

1 397-A:21 and RSA 383:10-d.

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

5 a. **Respondent Upper Valley:**

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

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

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

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

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

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

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

20 b. **Respondent Lindberg:**

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

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

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

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

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

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

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

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

11 c. **Respondent Bitler:**

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

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

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

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

20 d. **Respondent Estate:**

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

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

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

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

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

6 7. Each party has the right to have an attorney present to represent the
7 party at the party's expense, or may represent itself or himself. If the
8 Respondents elect to be represented by Counsel, said Counsel shall file a
9 notice of appearance at the earliest possible date.

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

15 9. The Presiding Officer to be designated by the Bank Commissioner shall
16 issue a RECOMMENDED DECISION in this matter which shall be reviewed and
17 approved, disapproved or modified by the Bank Commissioner.

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

