

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 06-226  
 )  
 3 State of New Hampshire Banking )  
 )  
 4 Department, ) Order to Show Cause  
 )  
 5 Petitioner, )  
 )  
 6 and )  
 )  
 7 Salmon Falls Finance Corp, Judson D. )  
 )  
 8 Talley, and Erika S. Talley, )  
 )  
 9 Respondents )  
 )  
 10 )

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11 NOTICE OF ORDER

12 This Order to Show Cause commences an adjudicative proceeding under  
13 the provisions of RSA Chapter 361-A (including RSA 361-A:3) and RSA Chapter  
14 541-A.

15 LEGAL AUTHORITY AND JURISDICTION

16 Pursuant to RSA 361-A:2,I, persons subject to RSA Chapter 361-A shall  
17 be responsible for the supervision of their employees, agents, and branch  
18 offices.

19 Pursuant to RSA 361-A:3,I the Commissioner has the authority to issue  
20 an order to show cause why license revocation and penalties for violations  
21 of New Hampshire Banking laws should not be imposed.

22 Pursuant to RSA 361-A:3,I-a, the Commissioner may, by order, deny,  
23 suspend, or revoke any license or application and bar any person from  
24 licensure if the Commissioner finds that the order is in the public  
25 interest and the applicant, respondent, or licensee, any partner, officer,

1 member, or director, any person occupying a similar status or performing  
2 similar functions, or any person directly or indirectly controlling the  
3 applicant, respondent, or licensee has, inter alia, (c) made fraudulent  
4 misrepresentations, has circumvented or concealed, through whatever  
5 subterfuge or device, any of the material particulars required to be stated  
6 or furnished to a borrower under the provisions of RSA Chapter 361-A; (d)  
7 has failed to supervise its agents, managers, or employees...; (h) has  
8 engaged in dishonest or unethical practices in the conduct of making retail  
9 installment transactions or collecting on retail installment contracts...;  
10 and/or (i) has violated RSA Chapter 361-A.

11 Pursuant to RSA 361-A:3,IV, if the Commissioner finds that any  
12 licensee or applicant for license is no longer in existence or has ceased  
13 to do business as a retail seller or sales finance company, or cannot be  
14 located after reasonable search, the Commissioner may by order revoke the  
15 license, impose penalties, or deny the application.

16 Pursuant to RSA 361-A:4-a,I, retail sellers or sales finance  
17 companies shall, within 30 days after receipt of a complaint, send a  
18 written acknowledgment thereof to the consumer and the Department. Not  
19 later than 60 days following receipt of such complaint, the retail seller  
20 or sales finance company shall conduct an investigation of the complaint  
21 and either (a) make appropriate corrections in consumer's account and  
22 notify both the consumer and the New Hampshire Banking Department  
23 ("Department") with documentation or (b) submit a written explanation or  
24 clarification to the consumer and Department, setting forth reasons why the  
25 licensee believes its actions are correct, including copies of documentary

1 evidence thereof.

2 Pursuant to RSA 361-A:4-a,II, the retail seller or sales finance  
3 company who fails to respond to the consumer complaint as required by RSA  
4 361-A:4-a shall pay to the Commissioner the sum of \$50.00 for each day such  
5 response is overdue.

6 Pursuant to RSA 361-A:5,IV, the Commissioner may issue, amend, or  
7 rescind such orders as are reasonably necessary to comply with the  
8 provisions of RSA Chapter 361-A.

9 Pursuant to RSA 361-A:11,I, any person who shall violate any  
10 provisions of RSA Chapter 361-A, or engage in the business of a sales  
11 finance company in this state without a license therefor as provided, shall  
12 be guilty of a misdemeanor if a natural person, or guilty of a felony if  
13 any other person.

14 Pursuant to RSA 361-A:11,V and VII, any person who, either knowingly  
15 or negligently, violates any provision of RSA Chapter 361-A or any rules or  
16 orders of the Commissioner, may upon hearing, and in addition to any other  
17 penalty provided for by law, be subject to such suspension, revocation, or  
18 denial of any registration or license, including forfeiture of any  
19 application fee, or imposition of an administrative fine not to exceed  
20 \$2,500.00, or both. Each of the acts specified shall constitute a separate  
21 violation, and such administrative action or fine may be imposed in  
22 addition to any criminal penalties or civil liabilities imposed by New  
23 Hampshire Banking laws.

24 Pursuant to RSA 361-A:11,VIII, every person who directly or indirectly  
25 controls a person liable under this section, every partner, principal

1 executive officer or director of such person, every person occupying a  
2 similar status or performing a similar function, every employee of such  
3 person who materially aids in the act constituting the violation, and every  
4 licensee or person acting as a common law agent who materially aids in the  
5 acts constituting the violation, either knowingly or negligently, may, upon  
6 notice and opportunity for hearing, and in addition to any other penalty  
7 provided for by law, be subject to suspension, revocation, or denial of any  
8 registration or license, including the forfeiture of any application fee, or  
9 the imposition of an administrative fine not to exceed \$2,500, or both.  
10 Each of the acts specified shall constitute a separate violation, and such  
11 administrative action or fine may be imposed in addition to any criminal or  
12 civil penalties imposed.

13 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct  
14 that is or may be an unfair or deceptive act or practice under RSA 358-A  
15 and exempt under RSA 358-A:3,I or that may violate any of the provisions of  
16 Titles XXXV and XXXVI and administrative rules adopted thereunder. The  
17 Commissioner may hold hearings relative to such conduct and may order  
18 restitution for a person or persons adversely affected by such conduct.

19 **NOTICE OF RIGHT TO REQUEST A HEARING**

20 The above named Respondents have the right to request a hearing on  
21 this Order to Show Cause, as well as the right to be represented by counsel  
22 at each Respondent's own expense. All hearings shall comply with RSA Chapter  
23 541-A. Any such request for a hearing shall be in writing, and signed by  
24 the Respondent or the duly authorized agent of the above named Respondent,  
25 and shall be delivered either by hand or certified mail, return receipt

1 requested, to the Banking Department, State of New Hampshire, 53 Regional  
2 Drive, Suite 200, Concord, NH 03301. Such hearings will be scheduled within  
3 10 days of the Department's receipt of the request. If a Respondent fails  
4 to appear at the hearing after being duly notified, such person shall be  
5 deemed in default, and the proceeding may be determined against the  
6 Respondent upon consideration of the Order to Show Cause, the allegations of  
7 which may be deemed to be true.

8 If any of the above named Respondents fails to request a hearing  
9 within 30 calendar days of receipt of the Order to Show Cause or reach  
10 formal settlement with the Department within that time frame, then such  
11 person shall likewise be deemed in default, and the Order to Show Cause  
12 shall, on the thirty-first day, become permanent, and shall remain in full  
13 force and effect until and unless later modified or vacated by the  
14 Commissioner, for good cause shown.

15 **STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF**

16 The Staff Petition dated June 9, 2010 (a copy of which is attached  
17 hereto) is incorporated by reference hereto.

18 **ORDER**

19 WHEREAS, finding it necessary and appropriate and in the public  
20 interest, and consistent with the intent and purposes of the New Hampshire  
21 banking laws; and

22 WHEREAS, finding that the allegations contained in the Staff  
23 Petition, if proved true and correct, form the legal basis of the relief  
24 requested;

25 It is hereby ORDERED, that:

- 1           1. Respondent Salmon Falls Finance Corp (hereinafter,  
2           "Respondent Salmon Falls") shall show cause why penalties in  
3           the amount of \$22,500.00 should not be imposed against it;
- 4           2. Respondent Judson D. Talley (hereinafter, "Respondent J.D.  
5           Talley") shall show cause why penalties in the amount of  
6           \$22,500.00 should not be imposed against him;
- 7           3. Respondent Erika S. Talley (hereinafter, "Respondent E.S.  
8           Talley") shall show cause why penalties in the amount of  
9           \$22,500.00 should not be imposed against her;
- 10          4. Respondents shall show cause why, in addition to the  
11          penalties listed in Paragraphs 1 through 3 above, the pay  
12          off amount of \$1,954.68 for Consumer A's vehicle loan,  
13          (which Consumer A attempted to pay and Respondents wouldn't  
14          process should not be imposed);
- 15          5. The above named Respondents shall show cause why, in  
16          addition to the penalties listed in Paragraphs 1 through 4  
17          above, the fine for \$225.00 for the late filing of the  
18          annual report should not be paid to the Department;
- 19          6. The above named Respondents shall show cause why, in  
20          addition to the penalties listed in Paragraphs 1 through 5  
21          above, the \$968.30 examination fee should not be paid to the  
22          Department;
- 23          7. Respondents shall be jointly and severally liable for the  
24          above amounts alleged in Paragraphs 1 through 6 above;
- 25          8. Respondents shall show cause why, in addition to the

1 penalties listed in Paragraphs 1 through 7 above, Respondent  
2 Salmon Falls' license should not be revoked;

3 It is hereby further ORDERED that:

- 4 9. Along with the administrative penalties listed for the above  
5 named Respondents, restitution should be given to Consumer A  
6 in the amount of \$1,954.68 and the outstanding sum of  
7 \$1,193.30 should be immediately paid to the Department; and  
8 10. Failure to request a hearing within 30 days of the date of  
9 receipt or valid delivery of this Order to Show Cause shall  
10 result in a default judgment being rendered and  
11 administrative penalties imposed upon the defaulting  
12 Respondent(s).

13 SIGNED,

14  
15 Dated: 06/17/10

/s/ Robert Fleury for

PETER C. HILDRETH  
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 06-226  
3 State of New Hampshire Banking )  
4 Department, ) Staff Petition  
5 Petitioner, ) June 9, 2010  
6 and )  
7 Salmon Falls Finance Corp, Judson D. )  
8 Talley, and Erika S. Talley, )  
9 Respondents )  
10 )

11 I. STATEMENT OF ALLEGATIONS

12 The Staff of the Banking Department, State of New Hampshire (hereinafter,  
13 "Department") alleges the following facts:

14 Facts Common on All Counts:

- 15 1. Respondent Salmon Falls Finance Corp (hereinafter, "Respondent  
16 Salmon Falls") has been licensed as a Sales Finance Company from  
17 at least September 7, 2005 until its license expired on December  
18 31, 2005.
- 19 2. Respondent Judson D. Talley (hereinafter, "Respondent Talley") was  
20 the 100% owner and President of Respondent Salmon Falls, when  
21 licensed by the Department.
- 22 3. Respondent Erika S. Talley (hereinafter, "Respondent E.S. Talley")  
23 was the Vice-President for a certain point of time and then  
24 indicated to the Department she was the new owner of Respondent  
25 Salmon Falls, when licensed by the Department.



1 CONSUMER A LOAN FILE

2 Violation of RSA 361-A:2, I Failure to Supervise (1 Count):

3 Violation of RSA 361-A:3, I-a(c) Fraudulent Representations To Consumer (1  
4 Count):

5 Violation of RSA 361-A:3, I-a(d) Failure to Supervise (1 Count):

6 Violation of RSA 361-A:3, I-a(h) Dishonest or Unethical Practices (1 Count):

7 Violation of RSA 361-A:3, I-a(i) Violation of RSA Chapter 361-A:4-a (2  
8 Counts):

9 Violation of RSA 361-A:4-a, I Failure to Properly and Timely Respond to a  
10 Consumer Complaint (1 Count):

11 4. Paragraphs 1 through 3 are hereby realleged as fully set forth  
12 herein.

13 5. Consumer A initially filed a complaint with the Department on or  
14 about September 26, 2005. The complaint alleged that Respondents  
15 failed to process his loan payments for the months of June, July  
16 and August of 2005. As a result of the non-payment, the  
17 Respondents had Consumer A's vehicle repossessed and took money  
18 and possessions out of the vehicle.

19 6. The Department mailed, via U.S. Certified Mail Return Receipt  
20 requested, the complaint to Respondents, which Respondents  
21 received on October 1, 2005.

22 7. Respondents had 30 days from October 1, 2005 to acknowledge the  
23 September 26, 2005 complaint and 60 days total from October 1,  
24 2005 to substantively respond to the Department regarding said  
25 complaint.

1 8. On October 28, 2005, the Department received a one page unsigned  
2 response from Respondent E.S. Talley indicating that Consumer A's  
3 payments were removed from his account via ACH but offered no  
4 proof. Respondent E.S. further indicated Consumer A may "pay [for  
5 the] car in full and will receive the title along with a letter  
6 noting it has been paid in full". Respondent E.S. Talley further  
7 indicated she would "research what happened" to Consumer A's  
8 property and notify Consumer A of the results themselves.

9 9. On November 2, 2005, the Department responded to Respondents'  
10 October 28, 2005 letter and indicated proof of the ACH payment  
11 attempts must be submitted. The Department sent two more reminder  
12 letters on December 8, 2005 and February 15, 2006.

13 10. On February 28, 2006, Respondent E.S. Talley submits a letter  
14 with very little documentation to the Department, which the  
15 Department received on March 6, 2006. Respondent E.S. Talley  
16 indicates the Respondent Salmon Falls is now owned solely by  
17 Respondent E.S. Talley.

18 11. Respondent E.S. Talley's February 28, 2006 correspondence  
19 includes documentation that apparently shows Consumer A owes  
20 \$1,954.68, but it clearly shows that Respondent E.S. Talley was  
21 untruthful. Contrary to Respondents' earlier contentions that  
22 payments were removed from Consumer A's ACH account, no such  
23 transaction is on the list Respondent E.S. Talley provided.  
24 Further, Respondent E.S. Talley failed to discuss the allegations  
25 that money and possessions were stolen from Consumer A's vehicle.

1 12. On March 7, 2006, the Department sent a final correspondence via  
2 U.S. Certified Mail Return Receipt requested to the above named  
3 Respondents, which Respondents received on March 10, 2006 and for  
4 which Respondent E.S. Talley signed the certified return receipt.

5 13. The above named Respondents must pay \$1,954.68 to Consumer A and  
6 title to the vehicle (if not already done) must be given to  
7 Consumer A.

8 **Violation of RSA 361-A:2-b,III Failure to Pay Late Penalty Owed for Late**

9 **Filing of Annual Report (1 Count):**

10 14. Paragraphs 1 through 13 are hereby realleged as fully set forth  
11 herein.

12 15. Respondent Salmon Falls was licensed in 2005 and therefore,  
13 subject to the filing of the 2005 annual report of business.

14 16. Respondent Salmon Falls' 2005 annual report was due on or before  
15 February 1, 2006.

16 17. Respondent Salmon Falls filed its 2005 annual report on February  
17 10, 2006 (9 days late), generating a fine of \$225.00 (\$25.00 a  
18 day x 9 days).

19 18. The Department sent the above named Respondents invoices in March,  
20 April, and a third and final one on June 13, 2006. The  
21 Department's licensing supervisor sent another letter on June 15,  
22 2006, which was returned to the Department by the post office on  
23 June 26, 2006.

24 19. To date, Respondent Salmon Falls has failed to pay the \$225.00  
25 late filing of the 2005 annual report fee.

1 **Violation of RSA 361-A:6-a,IV Failure to Pay Examination Fee (1 Count):**

2 20. Paragraphs 1 through 19 are hereby realleged as fully set forth  
3 herein.

4 21. The Department conducted an examination of Salmon Falls on January  
5 9, 2006, for activities that occurred while Respondent Salmon  
6 Falls was still licensed with the Department.

7 22. The Department sent Respondents the report of examination and  
8 examination invoice for \$968.30 via U.S. Certified Mail Return  
9 Receipt requested on April 27, 2006, which the post office  
10 returned to the Department on May 10, 2006 as "moved left no  
11 address unable to forward".

12 23. The Department's Examiner contacted the owner of Respondent Salmon  
13 Falls, but the communication didn't prove helpful.

14 24. The Department, via U.S. mail, mailed Respondents a second notice  
15 on June 13, 2006 and a third notice on July 19, 2006.

16 25. The Department mailed a notice via U.S. Certified Mail Return  
17 Receipt requested on August 23, 2006, which the post office  
18 returned to the Department on September 11, 2006 as "unclaimed".

19 26. The above named Respondents did not respond to any of the notices  
20 for payment of the \$968.30 invoice.

21 27. To date, the above named Respondents still owe the \$968.30  
22 examination fee for the 2.3 day examination.

23 **II. ISSUES OF LAW**

24 The staff of the Department alleges the following issues of law:

25 1. The Department realleges the above stated facts in Paragraphs 1

1 through 27 as fully set forth herein.

2 2. The Department has jurisdiction over the licensing and regulation  
3 of persons engaged in retail seller and sales finance activities  
4 pursuant to RSA 361-A:2.

5 3. RSA 361-A:2,I provides that persons subject to RSA Chapter 361-A  
6 shall be responsible for the supervision of their employees,  
7 agents, and branch offices. Each of the above named Respondents  
8 violated this provision on at least one occasion as alleged above.

9 4. RSA 361-A:2-b,III provides that any sales finance company failing  
10 to file either the annual report or the financial statement  
11 required by RSA 361-A:2 within the time period prescribed shall  
12 pay to the Commissioner a penalty of \$25.00 for each calendar day  
13 the annual report or financial statement is overdue to a maximum  
14 penalty of \$2,500.00 per report or statement and shall be subject  
15 to suspension or revocation of its license. Each of the above  
16 named Respondents violated this provision on at least one occasion  
17 as alleged above and owe \$2,500.00.

18 5. RSA 361-A:3,I provides that the Commissioner may issue an order  
19 requiring a person to whom any license has been granted or any  
20 person under the Commissioner's jurisdiction to show cause why the  
21 license should not be revoked or penalties should not be imposed,  
22 or both, for violations of this chapter. The above named  
23 Respondents are still under the Commissioner's jurisdiction due to  
24 their failure to timely respond to the consumer complaint while  
25 still currently licensed. Therefore, the license should be

1           revoked.

2           6. Pursuant to RSA 361-A:3,IV, if the Commissioner finds that any  
3           licensee or applicant for license is no longer in existence or has  
4           ceased to do business as a retail seller or sales finance company,  
5           or cannot be located after reasonable search, the Commissioner may  
6           by order revoke the license, impose penalties, or deny the  
7           application.

8           7. Pursuant to RSA 361-A:3,I-a, the Commissioner may, by order, deny,  
9           suspend, or revoke any license or application and bar any person  
10          from licensure if the Commissioner finds that the order is in the  
11          public interest and the applicant, respondent, or licensee, any  
12          partner, officer, member, or director, any person occupying a  
13          similar status or performing similar functions, or any person  
14          directly or indirectly controlling the applicant, respondent, or  
15          licensee has, inter alia, c) made fraudulent misrepresentations,  
16          has circumvented or concealed, through whatever subterfuge or  
17          device, any of the material particulars required to be stated or  
18          furnished to a borrower under the provisions of RSA Chapter 361-A;  
19          (d) has failed to supervise its agents, managers, or employees...;  
20          (h) has engaged in dishonest or unethical practices in the conduct  
21          of making retail installment transactions or collecting on retail  
22          installment contracts...; and/or (i)has violated RSA Chapter 361-A.  
23          Each of the above named Respondents have violated sub-paragraphs  
24          (c), (d) and (h) on at least one occasion each (three counts  
25          total) and subparagraph (i) on at least two occasions each (2

1 counts total) as alleged above.

2 8. RSA 361-A:4-a,I provides that retail sellers or sales finance  
3 companies shall, within 30 days after receipt of a complaint, send  
4 a written acknowledgment thereof to the consumer and the  
5 Department. Not later than 60 days following receipt of such  
6 complaint, the retail seller or sales finance company shall  
7 conduct an investigation of the complaint and either (a) make  
8 appropriate corrections in consumer's account and notify both the  
9 consumer and the Department with documentation or (b) submit a  
10 written explanation or clarification to the consumer and  
11 Department, setting forth reasons why the licensee believes its  
12 actions are correct, including copies of documentary evidence  
13 thereof. Each of the above named Respondents violated this  
14 provision on at least one occasion as alleged above.

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

18 10. RSA 361-A:6-a,IV provides that the expense of examination shall  
19 be chargeable to and paid by the sales finance company licensee  
20 or person. The procedure for such payment shall be the same as  
21 for payments by institutions. Each of the above named  
22 Respondents violated this provision by failing to pay the  
23 examination fee of \$968.30.

24 11. Pursuant to RSA 361-A:11,V and VII, any person who, either  
25 knowingly or negligently, violates any provision of RSA Chapter

1 361-A or any rules or orders of the Commissioner, may upon  
2 hearing, and in addition to any other penalty provided for by  
3 law, be subject to such suspension, revocation, or denial of any  
4 registration or license, including forfeiture of any application  
5 fee, or imposition of an administrative fine not to exceed  
6 \$2,500.00, or both. Each of the acts specified shall constitute  
7 a separate violation, and such administrative action or fine may  
8 be imposed in addition to any criminal penalties or civil  
9 liabilities imposed by New Hampshire Banking laws.

10 12. Pursuant to RSA 361-A:11,VIII, every person who directly or  
11 indirectly controls a person liable under this section, every  
12 partner, principal executive officer or director of such person,  
13 every person occupying a similar status or performing a similar  
14 function, every employee of such person who materially aids in the  
15 act constituting the violation, and every licensee or person acting  
16 as a common law agent who materially aids in the acts constituting  
17 the violation, either knowingly or negligently, may, upon notice  
18 and opportunity for hearing, and in addition to any other penalty  
19 provided for by law, be subject to suspension, revocation, or  
20 denial of any registration or license, including the forfeiture of  
21 any application fee, or the imposition of an administrative fine  
22 not to exceed \$2,500, or both. Each of the acts specified shall  
23 constitute a separate violation, and such administrative action or  
24 fine may be imposed in addition to any criminal or civil penalties  
25 imposed.



1 13. Pursuant to RSA 383:10-d, the Commissioner shall investigate  
2 conduct that is or may be an unfair or deceptive act or practice  
3 under RSA 358-A and exempt under RSA 358-A:3,I or that may  
4 violate any of the provisions of Titles XXXV and XXXVI and  
5 administrative rules adopted thereunder. The Commissioner may  
6 hold hearings relative to such conduct and may order restitution  
7 for a person or persons adversely affected by such conduct.

8 **III. RELIEF REQUESTED**

9 The staff of the Department requests the Commissioner take the following  
10 action:

- 11 1. Find as fact the allegations contained in section I of this Staff  
12 Petition;
- 13 2. Make conclusions of law relative to the allegations contained in  
14 section II of the this petition;
- 15 3. Find the Commissioner's order to be in the public interest;
- 16 4. Pursuant to RSA 361-A:3, order each of the above named Respondents  
17 to show cause why their license should not be revoked;
- 18 5. Assess fines and administrative penalties in accordance with RSA  
19 361-A:11, for violations of RSA Chapter 361-A, in the number and  
20 amount equal to the violations set forth in section II of this  
21 Staff Petition; and
- 22 6. Take such other administrative and legal actions as necessary for  
23 enforcement of the New Hampshire Banking Laws, the protection of  
24 New Hampshire citizens, and to provide other equitable relief.

1 IV. RIGHT TO AMEND

2 The Department reserves the right to amend this Staff Petition and to  
3 request that the Commissioner take additional administrative action.  
4 Nothing herein shall preclude the Department from bringing additional  
5 enforcement action under RSA Chapter 361-A or the regulations thereunder.

6  
7 Respectfully submitted by:

8 \_\_\_\_\_  
9 /s/ Maryam Torben Desfosses  
Hearings Examiner

\_\_\_\_\_ 06/09/10  
Date

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