

STATE OF NEW HAMPSHIRE

BANKING DEPARTMENT

In re Michaud Motors, LLC,

North Shore Auto, LLC,

Kevin P. Michaud, as a manager of Michaud Motors, LLC,

Jeffrey J. Chizmas, as a manager of Michaud Motors, LLC.

Case No. 12-468

ORDER TO SHOW CAUSE

Now comes the State of New Hampshire Banking Department (the “Department”) and the Bank Commissioner (the “Commissioner”), commencing an adjudicative proceeding under the provisions of RSA Chapter 361-A and RSA Chapter 541-A against the respondents, Michaud Motors, LLC (“Michaud Motors”), North Shore Auto, LLC, Kevin P. Michaud, as a manager of Michaud Motors, and Jeffery J. Chizmas, as a manager of Michaud Motors, LLC.

RESPONDENTS

1. Michaud Motors is licensed with the Department as a retail seller under RSA Chapter 361-A. Michaud Motors has a mailing address of 8 Route 125, Kingston, NH 03848.
2. North Shore Auto, LLC owns a 100% membership interest in Michaud Motors. North Shore Auto, LLC is incorporated in Massachusetts with Mr. Michaud, 38 Ledgewood Drive, Danvers, MA 01923 listed as the resident agent. North Shore Auto, LLC is presumed to control Michaud Motors because it has the right to vote 10 percent or more of a class of membership interest. RSA 361-A:1, III-b.
3. Mr. Michaud is a manager of Michaud Motors. He has a mailing address of 80 Andover Street, Danvers, MA 01923. Mr. Michaud controls Michaud Motors because he has the power to direct the management or policies of the company. RSA 361-A:1, III(c).

4. Mr. Chizmas is a manager of Michaud Motors. He has a mailing address of 80 Andover Street, Danvers, MA 01923. Mr. Chizmas controls Michaud Motors because he has the power to direct the management or policies of the company. RSA 361-A:1, III(c).

JURISDICTION

The Department licenses and regulates persons “engag[ing] in the business of a sales finance company or a retail seller in this state.” RSA 361-A:2, I. “The commissioner may issue an order requiring a person to whom any license has been granted . . . to show cause why the license should not be revoked or penalties should not be imposed, or both, for violations of this chapter.” RSA 361-A:3, I.

FACTS

On November 8, 2012, the Department received a complaint from Consumer A filed by her attorney against Michaud Motors. The complaint alleged that Consumer A “has been diagnosed with learning disabilities, cognitive disabilities, and low memory.” The complaint also alleged that Consumer A “has been determined to have a permanent mental disability by the United States Social Security Administration.”

Consumer A further states that she “received a postal communication from Michaud [Motors] stating that she may have won a prize in a contest.” Consumer A alleges that on June 24, 2012, she “called Michaud [Motors] and was told that she had indeed won a prize and that she should come to [Michaud Motor’s] Kingston location to collect her prize.” Consumer A states that she went to Michaud Motors later that day.

Consumer A alleges that when she arrived at Michaud Motors, Joe Solens, a salesperson, “informed [her] that [her current car, a 1999 Dodge Caravan,] was unsafe to drive, and persuaded her to test drive and complete a credit application on a 2006 Jeep Commander, valued at \$26,000.” Consumer A further alleges that she told Mr. Solens that she “received a fixed disability income of approximately \$700 a month to support her and her two dependent

children.” Consumer A states that “[i]n the course of completing the credit application, [Mr.] Solens and/or Michaud [Motors] employee Brian Unger . . . fraudulently, and without the consent or notice of [Consumer A], altered the credit application to indicate that [Consumer A’s] income was \$2,466 a month.”

Consumer A also states that “[u]pon completion of this application, [Mr.] Solens then processed sales documents completing the sale of the Jeep with [the Dodge Caravan] taken as a ‘trade-in’ for \$1,000 credit.” Consumer A’s complaint alleges that her monthly payment on the Jeep was \$449 per month. The purchase was financed by Santander Consumer USA, Inc. (“Santander”), a New Hampshire licensed sales finance company.

Upon receipt of Consumer A’s complaint, the Department issued an administrative subpoena duces tecum upon Michaud Motors to obtain, among other items, a complete copy of any and all documents associated with Consumer A’s purchase of a vehicle from Michaud Motors. Additionally, the Department processed the complaint in the normal course against Santander and Michaud Motors as prescribed in RSA 361-A:4-a.

The Department’s investigator delivered the subpoena by hand and received a number of documents responsive to the subpoena. Specifically, the Department received a document entitled “Applicant’s Credit Statement” which contained Consumer A’s signature and a line showing Consumer A’s income as \$2,466 per month.

Subsequently, the Department received Michaud Motors’ response to Consumer A’s complaint. Michaud Motors explained that the sale to Consumer A “was the result of a promotion run on behalf of Michaud [Motors] . . . by The Wolfington Group.”

Michaud Motors also stated that Consumer A’s “financing application was placed online through Dealer Track.” Michaud Motors provided the Department with an affidavit signed by Mr. Unger. In the affidavit, Mr. Unger stated “[t]he Wolfington Group Representatives handled the negotiation and completion of the documentation with [Consumer A].” Mr. Unger also

stated that “[t]he loan application was submitted by the Wolfington Group to Dealer Track on line for financing.”

Michaud Motors provided a Direct Mail and Sale Event Proposal contract between Michaud Motors and the Wolfington Group, Inc. The contract does not appear to contemplate representatives from the Wolfington Group, Inc. negotiating with consumers, completing documents, or submitting application documents on Dealer Track.

Subsequently, the Department received a response from Santander to Consumer A’s complaint. In the response, Santander explained that its “records show that two (2) applications for credit were submitted online on behalf of [Consumer A] on June 24, 2012.” Santander further explained:

The first is Application ID 36212125 which was submitted at 2:28 P.M. and was rejected due to minimum required income not being met. The second application is Application ID 36212188 [which was submitted] at 2:31 P.M. and was approved.

Santander included a copy of the approved application which showed the Applicant’s Credit Statement.

The Applicant’s Credit Statement is identical to the Applicant’s Credit Statement obtained by the Department from Michaud Motors in response to the subpoena in that it contained Consumer A’s signature and a line showing Consumer A’s income as \$2,466 per month. Michaud Motors provided the Department with a record from Dealer Track outlining the time Consumer A’s applications were submitted to various sales finance companies. The record from Dealer Track explained that Dealer Track only retains copies of applications for 60 days. The record from Dealer Track also confirmed that Consumer A’s application was submitted to Santander on June 24, 2012 at 2:28 PM and again at 2:31 PM Eastern Standard Time. Additionally, the record from Dealer Track indicated that the login ID which was used to upload

the application belonged to Mr. Unger, not a representative of the Wolfington Group as stated in Mr. Unger's affidavit.

On April 4, 2013, the Department sought clarification from Michaud Motors regarding the discrepancy between Mr. Unger's affidavit and the record from Dealer Track. Additionally, the Department requested that Michaud Motors explain the difference between the two applications submitted. Counsel for Michaud Motors requested two weeks to provide such clarification. Three weeks later, the Department had not received clarification and followed up with counsel for Michaud Motors. Counsel for Michaud Motors requested an additional week to obtain an affidavit to explain the above-noted discrepancies. To date, the Department has received no further information from Michaud Motors.

Subsequently, Santander provided the Department with screen shots of the two credit applications submitted through Dealer Track. The first application submitted on June 24, 2012 at 2:28 PM indicates that Consumer A has an income of \$205.50. This application was "rejected." The second application submitted on June 24, 2012 at 2:31 PM indicates that Consumer A has an income of \$2,466.00. The second application was "purchased."

Recently, Consumer A provided the Department with her original purchase contract for the Dodge Caravan. The contract indicates that Consumer A paid \$1,700 for the Dodge Caravan on October 15, 2010. Additionally, Consumer A notified the Department that Santander repossessed the Jeep this spring.

FINDINGS

Pursuant to RSA 361-A:3, I, the Commissioner finds as follows:

1. This Order to Show Cause is in the public interest.

2. The facts as alleged above, if true, show that Michaud Motors violated the following provisions of RSA Chapter 361-A:
 - a. RSA 361-A:3-b, I(c): Michaud Motors knowingly or negligently engaged in an act, practice, or course of business which operated as a fraud or deceit upon a person when its agents and/or employees misstated Consumer A's income on a credit application and submitted that application to Santander. See RSA 361-A:2, I ("Persons subject to [RSA Chapter 361-A] shall be responsible for the supervision of their employees, agents and branch offices.").
 - b. RSA 361-A:3, I-a(d): Michaud Motors knowingly or negligently failed to supervise its agents, managers, or employees when its agents, managers, or employees misstated Consumer A's income on a credit application.

PENALTIES

The Commissioner orders that the respondents show cause why the following penalties should not be assessed:

1. Michaud Motors, North Shore Auto, LLC, Mr. Michaud, and Mr. Chizmas shall be jointly and severally liable for \$2,500 in fines for knowingly or negligently violating RSA 361-A: 3-b, I(c);
2. Michaud Motors' Retail Seller license shall be suspended for ninety (90) days;¹ and
3. Michaud Motors shall provide restitution to Consumer A.²

¹ RSA 361-A:3, I-a(d).

² RSA 361-A:5, VII.

NOTICE OF RIGHT TO A HEARING

The respondents have a right to request a hearing in writing on this Order to Show Cause. “[W]ithin 10 calendar days after receipt of a written request the matter will be scheduled for a hearing.” RSA 361-A:3, I. “If the person to whom an order to show cause or other order is issued fails to request a hearing within 30 calendar days of receipt or valid delivery of the order and no hearing is ordered by the commissioner, then such person shall be deemed in default, and the order shall, on the thirty-first day, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the commissioner, for good cause shown.” Id.

RECOMMENDED by:

07/15/13
Date

/s/
Emelia A.S. Galdieri
N.H. Bar #19840
Hearings Examiner
State of New Hampshire
Banking Department

ORDERED by:

07/15/13
Date

/s/
Glenn A. Perlow
Bank Commissioner
State of New Hampshire
Banking Department

CERTIFICATE OF SERVICE

I, Emelia A.S. Galdieri, hereby certify that on July 15, 2013, a copy of this

Order to Show Cause was sent to the following parties via U.S. Certified Mail First Class:

Michaud Motors, LLC
8 Route 125
Kingston, NH 03848

Jeffrey J. Chizmas
80 Andover Street
Danvers, MA 01923

Kevin P. Michaud
80 Andover Street
Danvers, MA 01923

Patrick J. Devine, Esq.
The Law Offices of Patrick J. Devine, P.C.
P.O. Box 295
Plaistow, NH 03865

North Shore Auto, LLC
c/o Kevin P. Michaud
38 LedgeWood Drive
Danvers, MA 01923

_____/s/_____
Emelia A.S. Galdieri
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Hearings Examiner
State of New Hampshire
Banking Department