

1 In re the Matter of:) Case No.: 09-205
 2 State of New Hampshire Banking Department,)
 3 Petitioner,)
 4 and) Order to Show Cause and
 5 Silver St Auto Sales & Repairs LLC (a/k/a) Cease and Desist
 6 Silver St Auto Sales and a/k/a Silvers Auto)
 7 Sales & Repair), and Julio Otero Rivera,)
 8 Respondents)

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

10 1. This Order commences an adjudicative proceeding under the provisions
 11 of RSA Chapter 361-A (including RSA 361-A:3,I and I-a, RSA 361-A:3-a,I and
 12 II, and RSA 361-A:5,IV) and RSA Chapter 541-A.

13 2. The Commissioner may impose administrative penalties of up to \$2,500
 14 for each violation. RSA 361-A:11,VII and VIII.

15 3. Any person who engages in the business of a sales finance company
 16 without a license as required by RSA Chapter 361-A shall be barred from
 17 recovering any finance charge, delinquency, or collection charge on the
 18 contract. Where no finance charge is payable under the terms of the
 19 contract, a person engaging in the business of a sales finance company
 20 without a license shall be barred from recovering any amount in excess of
 21 the wholesale market value of the vehicle, if the vehicle was purchased by
 22 the seller at a wholesale auction or other wholesale outlet, or the trade-in
 23 value of the vehicle if the seller acquired the vehicle in trade. RSA 361-
 24 A:11,III.

1 RESPONDENTS

2 4. Silver St Auto Sales & Repair LLC (a/k/a Silver St Auto Sales and
3 a/k/a Silvers Auto Sales & Repair) ("Respondent Silver St Auto") was a
4 limited liability company registered with the New Hampshire Secretary of
5 State on March 27, 2009 (after purchase from a prior owner) with a principal
6 office location in Manchester, New Hampshire. Respondent Silver St Auto was
7 administratively dissolved by the New Hampshire Secretary of State on
8 September 1, 2011. Respondent Silver St Auto is a Person (RSA 361-
9 A:1,VIII).

10 5. Respondent Silver St Auto has never been licensed by the New Hampshire
11 Banking Department ("Department") as a Sales Finance Company.

12 6. Julio Otero Rivera ("Respondent Rivera") is the 100% owner of
13 Respondent Silver St Auto. Respondent Rivera is a Person (RSA 361-A:1,VIII),
14 a Direct Owner (RSA 361-A:1,III-d), a Principal (RSA 361-A:1, VIII-a) and a
15 Control Person (RSA 361-A:1,III-b).

16 7. The above named Respondents shall be collectively known as
17 "Respondents".

18 RIGHT TO REQUEST A HEARING

19 8. Respondents have a right to request a hearing on this Order. A hearing
20 shall be scheduled not later than ten (10) days after the Commissioner
21 receives Respondents' written request for a hearing. Respondents may request
22 a hearing and waive the ten (10) day hearing requirement. The hearing shall
23 comply with RSA Chapter 541-A, RSA 361-A:3,I and I-a, RSA 361-A:3-a,I and
24 II.

25 9. If any person fails to request a hearing within thirty (30) days of

1 receiving this Order, then such person shall be deemed in default, and the
2 Order shall, on the thirty-first (31st) day, become permanent, all
3 allegations may be deemed true, and shall remain in full force and effect
4 until modified or vacated by the Commissioner for good cause shown. RSA 361-
5 A:3,I and I-a, RSA 361-A:3-a,I and II.

6 10. A default may result in administrative fines and restitution as
7 described in Paragraphs 2 and 3 above.

8 STATEMENT OF ALLEGATIONS

9 11. On or about October 20, 2009, the Department was informed by a New
10 Hampshire State Trooper that Respondents were operating as an unlicensed
11 sale finance company.

12 12. On October 21, 2009, the Department conducted an on-site visitation of
13 Respondent Silver St Auto and took photocopies of the Bills of Sale and
14 other relevant documents.

15 13. On March 2, 2010, the Department subsequently obtained copies of the
16 title applications from the New Hampshire Department of Safety. Between the
17 records found at Respondent Silver St Auto and the Department of Safety,
18 Consumers A through S were listed with the following lien dates:

19 A: 07/18/09	F: 07/08/09	K: 09/30/09	P: 10/06/09
20 B: 08/14/09	G: 07/29/09	L: 07/27/09	Q: 10/09/09
21 C: 10/07/09	H: 10/16/09	M: 07/07/09	R: 08/01/09
22 D: 08/21/09	I: 09/22/09	N: 06/25/09	S: 09/22/09
23 E: 07/08/09	J: 09/29/09	O: 10/06/09	

24 14. From the documentation the Department did obtain, it does not appear
25 Respondents charged interest; therefore, the amount due Consumers A through

1 S would be the amounts set out in Paragraph 3 above (either the difference
2 between wholesale purchase at auction and Consumer's purchase from
3 Respondents or the difference between trade-in amount of the motor vehicle
4 and Consumer's purchase from Respondent).

5 15. The Bills of Sale for the consumers the Department was able to obtain
6 showed that Respondents violated RSA 361-A:7,I since they did not comply
7 with what a Retail Installment Contract for a New Hampshire consumer shall
8 contain.

9 16. On April 27, 2010, the Department spoke with Respondent Rivera, who
10 indicated he didn't have liens and not conducting business anymore.
11 Respondent Rivera was going to have his counsel contact the Department, but
12 the Department never received such communication.

13 17. On May 31, 2011, the Department examiner went onsite to see if
14 Respondent Silver St Auto is still at the same location; no signage for such
15 a business was up.

16 18. Respondents engaged in the business of a sales finance company (on at
17 least 19 occasions) without a Sales Finance Company license issued by the
18 Department, in violation of RSA 361-A:2,I.

19 _____ /s/ _____ 10/25/11
Maryam Torben Desfosses Date
20 Hearings Examiner

21 **ORDER**

22 19. I hereby find as follows:

23 a. Pursuant to RSA 361-A:3,I and I-a, the facts as alleged above,
24 if true, show Respondents are operating or have operated in violation of RSA
25 Chapter 361-A and form the legal basis for this Order;

1 b. Pursuant to RSA 361-A:5,VI, this Order is necessary and
2 appropriate to the public interest and for the protection of consumers and
3 consistent with the purpose and intent of New Hampshire banking laws;

4 c. The Department finds pursuant to RSA 361-A:3,I and RSA 361-A:3-
5 a,I, reasonable cause to issue an order to cease and desist; and

6 d. Pursuant to RSA 361-A:3 and RSA 361-A:3-a, if Respondents fail
7 to respond to this Order and/or defaults then all facts as alleged herein
8 are deemed as true.

9 **20. Accordingly, it is hereby ORDERED that:**

10 a. Respondents shall cease and desist from violating RSA Chapter
11 361-A and rules or orders thereunder;

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

14 (1). Respondent Silver St Auto:

15 Violation #1: Unlicensed Sales Finance Company activity

16 (RSA 361-A:2,I) - 19 Counts;

17 Violation #2: Failure to comply with Retail Installment

18 Contract requirements (RSA 361-A:7,I) - 19 Counts;

19 (2). Respondent Rivera:

20 Violation #1: Unlicensed Sales Finance Company activity

21 (RSA 361-A:2,I) - 19 Counts;

22 Violation #2: Failure to comply with Retail Installment

23 Contract requirements (RSA 361-A:7,I) - 19 Counts;

24 c. Respondents shall show cause why reimbursement to Consumers A
25 through S as described above should not be made; and

