

In re: Miller, Randy d/b/a Onyx Preowned, Licensee, and
Randy Dean Miller, Owner,
Respondents

Case No.: 15-186

NOTICE OF ORDER TO SHOW CAUSE

1. This Order to Show Cause ("Order") commences an adjudicative proceeding under the provisions of RSA Chapter 361-A (including RSA 361-A:3,I through IV, RSA 361-A:5,IV, and RSA 361-A:11,I through VIII) and RSA Chapter 541-A.
2. The commissioner of the New Hampshire Banking Department ("commissioner") may issue an order requiring Respondents to show cause why the license should not be revoked or penalties imposed, or both. RSA 361-A:3,I and I-a(c), (h) and (i).
3. The commissioner may issue an order requiring Respondents to show cause why each Respondent should not be barred from licensure. RSA 361-A:3, I-a(c), (h) and (i).
4. The Department reserves its right pursuant to RSA 361-A:5,IV to amend this Order or issue or rescind such orders as are reasonably necessary to carry out the provisions of RSA Chapter 361-A.

RESPONDENTS

5. Miller, Randy d/b/a Onyx Preowned ("Respondent Onyx Preowned") is a sole proprietorship operating with the trade name of "Onyx Preowned." The trade name was formed on October 14, 2014 and dissolved on February 5, 2016. Respondent Onyx Preowned is a licensed New Hampshire Retail Seller with a principal office location in Hooksett, New Hampshire. Respondent Onyx Preowned has been licensed with the New Hampshire Banking Department ("Department") as a Retail Seller since January 21, 2016. Respondent Onyx Preowned is a Retail Seller and a Person. RSA 361-A:1,VIII and XII.
6. Randy Dean Miller ("Respondent Miller") is the 100% direct owner and control person of Respondent Onyx Preowned. Respondent Miller is a Control person (RSA 361-A:1,III-b), a Direct Owner (RSA 361-A:1,III-d), a Principal (RSA 361-A:1,VIII-a), and a Person (RSA 361-A:1,VIII).
7. The above-named Respondents are hereinafter collectively known as "Respondents."

STATEMENT OF ALLEGATIONS

Breach of Consent Order:

8. On December 4, 2015, the Department issued an Order of

Denial of Retail Seller License against Randy Dean Miller (d/b/a Onyx Preowned) based on a determination that Respondents Miller's past and proposed conduct failed to warrant the public's confidence, which is required to grant licensure pursuant to RSA 361-A:2, VIII(b). Specifically, that:

- a. Respondent Miller owned and operated Empire Auto Group Inc. (a New Hampshire Retail Seller) prior to his ownership of Onyx Preowned. Respondent Miller subsequently closed Empire Auto Group Inc. in 2015. However, Respondent Miller failed to notify the Department of Empire Auto Group Inc.'s closure within 15 calendar days as required by RSA 361-A:2-a, I(a).
 - b. Respondent Miller failed to disclose, on his Retail Seller application for Onyx Preowned, previous administrative and legal actions taken against him and his former company.
 - c. Respondent Miller advertised rates and terms and took credit applications under Onyx Preowned prior to Respondent Onyx Preowned's licensure as a New Hampshire Retail Seller.
9. On January 21, 2016, the Department entered into a Consent Order with Respondent Miller, which allowed him

- to obtain licensure and required him to both obtain a surety bond within 30 days of the effective date of the Consent Order and be subject to examination.
10. Respondent Miller was required to obtain the surety bond by February 22, 2016 (30 days from the January 21, 2016 effective date of the Consent Order).
 11. Respondent Miller did not provide the Department with a surety bond by February 22, 2016.
 12. On March 9, the Department inquired with Respondent Onyx Preowned and Respondents' counsel of the status of the surety bond.
 13. On March 9, 2016, the Department received a copy of an executed surety bond with a March 8, 2016 effective date for a company named Onyx Preowned, Inc. and not under Respondents' current Retail Seller license, which is a sole proprietorship named "Miller, Randy d/b/a Onyx Preowned."
 14. According to information obtained by the Department, Respondents initiated communications with their insurance agent regarding the surety bond on February 22, 2016, and the surety bond company confirmed receipt of the application on February 24, 2016.
 15. Pursuant to RSA 361-A:3, I-a(i), the commissioner may revoke a license or bar any person from licensure if

any licensee or any person controlling the licensee, violated any order under RSA Chapter 361-A and the Commissioner finds the order is in the public interest. Respondents breached the January 21, 2016 Consent Order by failing to obtain a surety bond for Respondents' current Retail Seller license within 30 days of the effective date of the Consent Order.

Failure to Notify Commissioner of Dissolution of Trade Name

"Onyx Preowned":

16. Upon the Department's March 9, 2016 receipt of the surety bond naming Onyx Preowned Inc. as the insured, the Department researched the New Hampshire Secretary of State's records for both the trade name "Onyx Preowned" and the company name "Onyx Preowned Inc."
17. On January 27, 2016, Respondent Miller executed a "Consent to Formation" whereby, as owner of the "Onyx Preowned" trade name, Respondent Miller consented to the formation of his company, Onyx Preowned Inc.
18. On February 3, 2016, Respondent Miller executed the New Hampshire's Secretary of State's Certificate of Discontinuance of Use of Trade Name to dissolve the "Onyx Preowned" trade name.
19. The New Hampshire Secretary of State dissolved the "Onyx Preowned" trade name on February 5, 2016.

20. The New Hampshire Secretary of State registered Onyx Preowned Inc. with an entity creation date of February 5, 2016.
21. Pursuant to RSA 361-A:2, XII, retail seller licensees are under a continuing obligation to update information on file with the commissioner. If any information on file becomes materially inaccurate, the retail seller licensee shall promptly submit an amendment to its application records to correct the information on file with the commissioner. Pursuant to RSA 361-A:2, XII, an amendment shall be considered to be filed promptly if the amendment is filed within 30 days of the event that requires such amendment.
22. Respondents failed to notify the Department of the dissolution of the "Onyx Preowned" trade name, in violation of RSA 361-A:2, XII. The Department discovered the dissolution upon its own review of the New Hampshire Secretary of State filings.

Fraudulent Representations or Concealment of Material

Particulars to Consumer Borrowers:

23. Pursuant to the examination authority given under the January 21, 2016 Consent Order, Department Examiners conducted an on-site examination of Onyx Preowned on March 11, 2016 to determine under what name Respondents

- conducted business (if any) as of February 5, 2016 (trade name dissolution date and Onyx Preowned Inc. entity creation date).
24. The Department Examiners discovered that, between February 5, 2016 and March 11, 2016, Respondents sold thirteen (13) motor vehicles subject to financing wherein Respondents listed the trade name "Onyx Preowned" as the Seller on the Retail Installment Contracts even though Respondent Miller dissolved the trade name on February 5, 2016.
 25. Pursuant to RSA 361-A:7, I(d), a retail installment contract shall contain the name of the seller if an indirect loan. Respondents, as a New Hampshire Retail Seller, arranged indirect loans.
 26. RSA 361-A:3, I-a(c) states the commissioner may by order revoke a license or bar a person from licensure if the licensee or any person controlling the licensee made fraudulent representations, circumvented or concealed, through whatever subterfuge or device, any of the material particulars required to be stated or furnished to a borrower under RSA 361-A and the commissioner finds the order is in the public interest.
 27. Respondents fraudulently represented and concealed a material portion of the retail installment contract

- provided to borrowers, which is the seller's identity.
28. Respondents sold the thirteen (13) motor vehicles to retail buyers between February 5, 2016 and March 11, 2016 and in violation of RSA 361-A:3, I-a(c), failed to inform the retail buyers of the dissolution of the "Onyx Preowned" trade name when he listed the name on the retail installment contracts.

Dishonest Or Unethical Practices in Making Retail

Installment Transactions:

29. RSA 361-A:3, I-a(h) states the commissioner may by order revoke a license or bar a person from licensure if the licensee or any person controlling the licensee engaged in dishonest or unethical practices in the conduct of making retail installment transactions.
30. Respondents fraudulently represented and concealed a material portion of the retail installment contract provided to borrowers, which is the seller's identity.
31. In violation of RSA 361-A:3, I-a(h), Respondents assigned the thirteen (13) retail installment contracts to sales finance companies without informing the companies that Respondents dissolved their sole proprietorship trade name and still entered into retail installment contracts using the dissolved trade name.

ORDER

32. I hereby find as follows:

a. The facts as alleged above, if true, show Respondents are operating and have operated in violation of RSA Chapter 361-A and form the legal basis for this Order, specifically that Respondents:

(1). Knowingly violated the Consent Order, in violation of RSA 361-A:3, I-a(i);

(2). Knowingly failed to notify Commissioner of Dissolution of Trade Name, in violation of RSA 361-A:2, XII;

(3). Knowingly concealed material particulars to consumer borrowers, in violation of RSA 361-A:3, I-a(c); and

(4). Knowingly conducted dishonest and unethical practices in making retail installment transactions, in violation of RSA 361-A:3, I-a(h).

b. This Order is necessary and appropriate to the public interest and for the protection of consumers and consistent with the purpose and intent of New Hampshire banking laws;

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33. **Accordingly, it is hereby ORDERED that:**

- a. Pursuant to RSA 361-A:3-a, I, Respondents shall cease and desist from further violations of RSA Chapter 361-A; and
- b. Respondents shall show cause why Respondent Onyx Preowned's New Hampshire Retail Seller license should not be revoked for violating RSA 361-A:2, XII and RSA 361-A:3, I-a(c), (h) and (i); and
- c. Respondents shall show cause why Respondents should not be barred from licensure for violating RSA 361-A:3, I-a(c), (h) and (i); and
- d. Respondents shall each show cause why an administrative fine of \$70,000 for knowingly violating RSA 361-A:2, XII and RSA 361-A:3, I-a(c), (h) and (i) should not be imposed pursuant to RSA 361-A:11, V and VII.
- e. Respondents each have a right to request a hearing on this Order. Pursuant to RSA 361-A:3, I, a request shall be made in writing within thirty (30) calendar days of receipt or valid delivery of this Order. Pursuant to RSA 361-A:3, I, if the Respondents "fail[]" to request a hearing within 30 calendar days of receipt or valid delivery of the order and no hearing is

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CERTIFICATE OF SERVICE

I, Maryam Torben Desfosses, hereby certify that on March 25, 2016, a copy of this Notice of Order to Show Cause was sent to the following parties via U.S. Certified Mail First Class:

Miller, Randy d/b/a Onyx Preowned
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/s/
Maryam Torben Desfosses
Hearings Examiner, Consumer Credit Division
State of New Hampshire Banking Department