

In re: The Muffler House, LLC
Case No.: 13-308

CONSENT ORDER

The State of New Hampshire Banking Department (the "Department") finds and Orders as follows:

Respondent

1. The Muffler House, LLC ("Muffler House") is a limited liability company duly registered with the New Hampshire Secretary of State since November 8, 2007 with a principal office location in Lebanon, New Hampshire. Muffler House has not been previously licensed as a Sales Finance Company by the Department.

Jurisdiction

2. The Department is authorized to regulate sales finance companies pursuant to RSA Chapter 361-A. *RSA 361-A:2.*
3. The Commissioner has jurisdiction to issue orders to cease and desist from violations under RSA Chapter 361-A and to assess penalties pursuant to RSA Chapter 361-A. *RSA 361-A:3,I, RSA 361-A:3,I-a, RSA 361-A:3-a and RSA 361-A:11.*
4. The Department may assess Muffler House administrative fines of up to \$2,500.00 for each violation of RSA Chapter 361-A. *RSA 361-A:11, VII and VIII.*

5. Further, pursuant to RSA 361-A:11,III, the Department may impose restitution for each consumer with whom Muffler House contracted as a sales finance company.

Facts

6. The Department discovered that Muffler House conducted unlicensed sales finance company by financing the motor vehicles it sold to consumers ("buy here-pay here") without a valid New Hampshire Sales Finance Company license.
7. The Department has reviewed the contracts and payment history and has determined the following eight (8) consumers require restitution pursuant to RSA 361-A:11,III, for a total restitution amount of \$16,107.00:

- Consumer 1: \$120.00;
- Consumer 2: \$335.00;
- Consumer 3: \$5,700.00;
- Consumer 5: \$3,532.00;
- Consumer 6: \$900.00;
- Consumer 8: \$2,000.00;
- Consumer 9: \$2,330.00; and
- Consumer 14: \$1,190.00.

Violation(s) of Law and Penalties

8. Muffler House has conducted unlicensed sales finance

company activity for New Hampshire consumers without a valid Sales Finance Company license, in violation of RSA 361-A:2,I.

Respondent's Consent and Acknowledgments

9. Muffler House hereby acknowledges that were an administrative hearing to be held in this matter, the Department would introduce evidence demonstrating that Muffler House violated RSA Chapter 361-A.
10. Muffler House has voluntarily entered into this Consent Order without reliance upon any discussions between the Department and Muffler House, without promise of a benefit of any kind (other than concessions contained in this Consent Order), and without threats, force, intimidation, or coercion of any kind. Muffler House further acknowledges its understanding of the nature of the allegations set forth in this action, including the potential penalties provided by law.
11. Muffler House hereby acknowledges, understands, and agrees that it has the right to notice and hearing, hereby waives said rights. Muffler House hereby further acknowledges it waives the filing of any civil actions related this matter.

Order

12. **Whereas pursuant to RSA 361-A:5,VI** finding this Consent Order necessary, appropriate and in the public interest and consistent with the intent and purposes of New Hampshire banking laws, the Department Orders as follows:

- a. Pursuant to RSA 361-A:3,I, RSA 361-A:3,I-a, and RSA 361-A:3-a, Muffler House shall cease and desist from conducting unlicensed sales finance company activity and from violating RSA Chapter 361-A and any rules or orders thereunder;
- b. Muffler House shall reimburse the eight (8) Consumers the fees charged (as listed and described in Paragraph 7 above) over four (4) months as follows:
 - Consumers 1 and 2 shall be reimbursed contemporaneously with Muffler House's execution of this Consent Order;
 - Consumer 3 shall be reimbursed on the 15th of the month following the effective date of this Consent Order, which is upon the Commissioner's signature;
 - Consumer 5 shall be reimbursed on the 15th of the second month following the effective date

of this Consent Order, which is upon the Commissioner's signature;

- Consumers 6 and 8 shall be reimbursed on the 15th of the third month following the effective date of this Consent Order, which is upon the Commissioner's signature;
- Consumers 9 and 14 shall be reimbursed on the 15th of the fourth month following the effective date of this Consent Order, which is upon the Commissioner's signature;
- These consumer checks shall be bank checks or guaranteed funds and made payable to each individual consumer and submitted directly to each consumer via first class mail by Muffler House

(1). Each check shall be accompanied by written correspondence containing only the following language: "This refund check is being sent to you pursuant to a public consent order that Muffler House entered into with the New Hampshire Banking Department. You may find a copy of the public consent order on the Banking Department's website, which is located at www.nh.gov/banking/orders/enforcement/index.htm

by searching for Docket #13-308. For further questions, please contact the New Hampshire Banking Department at (603) 271-3561;"

(2). Any verbal communications with consumers about the restitution shall be limited to the language found in the written correspondence, and Muffler House shall refer the consumer to the Department for further information;

(3). Muffler House shall also forward to the Department copies of both cancelled checks or copies of both cancelled check images;

(4). Muffler House shall make a second attempt to locate the consumer, if the address to which the restitution check is mailed is no longer valid. Such attempt shall be documented and reported to the Department;

(5). Muffler House shall follow up at least once with any consumer who does not cash the check within three months of receipt. Such follow up shall be documented and reported to the Department; and

(6). If, after six months, a consumer has failed to cash or deposit the restitution check, Muffler House shall begin the process to

escheat the funds to the New Hampshire State Treasurer's Abandoned Property division. Such process shall be documented and reported to the Department. The process of escheatment may begin prior to six months, if so approved or directed by the Department; and

c. Muffler House shall pay to the Department \$3,000.00 in administrative penalties, payable contemporaneously with Muffler House's signing of this Consent Order. The check shall be bank check or guaranteed funds and made payable to "State of New Hampshire."

13. This Consent Order may be revoked and the Department may pursue any and all remedies available under law, if the Department later finds that Muffler House knowingly or willfully withheld information used and relied upon in this Consent Order or violates this Consent Order.
14. This Consent Order is binding on all heirs, assigns, and/or successors in interest.
15. This Consent Order shall become effective upon the date the Commissioner signs this Consent Order providing the Department has confirmed the initial payment referenced in Paragraph 12.b. and the payment

in Paragraph 12.c. herein.

16. Once this Consent Order is effective, the Department agrees not to seek further reimbursement, refunds, penalties, fines, costs, or fees regarding the facts, allegations, or findings of violations contained herein.

WHEREFORE, based on the foregoing, we have set our hands to this Consent Order, effective upon its execution by Glenn A. Perlow, Bank Commissioner.

Recommended this 2nd day of December, 2013 by

/s/

Maryam Torben Desfosses,
Hearings Examiner, Banking Department

Executed this 12th day of December, 2013 by

/s/

Robert L. Moulton, Jr., as 51% owner of and on behalf of
The Muffler House, LLC

Executed this 12th day of December, 2013 by

/s/

Joanne Moulton, as 49% owner of and on behalf of The
Muffler House, LLC

SO ORDERED.

 /s/
Ingrid E. White,
Deputy Commissioner for
Glenn A. Perlow,
Bank Commissioner

Dated: 12/17/13