

1 In re the Matter of:) Case No.: 10-511
)
 2 State of New Hampshire Banking)
)
 3 Department,)
)
 4 Petitioner,) Order to Show Cause and
) Cease and Desist
 5 and)
)
 6 Up Front Money (d/b/a upfrontmoney.com)
)
 7 and d/b/a for Financial Processing,)
)
 8 LLC), Warren Williams, Kim Brown, and)
)
 9 Phillip Saunders,)
)
 10 Respondents)

11 NOTICE OF ORDER TO SHOW CAUSE AND CEASE AND DESIST ("ORDER")

12 1. This Order commences an adjudicative proceeding under the provisions
 13 of RSA Chapter 399-A (including RSA 399-A:7,I and II, RSA 399-A:8,I and RSA
 14 399-A:16,IV), RSA Chapter 399-G (including RSA 399-G:18,I, RSA 399-G:19,I
 15 and II and RSA 399-G:20,IV) and RSA Chapter 541-A.

16 2. The Commissioner may impose administrative penalties of up to
 17 \$2,500.00 for each violation. RSA 399-A:18,V and VI and RSA 399-G:21,IV and
 18 V.

19 RESPONDENTS

20 3. Up Front Money (d/b/a upfrontmoney.com and d/b/a for Financial
 21 Processing, LLC) ("Respondent Up Front Money") is an online company located
 22 in all or either of the following locations: Cary, North Carolina, Raleigh,
 23 North Carolina and La Crosse, Wisconsin. The Better Business Bureau has
 24 Respondent Up Front Money located in Raleigh, North Carolina and Financial
 25 Processing, LLC located in Cary, North Carolina. Ripoff Report has

1 Respondent Up Front Money located in Cary, North Carolina. Manta has
2 Financial Processing, LLC located in Cary, North Carolina. The Wisconsin
3 Department of Financial Institutions has a Financial Processing, LLC located
4 in La Crosse, Wisconsin registered with it on October 16, 2008. There is an
5 intent to revoke this company dated August 22, 2011. Respondent Up Front
6 Money and Financial Processing, LLC are not registered with the New
7 Hampshire Secretary of State. Respondent Up Front Money Loan is a "Person."
8 RSA 399-A:1,XII and RSA 399-G:1,X.

9 4. Warren Williams ("Respondent Williams"), pursuant to the Better
10 Business Bureau, is the President of Respondent Up Front Money. Respondent
11 Williams is a Person (RSA 399-A:1,XII and RSA 399-G:1,X), a Principal (RSA
12 399-A:1,XIII and RSA 399-G:1,XI) and a Control person (RSA 399-G:1,II-a).

13 5. Kim Brown ("Respondent Brown"), pursuant to the Better Business
14 Bureau, is the Senior Manager of Respondent Up Front Money. Respondent Brown
15 is a Person (RSA 399-A:1,XII and RSA 399-G:1,X), a Principal (RSA 399-
16 A:1,XIII and RSA 399-G:1,XI) and a Control person (RSA 399-G:1,II-a).

17 6. Phillip Saunders ("Respondent Saunders"), pursuant to the Better
18 Business Bureau, is the Senior Manager of Respondent Up Front Money.
19 Respondent Saunders is a Person (RSA 399-A:1,XII and RSA 399-G:1,X), a
20 Principal (RSA 399-A:1,XIII and RSA 399-G:1,XI) and a Control person (RSA
21 399-G:1,II-a).

22 7. The New Hampshire Banking Department ("Department") records indicate
23 Respondent Up Front Money has never held a Payday or Small Loan Lender
24 license or a Money Transmitter license with the Department.

1 RIGHT TO REQUEST A HEARING

2 8. Respondents have a right to request a hearing on this Order. A hearing
3 shall be held not later than ten (10) days after the Commissioner receives
4 the Respondent's written request for a hearing. Respondents may request a
5 hearing and waive the ten (10) day hearing requirement. The hearing shall
6 comply with RSA Chapter 541-A. RSA 399-A:7, RSA 399-A:8, RSA 399-G:18 and
7 RSA 399-G:19.

8 9. If any person fails to request a hearing within thirty (30) days of
9 receiving this Order, then such person shall be deemed in default, and the
10 Order shall, on the thirty-first (31st) day, become permanent, all
11 allegations may be deemed true, and shall remain in full force and effect
12 until modified or vacated by the Commissioner for good cause shown. RSA 399-
13 A:7, RSA 399-A:8, RSA 399-G:18 and RSA 399-G:19.

14 10. A default may result in administrative fines as described in Paragraph
15 2 above.

16 STATEMENT OF ALLEGATIONS

17 11. On November 29, 2010 the Department received a complaint from a New
18 Hampshire consumer ("Consumer A") against Respondent Up Front Money for what
19 Consumer A believes concerns a payday or small loan.

20 12. Respondents generally offer a pre-paid 500 minute digital phone card,
21 for which consumers receive \$300.00 up front cash "that can be spent as
22 desired," according to Respondents' website. The contract for this pre-paid
23 digital phone card can be cancelled, but consumers must pay a termination
24 fee.

25 13. According to the Program Info section of Respondents' upfrontmoney.com

1 website, consumers receive an online instant cash rebate of up to \$300.00 if
2 the consumers agree to purchase pre-paid digital phone cards every two (2)
3 weeks.

4 14. There are three (3) different levels of service available.

5 a. Level 1: \$100 instant cash rebate wherein the consumer receives
6 one (1) pre-paid digital phone card (\$44.95 each) every two (2) weeks for a
7 total of \$44.95;

8 b. Level 2: \$200 instant cash rebate wherein the consumer receives
9 two (2) pre-paid digital phone cards (\$44.95 each) every two (2) weeks for a
10 total of \$89.90; and

11 c. Level 3: \$300.00 instant cash rebate wherein the consumer
12 receives three (3) pre-paid digital phone cards (\$44.95 each) every two (2)
13 weeks for a total of \$134.85.

14 15. At some point in 2010, Respondents issued Consumer A the payday or
15 small loan in the amount of \$400.00, in violation of RSA 399-A:2,I and/or
16 transmitted the monies via ACH transfer to Consumer A's bank account in
17 violation of RSA 399-G:3.

18 16. According to Consumer A's complaint, Consumer A would then pay \$134.85
19 in fees every two (2) weeks. Consumer A then attempted to pay off the payday
20 loan in the Summer of 2010 and was unable to reach anyone to obtain help and
21 payoff.

22 17. If any consumers attempts to terminate the pre-paid digital phone card
23 contract, Respondents would charge a termination fee of \$275.00.

24 18. Consumer complaints listed with ripoffreport.com and the Better
25 Business Bureau indicate consumers understood the transaction to be a payday

1 loan with the same termination fees and weekly charges to their bank
2 accounts.

3 19. Respondent deducted \$134.85 from Consumer A's bank account over the
4 course of at least fourteen (14) weeks in violation of RSA 399-A:11,XI and
5 RSA 399-A:13,I. Consumer A should be entitled to a refund of \$1,487.90, the
6 amount over the \$400.00 originally borrowed.

7 20. On May 2, 2011, the Department sent 2 letters via regular U.S. Mail to
8 Respondent Up Front Money in La Crosse, Wisconsin, both of which came back
9 as return to sender but listed a Cary, North Carolina address.

10 21. On June 1, 2011, the Department sent a letter to the Cary, North
11 Carolina address via U.S. Certified Mail Return Receipt requested.
12 Respondents received the letter on June 6, 2011.

13 22. On June 13, 2011, the Department received email correspondence from
14 Respondent Saunders, who indicated simply that Respondents do not provide
15 loans and re-explained what was already on Respondent Up Front Money's
16 website.

17 23. On June 13, 2011, the Department wrote back to indicate the response
18 was insufficient and that Respondents are either a payday lender or a money
19 transmitter so a response is required.

20 24. On June 13, 2011, late morning, the Department received a response
21 email which indicated that Respondents have been in business for five (5)
22 years and that they do not accept new customers and have not provided any
23 new customer rebates since January of 2010.

24 25. On June 13, 2011, the Department emailed Respondent Saunders to simply
25 indicate that they must review RSA Chapter 399-G and that the company must

1 be licensed as a money transmitter. Respondent Saunders wrote back to stated
2 that they were unaware of any license requirements in New Hampshire and they
3 will immediately stop any transactions with the four (4) New Hampshire
4 customers they have.

5 26. In addition to Consumer A, Respondents violated RSA 399-A:2,I and RSA
6 399-G:3 for the three remaining New Hampshire consumers (Consumer B, C and
7 D).

8 27. At about 12:09 P.M. on June 13, 2011, the Department emailed
9 Respondent Saunders that it must provide the Department the information on
10 the four (4) New Hampshire consumers with whom Respondents have conducted
11 business.

12 28. At 3:46 P.M. on June 13, 2011, the Department received a response from
13 Respondent Saunders that it will take them some time to get "this consumer
14 list together for you."

15 29. On September 13, 2011 and with no word back from Respondent Saunders,
16 a Department examiner emailed Respondent Saunders for the consumer list.

17 30. To date, the Department has not received the required response from
18 the Respondents.

19 31. To date, Respondent Respondents have failed to provide the Department
20 with the requested documentation in violation of RSA 399-A:10,II and RSA
21 399-G:13,VII.

22
23 _____ /s/
24 Maryam Torben Desfosses
Hearings Examiner

October 17, 2011
Date

ORDER

32. **I hereby find as follows:**

a. Pursuant to RSA 399-A:7,I and II and RSA 399-G:18,I, the facts as alleged above, if true, show Respondents are operating or have operated in violation of RSA Chapter 399-A and RSA Chapter 399-G and form the legal basis for this Order;

b. Pursuant to 399-A:16,VI and RSA 399-G:20,VI, this Order is necessary and appropriate to the public interest and for the protection of consumers and consistent with the purpose and intent of New Hampshire banking laws;

c. The Department finds pursuant to RSA 399-A:8,I and 399-G:19,II, reasonable cause to issue an order to cease and desist; and

d. Pursuant to RSA 399-A:7,I and II, RSA 399-A:8,I, RSA 399-G:18,I, and RSA 399-G:19,I and II, if Respondents fail to respond to this Order and/or default then all facts as alleged herein are deemed as true.

33. **Accordingly, it is hereby ORDERED that:**

a. Respondents shall cease and desist from violating RSA Chapter 399-A and RSA 399-G and rules or orders thereunder;

b. Respondents shall immediately provide the Department a list of all New Hampshire consumers for whom Respondents have given payday or small loans and a status of those accounts. This list must include the names and contact information of the New Hampshire consumers, along with monies charged, collected and waived (if applicable). The list shall also be accompanied by all contracts, checks to and from the consumer and any other documents in the New Hampshire consumers' files;

1 c. Respondents shall show cause why the Commissioner should not
2 enter an order of rescission, restitution, or disgorgement of profits,
3 including at a minimum restitution of \$1,487.90 (for Consumer A), and
4 restitution for Consumers B, C and D if applicable;

5 d. Respondents shall show cause why an administrative fine of up to
6 a maximum of \$2,500.00 per violation should not be imposed as follows:

7 (1). Respondent Up Front Money:

8 Violation #1: Unlicensed payday or small loan activity
9 (RSA 399-A:2,I) - 4 Counts;

10 Violation #2: Charging additional fees on a loan (RSA 399-
11 A:11,XI)) - 1 Count;

12 Violation #3: Charging additional fees on a loan (RSA 399-
13 A:13,I) - 1 Count;

14 Violation #4: Failure to provide requested documents (RSA
15 399-A:10,II) - 1 Count;

16 Violation #5: Unlicensed Money Transmitter activity (RSA
17 399-G:3) - 4 Counts;

18 Violation #6: Failure to provide requested documents (RSA
19 399-G:13,VII) - 1 Count;

20 (2). Respondent Williams:

21 Violation #1: Unlicensed payday or small loan activity
22 (RSA 399-A:2,I) - 4 Counts;

23 Violation #2: Charging additional fees on a loan (RSA 399-
24 A:11,XI)) - 1 Count;

25 Violation #3: Charging additional fees on a loan (RSA 399-

1 A:13,I) - 1 Count;

2 Violation #4: Failure to provide requested documents (RSA
3 399-A:10,II) - 1 Count;

4 Violation #5: Unlicensed Money Transmitter activity (RSA
5 399-G:3) - 4 Counts;

6 Violation #6: Failure to provide requested documents (RSA
7 399-G:13,VII) - 1 Count;

8 (3). Respondent Brown:

9 Violation #1: Unlicensed payday or small loan activity
10 (RSA 399-A:2,I) - 4 Counts;

11 Violation #2: Charging additional fees on a loan (RSA 399-
12 A:11,XI)) - 1 Count;

13 Violation #3: Charging additional fees on a loan (RSA 399-
14 A:13,I) - 1 Count;

15 Violation #4: Failure to provide requested documents (RSA
16 399-A:10,II) - 1 Count;

17 Violation #5: Unlicensed Money Transmitter activity (RSA
18 399-G:3) - 4 Counts;

19 Violation #6: Failure to provide requested documents (RSA
20 399-G:13,VII) - 1 Count;

21 (4). Respondent Saunders:

22 Violation #1: Unlicensed payday or small loan activity
23 (RSA 399-A:2,I) - 4 Counts;

24 Violation #2: Charging additional fees on a loan (RSA 399-
25 A:11,XI)) - 1 Count;

