

STATE OF NEW HAMPSHIRE BANKING DEPARTMENT

In the Matter of Randy Dean Miller (d/b/a Onyx Preowned)
Case No. 15-186

ORDER OF DENIAL OF RETAIL SELLER LICENSE

Randy Dean Miller (d/b/a Onyx Preowned) (“Randy Miller”) applied to the New Hampshire Banking Department (“Department”) to be licensed as a Retail Seller. For the reasons set forth below, the Department DENIES Mr. Miller’s retail seller application for licensure.

Jurisdiction

The Department licenses and regulates persons who engage in the business of a retail seller in New Hampshire. RSA 361-A:2, I.

Background

Prior to Current Retail Seller License Application:

Randy Miller previously owned and controlled Empire Automotive Group Inc, a former New Hampshire Retail Seller licensee. In January of 2014, a consumer filed a civil lawsuit against Empire Automotive Group, Inc (“Empire”), an active licensee at the time. The consumer alleged violations of the state consumer protection act and indicated the entity was holding itself out as Premier Automotive Group.

The Department was unsuccessful in its attempt to communicate with Randy Miller and later confirmed that:

- a. Empire advertised and held itself out as Premier Automotive Group (unregistered with the Secretary of State) in violation of RSA 361-A:2, II(a);
- b. Empire failed to notify the Department of this potential name change or new trade name, in violation of RSA 361-A:2, XII;
- c. Empire failed to notify the Department of its business closure within 30 days

of the closure, in violation of RSA 361-A:2-a, I(a).

Current Retail Seller License Application:

On May 22, 2015, Randy Miller submitted his new Retail Seller application for Onyx Preowned to the Department. The Department's Licensing Division determined that the application was incomplete and questionable issues still remained regarding his then-active Retail Seller license under the name of Empire Automotive Group Inc.

Randy Miller failed to disclose the following:

- a. Empire Automotive Group Inc's prior misdemeanor conviction;
- b. Lawsuit and default judgment against Empire Automotive Group Inc alleging, in part, fraudulent and deceptive practices around vehicle sales, including business conducted as Premier Automotive Group without registering the same with the Department; and
- c. Randy Miller's non-disclosure of background check results.

The Department then discovered that Empire Automotive Group Inc's Department of Safety Dealer License expired March 31, 2015, but the Department did not receive notice thereof directly from Randy Miller. Nonetheless, the Licensing Division and Legal Division worked with Randy Miller over the next few months to correct application deficiencies and attempt to resolve the disclosure issues with a consent order. On June 5, 2015, the Licensing Division sent Randy Miller correspondence requesting:

- a. A financial statement for Onyx Preowned;
- b. An updated New Hampshire Individual Disclosure form;
- c. An amended response to a question regarding documentary fees;
- d. A status as to Empire Automotive Group Inc's license; and
- e. Whether Onyx Preowned transacted retail seller business prior to licensure.

Despite the Licensing Division's numerous attempts to request the disclosure form be amended, Randy Miller still failed to disclose certain matters. Though Empire Automotive Group Inc's Department of Safety Dealer License expired on March 31, 2015, the Department did not receive the Retail Seller Surrender documentation until June 25, 2015, well after the 15 calendar day notification time period, in violation of RSA 361-A:2-a, I(a).

On July 8, 2015, the Department's Licensing Division sent Randy Miller another letter requesting that he again review his disclosure questions as they were still answered incorrectly; the Department also asked for supporting documentation. On July 31, 2015, Randy Miller amended his disclosure statements and indicated one matter is currently being reviewed by his counsel; to date, this particular matter has yet to be resolved.

On August 12, 2015, the Department's Licensing Division sent a letter to Randy Miller, regarding the information he provided regarding the New Hampshire Department of Safety and Attorney General actions spanning from 2010-2013. Randy Miller finally addressed these disclosure questions on August 19, 2015.

Taking Applications and Advertising Terms Without a Valid New Hampshire Retail Seller License:

During its investigation of Randy Miller's current license application, the Department discovered that the company allowed consumers to submit full credit applications online for motor vehicle financing. Randy Miller also admitted that he received such applications and indicated his company informed consumers that Onyx Preowned was not yet licensed to locate or arrange financing. After notifying the consumers, he indicated he would shred the applications.

Randy Miller's active credit application form on the Onyx Preowned website omitted the material fact that it was not yet licensed to conduct retail seller activity, in violation of RSA 361-A:3-b, I(a), (b) and (c) and RSA 383:10-h, I.

Further, Onyx Preowned advertised specific rates and terms for each motor vehicle listed on its website without specific credit application review and while unlicensed to conduct Retail Seller activity. The advertisement, display, printing, publication, distribution or broadcast of statements with regard to the rates, terms, or conditions for the lending of money under RSA 361-A that are false, misleading or deceptive violates RSA 361-A:10-a, I.

Application Fails to Meet RSA 361-A:2, VIII(b)

Randy Miller's record of past and proposed conduct do not warrant the public's confidence based on a review of his current application, repeated failures to timely and properly disclose significant matters to the Department and the failure to surrender his previous New Hampshire Retail Seller application after repeated requests. Further, Randy Miller's active acceptance of online credit applications through Onyx Preowned and advertisement of specific terms indicates that the business will not be operated lawfully, honestly and fairly within the purposes of RSA Chapter 361-A. *See* RSA 361-A:2, VIII(b).

Order

THEREFORE, IT IS ORDERED that, pursuant to RSA 361-A:2, VIII(b) and RSA 541-A:29, II(a), Randy Miller's (d/b/a Onyx Preowned) record of past and proposed conduct do not warrant the public's confidence and do not indicate the business will be operated lawfully, honestly, and fairly within the purposes of RSA Chapter 361-A and therefore, warrant the issuance of an Order of License Denial of Randy Miller's Retail Seller License Application; and

IT IS FURTHER ORDERED that pursuant to RSA 361-A:5, VI, this Order is necessary and appropriate to the public interest and for the protection of consumers and consistent with the purposes and intent of New Hampshire banking laws; and

IT IS FURTHER ORDERED that Randy Miller shall have the opportunity for a rehearing on this Order, in writing, by requesting a rehearing within thirty (30) calendar days of

the date of this Order, pursuant to RSA 541:3 and RSA 541:4; and

IT IS FURTHER ORDERED that, pursuant to RSA 541:4, if Randy Miller fails to request a rehearing within thirty (30) calendar days, this license denial shall become permanent and shall remain in full force and effect until and unless later modified or vacated by the Commissioner, for good cause shown; and

IT IS FURTHER ORDERED that nothing herein shall prevent: 1) the Department from taking any further administrative and legal action as necessary under New Hampshire law; or 2) the New Hampshire Office of the Attorney General from bringing an action against the above named applicant in any New Hampshire superior court, with or without prior administrative action by the Commissioner.

SO ORDERED:

12/04/15
Date

/s/
Ingrid E. White
Deputy Bank Commissioner
State of New Hampshire Banking Department

CERTIFICATE OF SERVICE

I, Maryam Torben Desfosses, hereby certify that on December 4, 2015, a copy of the foregoing was sent via U.S. Certified Mail First Class and electronic mail to:

Randy Dean Miller (d/b/a Onyx Preowned)
1170 Hooksett Road
Hooksett NH 03106

rmiller@onyxpreowned.com

Jim H. Moir, Esq.
Moir & Rabinowitz, PLLC
5 Green Street
Concord NH 03301

jim@moirlaw.com

/s/

Maryam Torben Desfosses
Hearings Examiner, Consumer Credit Division
State of New Hampshire Banking Department