:14,IV(a)) - 1 count

Violation #3: Unfair, deceptive, unethical, or fraudulent business

1 practices (RSA 397-A:14,IV(n)) - 1 count.

2 5. The facts as alleged in the Order to Show Cause with Immediate Suspension
3 and Cease and Desist Order are herein incorporated by reference.

4 6. An adjudicative proceeding shall be commenced pursuant to RSA 541-A:31
5 for the purpose of permitting the above named Respondents to show compliance
6 with the stated violations.

7 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 or himself. If the
9 Respondents elect to be represented by Counsel, said Counsel shall file a
10 notice of appearance at the earliest possible date.

11 8. Maryam Torben Desfosses, Hearings Examiner, New Hampshire Banking
12 Department is designated as Hearings Examiner in this matter with authority
13 to represent the public interest within the scope of the Department's
14 authority. The Hearings Examiner shall have the status of a party to this
15 proceeding.

16 9. **A Presiding Officer will be delegated to preside over this matter**
17 **pursuant to RSA 383:7-a and see also RSA 541-A:1, XV.**

18 10. Any proposed exhibits shall be pre-marked, for identification only, and
19 filed with the Department and provided to the opposing party by Friday,
20 December 3, 2010. The Hearings Examiner shall pre-mark the Department's
21 exhibits with Arabic numbers. The Respondents shall pre-mark exhibits with
22 capital letters. An index/list of exhibits providing a brief description of
23 each exhibit with its corresponding pre-marked number or letter shall be
24 filed by both parties simultaneous with the filing of exhibits.

25 11. The parties shall exchange a list of all exhibits and witnesses to be
called at the hearing with a brief summary at the hearing, and shall at the

1 same time file a copy of their respective lists with the Presiding Officer.

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

6 13. The Department shall have the burden of setting forth a *prima facie*
7 case, then the Respondents shall have the burden of showing compliance with
8 applicable law by a preponderance of the evidence.

9 14. Any Respondent's failure to appear at the time, date, and place
10 specified may result in the hearing being held *in absentia* and/or default
11 ruling in favor of the Department, without further notice or opportunity to
12 be heard.

13 15. The record of the proceeding shall be made by a certified shorthand
14 court reporter provided by the Department.

15 16. All documents shall be filed with the Presiding Officer in the form of an
16 original and one (1) copy and shall bear a certification that a copy is being
17 delivered to Hearings Examiner and any other parties to this matter in
18 accordance with applicable laws. All documents shall be filed by mailing or
19 delivering them to the New Hampshire Banking Department, ATTN: Presiding
20 Officer 10-001, 53 Regional Drive, Suite 200, Concord, NH 03301. Filing by
21 facsimile or electronic transmission shall not be accepted.

22 17. The parties may submit Proposed Orders, which shall include findings of
23 fact and conclusions of law, separately stated, no later than ten (10) days
24 following conclusion of the hearing(s) in this matter.

25 18. Routine procedural inquiries may be made by telephoning Maryam Torben
Desfosses, Hearings Examiner at (603)271-3561, but all other communications

1 with the Presiding Officer and with the Department shall be in writing and
2 shall be filed as provided above. *Ex parte* communications are forbidden by
3 statute.

4 19. A copy of this Notice of Hearing shall be mailed to all named
5 Respondents at their addresses of record and that a copy shall also be
6 delivered to Maryam Torben Desfosses, Hearings Examiner, and to the
7 Presiding Officer at the New Hampshire Banking Department.

8
9 **SO ORDERED AS AMENDED,**

10
11 _____ /s/
12 Robert A. Fleury
13 Deputy Bank Commissioner
14 State of New Hampshire
15 Banking Department

December 6, 2010
Date