

State of New Hampshire Banking Department

In re the Matter of:)	
)	Case No.: 15-076
State of New Hampshire Banking Department,)	
Petitioner)	
)	
And)	Order on the Merits
)	
Claremont Ford Lincoln, Inc. and Arrien L.C.)	
Schiltkamp, individually and as President of)	
Claremont Ford Lincoln, Inc.,)	
Respondents)	

ORDER

I. INTRODUCTION

The Respondent Claremont Ford Lincoln, Inc. (“Claremont Ford” or “Respondent”) was registered as a New Hampshire corporation on October 31, 2000. Department’s Exhibits 1 – 2 (All Exhibits hereafter “Ex. _”). The Respondent Arrien L.C. Schiltkamp (“Schiltkamp” or “Respondent”) has owned and controlled Claremont Ford since 2000 and owns 100% of Claremont Ford (Claremont Ford and Schiltkamp are, collectively, the “Respondents”). Exs. 1 – 2; Respondents’ Ex. A. Claremont Ford is engaged in the business of selling automobiles and is a licensed retail seller as described in RSA 361-A: 1, VII.

The State of New Hampshire Banking Department (“Department” or “Petitioner”) entered into a Consent Order dated May 21, 2015 with Claremont Ford after conducting an examination earlier that month and discovering that Claremont Ford had not paid off motor vehicles liens on trade-in vehicles pursuant to the requirements of RSA 361-A: 10-c, I. After the entry of the Consent Order, the Respondents failed to comply with its terms, and the Department sought an Order of Immediate Suspension of the Respondents’ license. The Department issued an Order to Show Cause against the Respondents on June 26, 2015. The Department filed a

Supplement to its Order to Show Cause on August 18, 2015. A hearing on the Order to Show Cause then was conducted on September 18, 2015. A day prior to the hearing, the Respondents filed an Emergency Motion to Continue the Hearing based, in part, upon Respondents' understanding that a grand jury proceeding had been initiated against them. The Emergency Motion was denied at the commencement of the hearing. At the conclusion of the hearing, the parties agreed to submit a Joint Status Report with the presiding officer by October 6, 2015, describing whether Respondents had been successful in obtaining funding to pay off the accumulated liens pursuant to RSA 361-A: 10-c, I. The Joint Status Report indicated that Respondents were unable as of October 6 to obtain such funding.

This Order is based upon the exhibits, the pleadings, and the hearing held on September 18, 2015.

II. FACTS

A. Consent Order of 2011

Prior to the Department's Order to Show cause, the Respondents previously had engaged in non-compliance with the requirements of RSA 361-A: 10-c, I by failing to pay off trade-in vehicles' existing liens. In 2011, the Department conducted an examination of Claremont Ford and discovered that from 2010 to 2011 Claremont Ford had failed to pay off liens on sixty-three trade-in vehicles within the statutory period of twenty one days as set forth in RSA 361-A: 10-c, I. The Department and Respondent Claremont Ford subsequently entered into a Consent Order by which Claremont Ford agreed to pay an administrative fine, obtain financing or a surety bond for Claremont Ford, and submit to future examination by the Department. Ex. 5. Respondent

Schiltkamp, as the owner of Claremont Ford, executed the Consent Order on behalf of Claremont Ford. Ex. 5. In that case, the Respondents complied with the Consent Order.

B. Complaints and Examination Resulting in Consent Order of May 21, 2015.

The Respondents' compliance with the statutory requirements of RSA 361-A: 10-c, I lasted only until 2014. Ex. 9. After receiving numerous complaints from consumers during April and May, 2015, the Department again conducted an examination of Claremont Ford on or about May 13, 2015. During this examination the Department's examiners, Lorry Cloutier and Kathleen Sheehan, met with Deb Macia, at that time the Controller of Claremont Ford. Ms. Macia provided the examiners with financial statements and two dealership reports. Based upon the examination, the Department determined that the financial condition of Claremont Ford had deteriorated on a continuous basis, from \$-74,949 as of September 30, 2014 to \$-601,584 as of March 31, 2015. Exs. 12 - 14. The two dealership reports documented sales with trade-ins that occurred between January, 2015 and May 13, 2015. One report provided detail of each transaction that occurred for each vehicle accepted in trade, and the other provided a summary for each such vehicle. Exs. 10 -11. During the hearing, the Department introduced as an exhibit a spreadsheet based upon the reports and prepared by the examiners that identified, for each vehicle accepted in trade, the date of the sale and trade, the date that pay-off of the lien was due pursuant to RSA 361-A: 10-c, I, the date that the lien actually was paid, the number of days late the payoff occurred, and whether Claremont Ford sold particular trade-in vehicles prior to paying off their liens. Ex. 9. In addition, the spreadsheets indicated whether Claremont Ford itself had made a payment to a lienholder on behalf of a consumer. Ex. 9.

Faced with the results of the Department's May 13 examination and subsequent analysis, Respondent Schiltkamp, as representative of Claremont Ford and on his own behalf, entered into

a Consent Order with the Department on May 21, 2015. Exs. 3, 5. In the Consent Order (the “2015 Consent Order”) the Respondents agreed to undertake measures to make the affected consumers whole, and in so doing agreed to provide a cash pledge for \$500,000 or a \$1,000,000 surety bond; to inject sufficient cash into Claremont Ford to create a positive net value; to pay off all outstanding motor vehicle liens by May 28, 2015; to pay restitution to customers, including letters of credit to credit reporting agencies; and to continue to provide the Department with certain business documents. 2015 Consent Order, ¶¶ 3, 4, 6, 7, 10, 16.

C. Respondents’ Failure to Comply with the 2015 Consent Order

The Respondents do not dispute that they have failed to comply with the terms of the 2015 Consent Order. As of the date of the hearing in this matter, the Respondents were attempting, in fact, to procure funding to pay off the motor vehicle liens. The Respondents owed, as of June 19, 2015, \$565,000 in outstanding trade payoffs. Ex. 26. The Department continued to receive consumer complaints through August 19, 2015 regarding the non-payment of liens on trade-in vehicles. Ex. 6-A – 6-O. The individual complaints demonstrate the extreme level of frustration and stress consumers experienced as a result of the failure of Respondents to pay off the liens on trade-in vehicles.¹

D. Respondent Schiltkamp

Respondent Schiltkamp has been sole owner of Claremont Ford since its incorporation in New Hampshire in 2000. Exs. 1 - 2. Schiltkamp had been the signatory to the 2011 Consent

¹ Pursuant to the provisions of RSA 383:10-b, a number of the exhibits introduced at trial consisted of confidential information, and have been so described in the Exhibit List introduced by the Department. Similarly, during the September 18, 2015 hearing, the proceedings were, at times, closed to the public because of witnesses’ testimony concerning confidential information.

Order and is the signatory to the 2015 Consent Order. Beginning in August, 2014, Ms. Macia communicated directly with Schiltkamp concerning the financial situation of Claremont Ford. These emails expressed concerns with the manner in which Claremont Ford handled its obligations to pay off liens of consumers' trade-in vehicles and, at a minimum, reiterated the obligations of the Respondents, and the consequences to them, of failing to pay off the liens. Exs. 16, 18, 19, 20. Schiltkamp involved himself directly with certain customers through direct communications with them about their unpaid liens on their trade-in vehicles. Ex. 6-D, 6-F; 6-J.

Schiltkamp sought funding for Claremont Ford during the months of March, April, and May, 2015.² Ex. 21, 22, 24, 25. In his communications with Ms. Macia during those months, Schiltkamp continued to assert that funding was possible, if not imminent. He also instructed her to retain significant percentages of such funding for a mortgage and other personal expenses. As of the date of the hearing, the Respondents were unsuccessful in obtaining funding to pay off the liens of consumers' trade-in vehicles pursuant to RSA 361-A: 10-c, I.³

E. Respondents' Exhibit A: Complaint and Summons in Schiltkamp International Automotive Management, Inc., et al v. Dennis J. Griffin

Respondents, through their counsel, introduced one exhibit during the hearing, a copy of the summons and the complaint in a civil action, Schiltkamp International Automotive Management, Inc., et al v. Dennis J. Griffin, Case No. 216-2015-CV-00588, filed in Hillsborough County Superior Court on September 17, 2015 (the "Complaint"). The Complaint reveals that Respondent Schiltkamp, as plaintiff, seeks damages for breaches of fiduciary duties

² In addition, as of September 18, 2015, the date of the hearing, Respondent Schiltkamp was in the process of attempting to secure funding, which was unsuccessful as set forth in the Joint Status Report dated October 6, 2015.

³ I note that Mr. Schiltkamp was not present at the hearing held on September 18, 2015; on that date his counsel represented that he was in New York attempting to secure funding to pay off the liens.

and contractual obligations from Dennis J. Griffin, a former employee of an entity owned by Schiltkamp, Schiltkamp International Automotive Management, Inc. (“SIAM”). The Complaint alleges, in large part, that the defendant, Mr. Griffin, engaged in a pattern of self-serving and self-dealing concerning financial transactions related to SIAM to the detriment of Schiltkamp and Schiltkamp’s various car dealerships, one of which was Claremont Ford. Ex. A. The Complaint states that Mr. Griffin resigned from his employment in August 2014. Ex. A, para. 45.

III. ANALYSIS

RSA chapter 361-A establishes a comprehensive licensing and regulatory scheme for persons engaged in the business of selling or providing financing for the sale of motor vehicles using "retail installment contract[s]." RSA 361-A:1, X (Supp.2011). State v. Empire Automotive Group, Inc., 163 N.H. 144, 146 (N.H. 2011).

As a licensed retail seller, Claremont Ford is subject to the provisions of Chapter RSA 361-A. Schiltkamp, as owner of 100 percent of Claremont Ford, has “control” of Claremont Ford and is a “direct owner” and “principal” of Claremont Ford. RSA 361-A: 1, III-b, III-d, and VIII-a.

RSA 361-A: 3, I-a (i) provides that the Commissioner of the Department “may, by order, deny, suspend, or revoke any license . . . if the commissioner finds that the order is in the public interest and the . . . respondent, or licensee, any partner, officer, member, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the . . . respondent, or licensee: . . . (i) Has violated this chapter or any rule or order thereunder . . .”

RSA 361-A:10-c, I requires that a retail seller, such as Claremont Ford, after entering into a retail transaction in which a consumer trades in or sells a vehicle that is subject to a lien, “remit payment to the lien holder within 21 calendar days of the date of sale, unless the underlying contract has been rescinded before expiration of 21 calendar days.” Respondents, through counsel, at the hearing and in Respondents’ Proposed Findings of Fact and Conclusions of Law, have conceded that Claremont Ford has failed to pay off the liens on consumers’ trade-in vehicles and do not contest that, as of June 19, 2015, \$565,000 in outstanding trade payoffs remained. Consumers, as a result, have remained responsible for paying the liens and their credit reports continue to show debt. The obvious result is a likely potential for negative credit ratings, the imposition of higher interest rates on present and future loans, and denial of future loan requests.

RSA 361-A: 11 sets forth the statutory requirements upon which penalties may be based.

RSA 361-A: 11, V states that:

“any person who knowingly violates any rule or order, may, upon notice and opportunity for hearing, except where another penalty is expressly provided, be subject to suspension or revocation of any registration or license, or imposition of an administrative fine not to exceed \$2,500 for each violation in lieu of or in addition to such suspension or revocation as may be applicable under this title for violation of the provision to which a rule or order relates. Each of the acts specified shall constitute a separate action.”

RSA 361-A; 11, VII states that “[a]ny person who, either knowingly or negligently, violates any provision of this chapter may, upon notice and an opportunity for hearing, and in addition to any penalty provided for by law, be subject to such suspension, revocation, or denial of any registration or license, including . . . imposition of an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation . . .”

RSA 361-A: 11, VIII provides that:

“[e]very person who directly or indirectly controls a person liable under this section . . . who materially aids in the act constituting the violation . . . either knowingly or negligently, may, upon notice and opportunity for hearing, and in addition to any other penalty provided for by law, be subject to such suspension [or] revocation . . . including . . . an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation . . . No person shall be liable under this paragraph who shall sustain the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which the liability is alleged to exist.”

The Respondents contend that the allegations in the Complaint manifest that the Respondents have each been victims of a fraud. The Complaint is evidence of particular allegations only, and cannot be relied upon for definitive factual proof concerning the actions of the purported defendant in the Complaint, Mr. Griffin, and the effects of his actions upon Claremont Ford and Schiltkamp. Schiltkamp is and has been the owner of, and thus “controls” under RSA 361-A: 1, III-b, Claremont Ford. His participation on the 2011 Consent Order and the 2015 Consent Order demonstrates that he was, at a minimum, aware of the statutory requirements imposed upon both Claremont Ford and him.⁴

The statutory definitions of “control,” “direct owner,” and “principal” set forth in RSA 361-A manifest the Legislature’s recognition of just this type of scenario. RSA 361-A: 1, III-b, III-d, VIII-a. Respondent Schiltkamp has been at all times a “person” presumed to control Claremont Ford, as well as the “direct owner” and “principal” of Claremont Ford. While Ms. Macia testified that Schiltkamp became more actively involved in the day-to-day affairs of the

⁴ I note that current counsel for the Respondents was not the counsel of record in Respondents’ dealings with the Department either in the events leading to the 2011 Consent Order or to those leading to the 2015 Consent Order.

dealership, no evidence exists that at any time did Schiltkamp relinquish his roles as defined in RSA 361-A: 1.

If anything, the evidence in the pleadings and presented during the hearing further demonstrates that Schiltkamp's involvement with the day-to-day activities of Claremont Ford's operations intensified after August 2014, and that at least as early as August, 2014, his communications with the then-Controller of Claremont Ford, Ms. Macia, included specific references to the fact that liens of consumers' trade-in vehicles were not paid off and that such actions were on-going. Ex. 16. The consumer complaints that initiated this matter, in fact, arose after August 2014. Schiltkamp's involvement with and control over Claremont Ford, and by extension the manner in which Respondents together addressed the issues of the unpaid vehicle liens, also is manifested in his direct communication with a number of consumers.

Respondent Schiltkamp's involvement in the funding efforts in 2015, indeed, demonstrate his direct control of Claremont Ford during that time, a period during which the majority of violations of RSA 361-A: 10-c, I occurred. Ex. 9. I find that Schiltkamp has not sustained, under RSA 361-A: 11, VIII, his burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the circumstances underlying the imposition of liability in this matter.

Based upon the evidence before me, I find that Schiltkamp, in addition to Claremont Ford, knowingly violated the 2015 Consent Order; negligently and knowingly violated the provisions of RSA 361-A: 10-c; and that Respondent Schiltkamp materially aided in the acts which resulted in a failure to pay off consumers' lines pursuant to RSA 361-A: 10-c, I.

IV. PROPOSED FINDINGS OF FACT AND RULINGS OF LAW

A. Respondents' Proposed Findings of Fact

1. Denied.
2. Denied in part and granted in part. It is granted that Mr. Schiltkamp was not physically present at Claremont Ford every business day in 2014 and 2015.
3. Granted to the extent that no evidence exists which demonstrates Mr. Schiltkamp directly “caused a consumer transaction to be consummated when he knew that a consumer lien would not be paid off.”
4. Granted to the extent of the request.
5. Granted.
6. Neither granted nor denied.

B. Respondents' Proposed Conclusions of Law

1. Granted as to the first sentence and second sentence. Denied as to the third sentence.
2. Denied as to the first sentence. Granted as to the second sentence.
3. Denied.
4. Denied as to the first sentence. Violations of RSA 361-A: 10-c, I arose beginning in 2014 and steadily increased in the first quarter of 2015. Ex.9. The record demonstrates that the sole reason the Respondents entered into the 2015 Consent Order stemmed from the Department's receipt of consumer complaints and the Department's subsequent investigation in May, 2015. Granted as to the second sentence.

C. Department's Proposed Findings of Fact

1. Granted.
2. Granted.

3. Granted.
4. Granted.
5. Granted.
6. Granted.
7. Granted.
8. Granted.
9. Granted.
10. Granted.
11. Granted.
12. Granted.
13. Granted.
14. Granted.
15. Granted.
16. Granted.
17. Granted.
18. Granted.
19. Granted.
20. Granted, with the clarification that the two reports also demonstrate trade-ins that occurred in 2014 as well.
21. Granted, with the clarification that the spreadsheets include 2014 trade-ins.
22. Granted.
23. Granted, with the observation that upon further review it appears that Exhibit 9 has 70 vehicles liens that were not paid off.

24. Granted.

25. Granted.

26. Granted.

27. Granted.

28. Granted.

29. Granted.

30. Granted.

31. Granted.

32. Granted.

33. Granted, with the clarification that the CEO was Dennis J. Griffin.

34. Granted.

35. Granted.

36. Granted.

37. Granted.

38. Granted.

39. Granted.

40. Granted.

41. Granted.

42. Granted, to the extent that the record reflects six consumers.

43. Granted.

44. Granted.

45. Granted.

46. Granted.

47. Granted to the extent that the statement reflects what occurred during the months of April and May, 2015.

48. Granted.

49. Granted.

50. Granted.

51. Granted.

52. Granted.

53. Granted.

54. Granted.

55. Granted.

D. Department's Proposed Rulings of Law

A. Granted.

B. Granted.

C. Granted.

D. Granted.

E. Granted.

F. Granted.

G. Granted.

V. CONCLUSION

No dispute exists as to whether the Respondents failed to comply with RSA 361-A: 10-c, I in failing to pay off the liens on consumers' vehicles. I find that the documents introduced at the hearing and the testimony indicate that consumers have been harmed through the effect on

their credit ratings, and the resultant threat of increased interest rates or denial of future loans, as well as with having to handle queries from what they expected to be past lien holders.

I am cognizant of the efforts of the Respondents to attain financing and/or a capital infusion in order to pay off the liens, and Respondent Schiltkamp' s efforts after the hearing date and the filing of the Joint Status Report on October 6 presumably reflect such efforts. I find unconvincing the argument that Respondent Schiltkamp was unaware of and did not know of the consistent pattern of the failure to pay off the liens on trade-in vehicles. I also am mindful that Respondents have not denied the existence of their obligations under RSA 361-A: 10-c, I and have requested that the administrative fines be suspended for a period of six (6) months during which time they have represented that they will continue to seek funding to pay off the motor vehicle liens, which amount is at least \$595,000.

Based on the forgoing, I issue the following Order:

1. The retail seller license for Respondent Claremont Ford Lincoln, Inc. is hereby revoked for violating RSA 361-A: 10-c, I, RSA 361-A: 11, V, and RSA 361-A: 11, VII.
2. Respondents shall immediately pay off all outstanding motor vehicle liens due pursuant to RSA 361-A: 10-c, I and provide written proof to the Department that each lien has been paid.
3. Respondents shall pay full restitution to consumers for any monies paid, including fees or interest incurred, by the consumer relative to the out-standing trade-in liens and provide to the Department cancelled checks for all restitution paid to consumers. All such payments shall be made using bank checks or guaranteed funds and made payable to each consumer and mailed directly to each consumer via first class mail.

4. Respondents shall follow up and contact each consumer who does not cash his or her restitution check within three (3) months of receipt and provide written documentation of such follow-up to the Department. If, after six months, a consumer has not cashed or deposited a restitution check, Respondents shall commence the process of escheating the funds to the New Hampshire State Treasurer's Abandoned Property division.
5. For each of Respondent Claremont Ford's consumers with an outstanding lien on the trade-in vehicle, Respondents shall provide a letter to each associated lien holder and to the appropriate credit reporting agency with an explanation that any late payments or unpaid fines are solely the fault of Claremont Ford.
6. Respondent Schiltkamp is ordered to pay an administrative fine of \$265,000 for knowingly or negligently violating RSA 361-A: 10-c, I, RSA 361-A: 11, V, and RSA 361-A: 11, VIII; provided, however, that such fine shall be suspended for a period of six (6) months from the date of this Order; and furthermore, provided that if all of the payments to and on behalf of consumers as set forth in paragraphs 1 through 3 of this Order, above, have been completed within six (6) months of the date of this Order with such written proof as necessary for the Department, such administrative fine shall be vacated.
7. Respondent Claremont Ford is ordered to pay an administrative fine of \$265,000 for knowingly or negligently violating RSA 361-A: 10-c, I, RSA 361-A: 11, V, and RSA 361-A:11, VII; provided, however, that such fine shall be suspended for a period of six (6) months from the date of this Order.
8. The appeal process begins with a Motion for Rehearing within 30 days of this Order.

So Ordered:

_____/s/_____
Andrew B. Eills, Esquire
Presiding Officer

Date: 10/26/15