

1	In re the Matter of:	) Case No.: 10-464
		)
2	State of New Hampshire Banking	)
		)
3	Department,	)
		)
4	Petitioner,	)
		)
5	and	) MOTION TO CLARIFY AND COMPEL
		) COMPLIANCE WITH DEFAULT JUDGMENT
		)
6	Upper Valley Mortgage LLC, Benjamin	)
		)
7	Hunter Lindberg, and Estate of	)
		)
8	Lawrence Gene Stern, M.D.,	)
		)
9	Respondents	)

10                   MOTION TO CLARIFY AND COMPEL COMPLIANCE WITH DEFAULT JUDGMENT

11                                   ("MOTION TO COMPEL")

- 12 1.     Presiding Officer Stephen J. Judge, Esq. issued an Order for Default  
13 Judgment in this matter on December 17, 2010 ("Order").
- 14 2.     Pursuant to the Order, Respondent Upper Valley Mortgage LLC's ("Upper  
15 Valley") New Hampshire Mortgage Broker license and Respondent Benjamin  
16 Hunter Lindberg's ("Lindberg") New Hampshire Mortgage Loan Originator  
17 license were revoked effective December 17, 2010.
- 18 3.     Paragraph 13 of the Order required Upper Valley, Lindberg and Stern  
19 (collectively "Remaining Respondents") to "immediately reimburse Consumer A  
20 all monies (to be calculated by the Department but totaling approximately  
21 \$82,200.00 plus interest) owed to Consumer A." The Remaining Respondents  
22 have failed to comply by, to date, only reimbursing \$7,000.00 of the  
23 approximately \$82,200.00 owed to Consumer A.
- 24 4.     Paragraph 14 of the Order required Remaining Respondents to "take all  
25 necessary action to immediately transfer all monies in full in the

MOTION TO CLARIFY AND COMPEL COMPLIANCE WITH DEFAULT JUDGMENT

1 certificate of deposit valued at approximately \$62,500.00 to Consumer A."  
2 Remaining Respondents have failed to comply with this provision of the Order  
3 as all the monies in full in the certificate of deposit have not been  
4 transferred to Consumer A.

5 5. Paragraph 15 of the Order, in order to expedite Paragraphs 13 and 14,  
6 required Remaining Respondents to "take all necessary action to immediately  
7 recover the \$60,000.00 of Consumer A's funds transferred out of the  
8 account." Remaining Respondents have failed to comply with this Order.

9 6. Robert S. Carey, attorney for Lindberg, has represented to the  
10 Department that the certificate of deposit can only be liquidated if the  
11 Department "releases the bond." The Department understands that request to  
12 mean that the Department would release the bond from any and all claims. The  
13 result of such a release would be that the Department could not make a claim  
14 against the bond as is contemplated and allowed by law.

15 7. As represented to the New Hampshire Banking Department ("Department")  
16 by Mascoma Savings Bank, the certificate of deposit issued to Lindberg by  
17 Mascoma Savings Bank was pledged as collateral by Lindberg to obtain a  
18 Mascoma Savings Bank Letter of Credit issued in favor of NGM Insurance  
19 Company. The Letter of Credit was then used to obtain a surety bond from NGM  
20 Insurance Company issued to Upper Valley for the benefit of the New  
21 Hampshire Banking Department ("Department"). See attached December 27, 2010  
22 letter from Mascoma Savings Bank and Exhibit 5f. The Department had no  
23 knowledge of any restrictions on the Bond. Accordingly, as to the Department  
24 as obligee, the Bond is not conditioned upon the letter of credit and  
25 therefore in turn is not tied to the certificate of deposit. Further,

1 neither the certificate of deposit nor the Letter of Credit mentions a) that  
2 the certificate of deposited was used as collateral, nor b) the asserted  
3 limitations on liquidity of the certificate of deposit.

4 8. Mascoma Savings Bank has represented that if the original Letter of  
5 Credit is returned to Mascoma Savings Bank by NGM Insurance Company undrawn  
6 then Mascoma Savings Bank would release its collateral hold against the  
7 certificate of deposit pledged by Lindberg, thus allowing the certificate of  
8 deposit to be liquidated.

9 9. Upper Valley and Lindberg have failed to articulate the reason Upper  
10 Valley must currently maintain an active surety bond when its license was  
11 revoked on December 17, 2010.

12 10. The July 31, 2009 \$50,000.00 surety bond rider of which the Department  
13 is the obligee increased the original amount to the statutorily required  
14 \$50,000.00 and states "[i]t is further understood and agreed that no other  
15 condition, limitation or exclusion of the bond shall be altered or amended  
16 by this rider." There are no other conditions in the rider and there are no  
17 other riders to the bond. Accordingly, the validity of Mascoma Savings  
18 Bank's assertion that the letter of credit cannot be released or the  
19 certificate of deposit cannot be liquidated without a release from the  
20 Department is unfounded and against public policy. See attached July 31,  
21 2009 surety bond rider from NGM Insurance Company.

22 11. The Commissioner may issue, amend, or rescind such orders as are  
23 reasonably necessary to comply with the provisions of RSA Chapter 397-A. RSA  
24 397-A:20, IV.

25

REQUEST FOR RELIEF

12. I hereby request Presiding Officer Stephen J. Judge, Esq. to define "immediately", or in the alternative, to rule on this motion to compel compliance with the default judgment by ordering the monies due under Paragraphs 13, 14, and 15 be paid within 48 hours of the granting of this petition.

SO MOVED.

/s/

Maryam Torben Desfosses  
Hearings Examiner

Dated:

Jan 6, 2011

Jul 26 10 4:11p

Montage Marketing

FE012-2210 12:53 From: UPPER VALLEY MTG

6034465555

603 568 7186

To: 9787720830

p.15

P.1/4

5f



MASCOMA SAVINGS BANK

Incorporated and manually owned since 1899

15 a/15  
COPY

NGM Insurance Company  
Bond Department-Collateral  
55 West Street  
P.O. Box 2300  
Keene, NH 03431

MSB Letter # [REDACTED]

IRREVOCABLE LETTER OF CREDIT

We hereby establish our irrevocable Letter of Credit in your favor and authorize you to draw on us, up to an aggregate amount of \*\*\*\*Sixtytwothousandfivehundred\*\*\*\* (\$ 62,500 ) Dollars available by your draft(s) at sight accompanied by your written certification that you, as Surety, have executed or have procured the execution of bond(s) or undertaking(s) at the request of Upper Valley Mortgage, LLC (Name of Principal) and that you have incurred liability, or that a situation exists under which, in the sole judgment of the Surety claim may be made for loss, cost or expense, and that monies represented by your draft(s) are required at the discretion of the Surety for its protection of its co-surety(ies) and re-insurer(s), if any, under said bond(s) or undertaking(s) or under agreement(s) of indemnity executed by Upper Valley Mortgage, LLC (Name of Principal).

We engage with you that all draft(s) drawn under and in compliance with the terms of this credit will be duly honored by us as specified if presented at this office on or before July 31, 2010 or any extended date, it being a condition of this Irrevocable Letter of Credit that it shall be automatically extended for additional periods of one year from the present or each future expiration date unless thirty days prior to such date we shall notify you in writing by registered mail at the above address, attention of "Surety Bond Department" that we elect not to renew this Letter of Credit for such additional period: Upon receipt by you of such notice, you may draw on us hereunder by means of your draft on us at sight for the full amount of this Letter of Credit, accompanied by your written certification that you have not been released from liability and that the proceeds of your draft will be applied by you to satisfy any loss, cost, claim or expense which may be incurred by you or your co-surety(ies), or re-insurer(s), if any, as a result of having executed or having procured the execution of bonds or undertakings as aforesaid, or under agreement(s) of indemnity as aforesaid.

Your acceptance of this Credit will constitute your agreement to repay to us any funds paid by us to you hereunder and not used by you in satisfaction of or reimbursement of any loss, cost, claim or expense of any nature whatsoever incurred by you, (including unpaid premiums), or any such bond(s) or undertaking(s) or agreement(s) of indemnity as aforesaid.

The request for payment under this Letter of Credit shall be final and conclusive for all purposes without verification by Mascoma Savings Bank (Name of Bank) and shall not be subject to refutation, denial or contest.

Except so far as otherwise expressly stated, this Credit is subject to the Uniform Customs and Practices for Commercial Documentary Credits fixed by the International Chamber of Commerce applicable at the date of this letter.

Signed and Sealed this 30th day of July, 2009

Bank's Address and Phone Number:  
67 North Park Street  
Lebanon, NH 03766  
Attn: Commercial Loans

(Name of Bank) Mascoma Savings Bank  
By: [REDACTED]  
William P. Gunn  
Title: Vice President



130/15

**AUTOMATICALLY RENEWABLE  
CERTIFICATE OF DEPOSIT  
WITH  
MASCOMA SAVINGS BANK**

Name(s) Address:

Ben Lindburg

No.

DATE OF DEPOSIT 07/30/09	DEPOSIT \$ 52,500.00	MATURITY DATE 07/30/12	INTEREST RATE 2.75 %	*ANNUAL PERCENTAGE YIELD 2.75 %
INTEREST PAID <input checked="" type="checkbox"/> MONTHLY <input type="checkbox"/> QUARTERLY <input type="checkbox"/> SEMI ANNUALLY <input type="checkbox"/> AT MATURITY		INTEREST CREDIT <input checked="" type="checkbox"/> ADD TO BALANCE <input type="checkbox"/> BY CHECK <input type="checkbox"/> TRANSFER TO A/C <input type="checkbox"/> ACH		MASCOMA SAVINGS BANK BY ONLY AUTHORIZED:

\* The Annual Percentage Yield assumes interest will remain on deposit. A withdrawal will reduce earnings.

MEMBER FDIC      NOT TRANSFERABLE      NOT NEGOTIABLE

This account is subject to the by-laws of MASCOMA SAVINGS BANK, a copy of which will be furnished on request, AND the Terms and Conditions are as defined in the account disclosure.

Payment of the DEPOSIT, including interest, will be on the MATURITY DATE to the account owners upon surrender of the certificate.

This account will automatically renew at maturity for the same term at the current rate UNLESS presented for changes within seven (7) calendar days. Withdrawals made during the seven (7) days grace period are without penalty and will not receive interest for this period.

Interest will be calculated on the daily balance and credited on the anniversary date each month. You may request periodic interest withdrawals: monthly, quarterly, semiannually or annually, either by check or transfer.

Early withdrawal penalty: Refer to account disclosure.

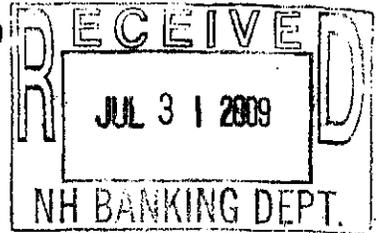
Penalty is waived upon the death of an owner of the account, or when an owner has been determined to be legally incompetent by a court or other administrative body, or for other bank determined hardships.

The bank may accept this account as loan collateral in accordance with such loan policies as may be in effect at the time loan application is made.

Borrowing on this account prior to maturity will require the signatures of all account owners.



**SURETY RIDER**



It is understood and agreed that surety bond number [redacted] with Upper Valley Mortgage LLC as principal and New Hampshire Banking Commission as obligee is hereby amended effective 7/31/2009 as follows:

Bond Penalty is increased to: 50,000.00

\*\*\* End of Changes \*\*\*

It is further understood and agreed that no other condition, limitation or exclusion of the bond shall be altered or amended by this rider.

This rider shall be attached to and form a permanent part of this bond.

Signed, Sealed and Dated this 31st day July of 2009.

Accepted By

Upper Valley Mortgage LLC

Obligee

BY: [redacted] Principal

Benjamin H Lindberg

BY:

NGM Insurance Company

[redacted] Surety

Typed Name

Attorney-in-Fact

Robert J. Sammon

Title:

**POWER OF ATTORNEY**

**KNOW ALL MEN BY THESE PRESENTS:** That the NGM Insurance Company, a Florida corporation having its principal office in the City of Jacksonville, State of Florida, pursuant to Article IV, Section 2 of the By-Laws of said Company, to wit:

"SECTION 2. The board of directors, the president, any vice president, secretary, or the treasurer shall have the power and authority to appoint attorneys-in-fact and to authorize them to execute on behalf of the company and affix the seal of the company thereto, bonds, recognizances, contracts of indemnity or writings obligatory in the nature of a bond, recognizance or conditional undertaking and to remove any such attorneys-in-fact at any time and revoke the power and authority given to them."

does hereby make, constitute and appoint Robert J Sammon its true and lawful Attorney-in-fact, to make, execute seal and deliver for and on its behalf, and as its act and deed bond number [redacted] dated May 13, 2009 on behalf of Upper Valley Mortgage LLC in favor of New Hampshire Banking Commission for Fifty Thousand and 00/100 Dollars (\$ 50,000.00 ) and to bind NGM Insurance Company thereby as fully and to the same extent as if such instrument was signed by the duly authorized officers of the NGM Insurance Company; this act of said Attorney is hereby ratified and confirmed.

This power of attorney is signed and sealed by facsimile under and by the authority of the following resolution adopted by the Directors of NGM Insurance Company at a meeting duly called and held on the 2nd day of December 1977.

Voted: That the signature of any officer authorized by the By-Laws and the company seal may be affixed by facsimile to any power of attorney or special power of attorney or certification of either given for the execution of any bond, undertaking, recognizance or other written obligation in the nature thereof; such signature and seal, when so used being hereby adopted by the company as the original signature of such officer and the original seal of the company, to be valid and binding upon the company with the same force and effect as though manually affixed.

IN WITNESS WHEREOF, NGM Insurance Company has caused these presents to be signed by its Senior Vice President and its corporate seal to be hereto affixed this 1<sup>st</sup> day of March, 2007.

NGM INSURANCE COMPANY By:

[redacted signature]

Susan Mack  
Senior Vice President



State of Florida,  
County of Duval

On this 1<sup>st</sup> day of March, 2007 before the subscriber a Notary Public of State of Florida in and for the County of Duval duly commissioned and qualified, came Susan Mack of the NGM Insurance Company, to me personally known to be the officer described herein, and who executed the preceding instrument, and he acknowledged the execution of same, and being by me fully sworn, deposed and said that he is an officer of said Company, aforesaid: that the seal affixed to the preceding instrument is the corporate seal of said Company, and the said corporate seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Company; that Article V, Section 2 of the By-Laws of said Company is now in force.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal at Jacksonville, Florida this 1st day of March, 2007.

[redacted signature]



P. A. Harrell  
Commission # DD464125  
Expires August 21, 2009  
Florida Notary Public - Insurance, Inc. 200346-7018

I, Brian J Beggs, Vice President of the NGM Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by said Company which is still in force and effect. IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Company at Jacksonville, Florida this 31 day of July, 2009

[redacted signature]



WARNING: Any unauthorized reproduction or alteration of this document is prohibited.

TO CONFIRM VALIDITY of the attached bond please call 1-603-358-1343.

TO SUBMIT A CLAIM: Send all correspondence to 55 West Street, Keene, NH 03431 Attn: Bond Claim Dept. or call our Bond Claim Dept. at 1-603-358-1206.



# MASCOMA SAVINGS BANK

Incorporated in and mutually owned since 1899.

12/27/10

Attorney Robert S. Carey  
Ort & Reno  
One Eagle Square  
PO Box 3550  
Concord, NH 03302-3550

RE: Upper Valley Mortgage LLC and Ben Lindberg

Dear Attorney Carey:

With regard to the funds that your client (Ben Lindberg) holds on deposit with Mascoma Savings Bank in Certificate of Deposit #.....455:

The CD is pledged as collateral securing a Letter of Credit issued in favor of NGM Insurance Company of Keene, NH. If the original Letter of Credit were to be returned to Mascoma Savings Bank by NGM Insurance Company (undrawn) then Mascoma Savings Bank would release its collateral hold against the CD pledged by Mr. Lindberg, thus allowing the CD to be liquidated.

Barring the return of the original Letter, the Bank would wait until the maturity date of the Letter of Credit (07/31/11) before allowing a collateral release; as we are required to inform the beneficiary of this Letter of Credit (NGM Insurance Company) of our unwillingness to renew the Letter going forward

Sincerely,

[Redacted signature]

William P. Dunn  
Vice President, Commercial Loan Officer  
Mascoma Savings Bank  
67 N. Park St., Lebanon, NH 03766  
Telephone: (603) 443-8635  
Facsimile: (603) 448-1470  
[william.dunn@mascomabank.com](mailto:william.dunn@mascomabank.com)

cc:

Carl Gibbs, Vice President, Loan Servicing, Collections  
Terry Martin, Vice President, Special Assets Management  
Peter E. Begin, Vice President, Security and Fraud Prevention Officer