

1 3. Pursuant to RSA 541-A:31,III(b), the legal authorities under which the
2 hearing is to be held are: RSA 541-A:30,III, RSA 361-A:3, RSA
3 361-A:3-a, RSA 361-A:11 and RSA 383:10-d.

4 4. The Department's alleged violations against the above named Respondents
5 in the Order to Show Cause and Cease and Desist are as follows

6 a. Respondent LHF Inc (d/b/a Pelham Auto Finance):

7 Violation #1: Failure to Supervise (RSA 361-A:2,I) - 2 Counts;

8 Violation #2: Fraudulent Representations to Consumer (RSA 361-A:3,I-
9 a(c))- 1 Count;

10 Violation #3: Failure to Supervise (RSA 361-A:3,I-a(d))- 2 Counts;

11 Violation #4: Dishonest or Unethical Practices (RSA 361-A:3,I-a(h))- 1
12 Count;

13 Violation #5: Violation of RSA 361-A:4-a (RSA 361-A:3,I-a(i)) - 2
14 Counts;

15 Violation #6: Employing any Scheme, Device or Artifice to Defraud (RSA
16 361-A:3-b,I(a)) - 1 Count;

17 Violation #7: Making Untrue Statements of a Material Fact in order to
18 make such statements not appear misleading (RSA 361-A:3-b,I(b)) - 1
19 Count;

20 Violation #8: Engaging in any act, practice or course of business
21 which operates as a fraud or deceit upon any person (RSA 361-A:3-
22 b,I(c)) - 1 Count;

23 Violation #9: Failure to properly and timely respond to a consumer
24 complaint (RSA 361-A:4-a,I) - 1 Count; and
25

1 Violation #10: Failure to pay off lien holder of vehicle trade-in (RSA
2 361-A:10-c,I) - 1 Count.

3 b. Respondent James Kemos:

4 Violation #1: Failure to Supervise (RSA 361-A:2,I) - 2 Counts;

5 Violation #2: Fraudulent Representations to Consumer (RSA 361-A:3,I-
6 a(c))- 1 Count;

7 Violation #3: Failure to Supervise (RSA 361-A:3,I-a(d))- 2 Counts;

8 Violation #4: Dishonest or Unethical Practices (RSA 361-A:3,I-a(h))- 1
9 Count;

10 Violation #5: Violation of RSA 361-A:4-a (RSA 361-A:3,I-a(i)) - 2
11 Counts;

12 Violation #6: Employing any Scheme, Device or Artifice to Defraud (RSA
13 361-A:3-b,I(a)) - 1 Count;

14 Violation #7: Making Untrue Statements of a Material Fact in order to
15 make such statements not appear misleading (RSA 361-A:3-b,I(b)) - 1
16 Count;

17 Violation #8: Engaging in any act, practice or course of business
18 which operates as a fraud or deceit upon any person (RSA 361-A:3-
19 b,I(c)) - 1 Count;

20 Violation #9: Failure to properly and timely respond to a consumer
21 complaint (RSA 361-A:4-a,I) - 1 Count; and

22 Violation #10: Failure to pay off lien holder of vehicle trade-in (RSA
23 361-A:10-c,I) - 1 Count.

24 5. The Department's alleged violations against Respondents also include:

25 a. A statutory fine of \$5,150.00 for failing to respond to the
Department regarding the Consumer A complaint;

- 1 b. An order to show cause why the pay off amount of \$16,698.62 for
2 Consumer A's trade-in vehicle, plus any and all fees/charges
3 incurred as a result of failing to properly payoff said trade-in
4 vehicle should not be imposed against Respondents;
- 5 c. An order to show cause why the pay off amount of \$1,294.51 for
6 Consumer B's trade-in vehicle, plus any and all fees/charges
7 incurred as a result of failing to properly payoff said trade-in
8 vehicle should not be imposed against Respondents;
- 9 d. An order to show cause why letters to the credit bureaus and
10 lenders should not be sent regarding Consumer A and B and the
11 issues with trade-off;
- 12 e. An order to show cause why any and all costs incurred to remove
13 any and all negative reporting from all three credit bureaus
14 should not be paid by Respondents regarding Consumers A and B;
- 15 f. An order to show cause why Respondents' New Hampshire Retail
16 Seller license should not be revoked (or in the alternative not
17 allowed to renew); and
- 18 g. An order to show cause why Respondent James Kemos should not be
19 barred from licensure.

20 6. The facts as alleged in the Order to Show Cause and Cease and Desist are
21 herein incorporated by reference.

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

25

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

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

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

12 11. Any proposed exhibits shall be pre-marked, for identification only, and
13 filed with the Department and provided to the opposing party by Wednesday,
14 October 19, 2011. The Hearings Examiner shall pre-mark the Department's
15 exhibits with Arabic numbers. The Respondents shall pre-mark exhibits with
16 capital letters. An index/list of exhibits providing a brief description of
17 each exhibit with its corresponding pre-marked number or letter shall be
18 filed by both parties simultaneous with the filing of exhibits.

19 12. The parties shall exchange a list of all exhibits and witnesses to be
20 called at the hearing with a brief summary at the hearing, and shall at the
21 same time file a copy of their respective lists with the Presiding Officer.

22 13. All periods referenced in this notice shall be calendar days. If the
23 last day of the period so computed falls on a Saturday, Sunday, or legal
24 holiday, then the time period shall be extended to include the first
25 business day that is not a Saturday, Sunday, or legal holiday.

1 14. The Department shall have the burden of setting forth a *prima facie*
2 case, then the Respondents shall have the burden of showing compliance with
3 applicable law by a preponderance of the evidence.

4 15. Any Respondent's failure to appear at the time, date, and place
5 specified may result in the hearing being held *in absentia* and/or default
6 ruling in favor of the Department, without further notice or opportunity to
7 be heard.

8 16. The entirety of all verbal proceedings shall be recorded verbatim by the
9 Department. Upon request of any party, or upon the Presiding Officer's own
10 initiative, such record shall be transcribed by a certified court reporter
11 designated by the Presiding Officer, and that all costs shall be borne
12 solely by the requesting party.

13 17. Each party has the right to have the Department provide a certified
14 shorthand court reporter at the requesting party's expense. Any such request
15 shall be submitted in writing to the Presiding Officer at least 10 days
16 prior to the hearing.

17 18. All documents shall be filed with the Presiding Officer in the form of an
18 original and one (1) copy and shall bear a certification that a copy is being
19 delivered to Hearings Examiner and any other parties to this matter in
20 accordance with applicable laws. All documents shall be filed by mailing or
21 delivering them to the New Hampshire Banking Department, ATTN: Presiding
22 Officer, Docket 09-132, 53 Regional Drive, Suite 200, Concord, NH 03301.
23 Filing by facsimile or electronic transmission shall not be accepted.

24 19. The parties may submit Proposed Orders, which shall include findings of
25 fact and conclusions of law, separately stated, no later than ten (10) days

1 following conclusion of the hearing(s) in this matter.

2 20. Routine procedural inquiries may be made by telephoning Maryam Torben
3 Desfosses, Hearings Examiner at (603)271-3561, but all other communications
4 with the Presiding Officer and with the Department shall be in writing and
5 shall be filed as provided above. *Ex parte* communications are forbidden by
6 statute.

7 21. A copy of this Notice of Hearing shall be mailed to all named
8 Respondents and that a copy shall also be delivered to Maryam Torben
9 Desfosses, Hearings Examiner, and to the Presiding Officer at the New
10 Hampshire Banking Department.

11
12
13 **SO ORDERED,**

14 _____
15 /s/
16 Ronald A. Wilbur
17 Bank Commissioner

14 October 7, 2011
15 Date