

1	In re the Matter of:)	Case No.: 11-001
)	
2	State of New Hampshire Banking)	
)	
3	Department,)	
)	
4	Petitioner,)	Order to Show Cause and Cease and
)	Desist
5	and)	
)	
6	Inofin Incorporated, Michael Joseph)	
)	
7	Cuomo, Kevin J. Mann, Sr., Donald K.)	
)	
8	Heap, and Melissa M. George,)	
)	
9	Respondents)	

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

1. This Order commences an adjudicative proceeding under the provisions of RSA Chapter 361-A and RSA Chapter 541-A.

RESPONDENTS

2. Inofin Incorporated ("Respondent Inofin") is a corporation formed in Massachusetts on March 1, 1994 and registered in New Hampshire on June 8, 1999 with its principal office location in Rockland, Massachusetts.

3. Respondent Inofin has been licensed as a Sales Finance Company with the New Hampshire Banking Department ("Department") since July 6, 2001. Respondent Inofin's Motor Vehicle Sales Finance Company license in Massachusetts expired on October 31, 2010.

4. Michael Joseph Cuomo ("Respondent Cuomo") is the 43% owner, President, Director and control person of Respondent Inofin.

5. Kevin J. Mann, Sr. ("Respondent Mann") is the 43% owner, Chief Executive Officer, Director and control person of Respondent Inofin.

6. Donald K. Heap ("Respondent Heap") is the 14% owner, Shareholder and

1 control person of Respondent Inofin.

2 7. Melissa M. George ("Respondent George") is the Chief Operating Officer
3 and control person of Respondent Inofin.

4 8. The above named Respondents are hereby collectively known as
5 "Respondents".

6 **LEGAL AUTHORITY AND JURISDICTION**

7 9. "Control" means the power, directly or indirectly, to direct the
8 management or policies of a company, whether through ownership of
9 securities, by contract, or otherwise. Any person who is a director, general
10 partner, or executive officer is presumed to control a company. RSA 361-
11 A:1,III-b.

12 10. "Person" is defined as an individual, partnership, corporation,
13 association, and any other group however organized. RSA 361-A:1,VIII.

14 11. The Commissioner has the authority to issue an order to show cause to
15 any person under the Commissioner's jurisdiction why Respondents' license
16 should not be revoked or suspended and penalties for violations of RSA
17 Chapter 361-A or any rule or order thereunder should not be imposed. RSA
18 361-A:3,I.

19 12. The Commissioner may by order, upon due notice and opportunity for
20 hearing, assess penalties, deny, suspend, decline to renew or revoke a
21 license if it is in the public interest and the respondent, any partner,
22 officer, member, or director, any person occupying a similar status or
23 performing similar functions, or any person directly or indirectly
24 controlling the respondent has, inter alia, (g) is not qualified on the
25 basis of such factors as experience, knowledge, and financial integrity; and

1 (i) violated any provision of RSA Chapter 361-A or rules or orders
2 thereunder. RSA 361-A:3,I-a.

3 13. The Commissioner may issue an order to cease and desist from violating
4 RSA Chapter 361-A or any rule or order thereunder if the Commissioner has
5 reasonable cause to believe the Respondents have violated RSA Chapter 361-A
6 or any rule or order thereunder. RSA 361-A:3-a,I.

7 14. The Commissioner may impose administrative fines of up to a maximum of
8 \$2,500.00 for each violation. RSA 361-A:11.

9 15. The Commissioner may issue, amend, or rescind such orders as are
10 reasonably necessary to comply with the provisions of RSA Chapter 361-A. RSA
11 361-A:5,IV.

12 **RIGHT TO REQUEST A HEARING**

13 16. Respondents have a right to request a hearing on this Order. A hearing
14 shall be scheduled not later than ten (10) days after the Commissioner
15 receives the Respondent's written request for a hearing. Respondents may
16 request a hearing and waive the ten (10) day hearing requirement. The
17 hearing shall comply with RSA Chapter 541-A, RSA 361-A:3 and RSA 361-A:3-a.

18 17. If any person fails to request a hearing within thirty (30) days of
19 receiving this Order, then such person shall be deemed in default, and the
20 Order shall, on the thirty-first (31st) day, become permanent, all
21 allegations may be deemed true, and shall remain in full force and effect
22 until modified or vacated by the Commissioner for good cause shown. RSA 361-
23 A:3 and RSA 361-A:3-a

24 18. A default may result in administrative fines as described in Paragraph
25 14 above.

STATEMENT OF ALLEGATIONS

1
2 19. On July 6, 2001, the Department approved and licensed Respondent
3 Inofin's Sales Finance Company license application, which included an
4 affirmation signed by Respondent Cuomo on January 23, 2001 and attested to
5 by a Notary Public. The affirmation indicated Respondent Inofin will be
6 operated in accordance with the New Hampshire Revised Statutes Annotated
7 (the RSAs) and rules of the New Hampshire Banking Department.

8 20. Sales finance company licensees are under a continuing obligation to
9 update information on file with the Commissioner. RSA 361-A:2,XII.

10 21. On June 18, 2010, the Massachusetts Division of Banks ("Division")
11 entered into a Consent Order with Respondent Inofin as a result of the
12 Division's concern with Respondent Inofin's ability to "maintain the minimum
13 financial requirements for holding a motor vehicle sales finance company
14 license in Massachusetts."

15 22. On November 18, 2010, Respondents electronically renewed Respondent
16 Inofin's New Hampshire Sales Finance Company license with the Department.
17 The electronic renewal required Respondents to affirm by checking a box that
18 the statements in the filing are true, correct and complete and that the
19 person submitting the affirmation has reviewed the licensee's records and
20 that all documents on file with the Department in connection with the
21 licensee's file are true and accurate. Respondents had to also affirm
22 Respondent Inofin will be operated in accordance with the New Hampshire
23 Revised Statutes Annotated (the RSAs) and rules of the New Hampshire Banking
24 Department.

25 23. On December 30, 2010, the Division then issued an Order to Cease and

1 Desist, Order to Show Cause and Notice of Intent to Revoke Motor Vehicle
2 Sales Finance Company License ("Cease and Desist Order") against Respondent
3 Inofin. The Division's Cease and Desist Order was based on two main issues:
4 the uncertainty of Respondent Inofin's ability to meet the minimum financial
5 requirements for holding a motor vehicle sales finance company license and
6 the material failure to comply with the terms of the June 18, 2010 Consent
7 Order. One of the material failures of the consent order was the
8 Respondents' inability to submit an audit of the financial statements for
9 2009 and an opinion audit in conformity with general accepted accounting
10 principles (GAAP).

11 24. Contrary to RSA 361-A:2,XII and as described in Paragraphs 19 to 23,
12 Respondents failed to notify the Department of the June 18, 2010 Consent
13 Order.

14 25. Contrary to RSA 361-A:2,XII and as described in Paragraphs 19 to 23,
15 Respondents failed to notify the Department of the December 30, 2010 Cease
16 and Desist Order.

17 26. Contrary to RSA 361-A:3,I-a(g) and as described in Paragraphs 19 to
18 23, Respondents lack the financial integrity to maintain a Sales Finance
19 Company license with the Department.

20 27. Contrary to RSA 361-A:3-b,II and as described in Paragraphs 19 to 23,
21 Respondents filed renewal documents with the Department which were at the
22 time and in light of the June 18, 2010 Consent Order filed against
23 Respondent Inofin, materially false and misleading.

24 _____
25 /s/ Maryam Torben Desfosses
Hearings Examiner

January 6, 2011
Date

ORDER

32. I hereby find as follows:

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

b. 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 purpose of New Hampshire banking laws;

c. Pursuant to RSA 361-A:3,I and RSA 361-A:3-a,I, reasonable cause to issue an order to cease and desist; and

d. If Respondents fail to respond to this Order and/or defaults 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 361-A and rules or orders thereunder;

b. Respondents shall immediately provide the Department a list of all New Hampshire consumers for whom Respondents have conducted sales finance company activity and a status of the loans (both transferred and non-transferred loans). 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;

c. Respondents shall show cause why Respondent Inofin's New Hampshire Sales Finance Company license should not be revoked;

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

3 (1). Respondent Inofin:

4 Violation #1: Failure to update information with the
5 Commissioner (RSA 361-A:2,XII) (2 counts);

6 Violation #2: Filing of materially false and misleading
7 statement (RSA 361-A:3-b,II) (1 count); and

8 Violation #3: Failure to maintain financial integrity (RSA
9 361-A:3,I-a(g)) (1 count);

10 (2). Respondent Cuomo:

11 Violation #1: As control person, failure to update
12 information with the Commissioner (RSA 361-A:2,XII) (2
13 counts);

14 Violation #2: As control person, filing of materially
15 false and misleading statement (RSA 361-A:3-b,II) (1
16 count); and

17 Violation #3: As control person, failure to maintain
18 financial integrity (RSA 361-A:3,I-a(g)) (1 count);

19 (3). Respondent Mann:

20 Violation #1: As control person, failure to update
21 information with the Commissioner (RSA 361-A:2,XII) (2
22 counts);

23 Violation #2: As control person, filing of materially
24 false and misleading statement (RSA 361-A:3-b,II) (1
25 count); and

1 Violation #3: As control person, failure to maintain
2 financial integrity (RSA 361-A:3,I-a(g)) (1 count);

3 (4). Respondent Heap

4 Violation #1: As control person, failure to update
5 information with the Commissioner (RSA 361-A:2,XII) (2
6 counts);

7 Violation #2: As control person, filing of materially
8 false and misleading statement (RSA 361-A:3-b,II) (1
9 count); and

10 Violation #3: As control person, failure to maintain
11 financial integrity (RSA 361-A:3,I-a(g)) (1 count);

12 (5). Respondent George:

13 Violation #1: As control person, failure to update
14 information with the Commissioner (RSA 361-A:2,XII) (2
15 counts);

16 Violation #2: As control person, filing of materially
17 false and misleading statement (RSA 361-A:3-b,II) (1
18 count); and

19 Violation #3: As control person, failure to maintain
20 financial integrity (RSA 361-A:3,I-a(g)) (1 count); and

21 e. Nothing in this Order:

22 (1). shall prevent the Department from taking any further
23 administrative and legal action as necessary under New Hampshire law; and

24 (2). shall prevent the New Hampshire Office of the Attorney General
25 from bringing an action against the above named Respondents in any New

