

1 State of New Hampshire Banking Department

2	In re the Matter of:)	Case No.: 08-059
)	
3	State of New Hampshire Banking)	
)	
4	Department,)	Cease and Desist Order
)	
5	Petitioner,)	
)	
6	and)	
)	
7	Francis Colburn,)	
)	
8	Respondent)	
)	
9)	

10 NOTICE OF ORDER

11 This Order commences an adjudicative proceeding under the provisions
12 of RSA 361-A (including RSA 361-A:3-a), RSA 541-A and JUS 800.

13 LEGAL AUTHORITY AND JURISDICTION

14 Pursuant to RSA 361-A:3, the Banking Department of the State of New
15 Hampshire (hereinafter the "Department") has the authority to issue an
16 order to show cause why license revocation and penalties for violations of
17 New Hampshire Banking laws should not be imposed.

18 Pursuant to RSA 361-A:3-a, the Department has the authority to issue
19 and cause to be served an order requiring any person about to engage in or
20 who has engaged in any act or practice constituting a violation of RSA 361-
21 A or any rule or order thereunder, to cease and desist from violations of
22 RSA 361-A.

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

1 Pursuant to RSA 361-A:11, the Commissioner has the authority to
2 suspend, revoke or deny any license and to impose administrative penalties
3 of up to \$2,500.00 for each violation of New Hampshire banking law and
4 rules.

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

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

12 The above named Respondent has the right to request a hearing on this
13 Cease and Desist Order, as well as the right to be represented by counsel
14 at the Respondent's own expense. All hearings shall comply with RSA 541-A.
15 Any such request for a hearing shall be in writing, and signed by the
16 Respondent or the duly authorized agent of the above named Respondent, and
17 shall be delivered either by hand or certified mail, return receipt
18 requested, to the Banking Department, State of New Hampshire, 53 Regional
19 Drive, Suite 200, Concord, NH 03301. Such hearings will be scheduled within
20 10 days of the Department's receipt of the request. If the Respondent fails
21 to appear at the hearing after being duly notified, such person shall be
22 deemed in default, and the proceeding may be determined against the
23 Respondent upon consideration of the Cease and Desist Order, the allegations
24 of which may be deemed to be true.

25 If the above named Respondent fails to request a hearing within 30

1 calendar days of receipt of such order or reach a formal written and
2 executed settlement with the Department within that time frame, then such
3 person shall likewise be deemed in default, and the orders shall, on the
4 thirty-first day, become permanent, and shall remain in full force and
5 effect until and unless later modified or vacated by the Commissioner, for
6 good cause shown.

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

8 The Staff Petition dated June 12, 2009 (a copy of which is attached
9 hereto) is incorporated by reference hereto.

10 **ORDER**

11 WHEREAS, finding it necessary and appropriate and in the public
12 interest, and consistent with the intent and purposes of the New Hampshire
13 banking laws, and

14 WHEREAS, finding that the allegations contained in the Staff
15 Petition, if proved true and correct, form the legal basis of the relief
16 requested,

17 It is hereby ORDERED, that:

- 18 1. Respondent Francis Colburn (hereinafter, "Respondent
19 Colburn") shall immediately cease originating direct "buy
20 here, pay here" loans and/or financing such loans for
21 vehicles purchased elsewhere while unlicensed with the New
22 Hampshire Banking Department; and

23 It is hereby further ORDERED, that:

- 24 2. Respondent Colburn shall show cause why penalties in the
25 amount of \$12,500.00 should not be imposed against him;

1 3. Respondent Colburn shall show cause why he should not be
2 ordered to reimburse consumers such sums as were collected
3 in violation of RSA 361-A:7; and

4 4. Respondent Colburn shall show cause why he should not be
5 ordered to reimburse consumers such sums as were collected
6 in violation of RSA 361-A:11.

7 It is hereby further ORDERED that:

8 5. Respondent Colburn shall immediately **Cease and Desist** from
9 all violations of New Hampshire law and the rules
10 promulgated thereunder; and

11 6. Failure to request a hearing within 30 days of the date of
12 receipt or valid delivery of this Order shall result in a
13 default judgment being rendered and administrative penalties
14 imposed upon the defaulting Respondent(s).

15 SIGNED,

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19 Dated: 06/12/09

/s/
PETER C. HILDRETH
BANK COMMISSIONER

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State of New Hampshire Banking Department

In re the Matter of:)	Case No.: 08-059
)	
State of New Hampshire Banking)	
Department,)	Staff Petition
)	
Petitioner,)	June 12, 2009
)	
and)	
)	
Francis Colburn,)	
)	
Respondent)	
)	
)	

I. STATEMENT OF ALLEGATIONS

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

Facts Common on All Counts:

1. Respondent Francis Colburn (hereinafter, "Respondent Colburn") appears to be a lender/lien holder to vehicles sold through a Department licensee ("Licensee A"). Respondent Colburn is not a licensed sales finance company or retail seller with the Department.
2. Employee A is the President of Licensee A.

UNLICENSED ACTIVITY - AS A SALES FINANCE COMPANY

Violation of 361-A:3, I-a(i) Violated RSA Chapter 361-A by Engaging in

Activity Without a Sales Finance Company License (5 Counts):

3. Paragraphs 1 through 3 are hereby realleged as fully set forth herein.
4. On or about January 30, 2008, the Department was notified that

1 Licensee A was potentially conducting unlicensed "buy here, pay
2 here" sales finance activities in the State of New Hampshire.

3 5. A letter dated March 6, 2008 asked Licensee A and Employee A to
4 describe the nature of its operations concerning "buy here, pay
5 here" financing.

6 6. Licensee A's response dated March 10, 2008 stated "[a]llthough all
7 of the notes are generated and paid for at our dealership the
8 funding for all of these "buy here, pay here" notes actually come
9 from a private individual". The March 10, 2008 response, which
10 was signed by Employee A, named Respondent Colburn as the private
11 individual.

12 7. Respondent Colburn has been listed as holding title to as many as
13 269 liens with the New Hampshire Department of Motor Vehicles.

14 8. Respondent Colburn, at the time of the March 10, 2008 letter,
15 held title to at least 12 liens.

16 9. Respondent Colburn's place of business (as disclosed on the
17 titles) is 3 Sycamore Street, Hudson, NH 03051, which is not the
18 office location for Licensee A.

19 10. At least five (5) of the thirteen (13) titles naming Respondent
20 Colburn as the lien holder were filed with the New Hampshire
21 Department of Motor Vehicles between April 8, 2008 and April 14,
22 2008.

23 11. At least five (5) consumers have purchased a motor vehicle from
24 Licensee A between April 8, 2008 and April 14, 2008.

25 12. To date, there is no pending sales finance company application

1 for Respondent Colburn.

2 13. There were five (5) retail installment contracts signed between
3 April 8 and April 14, 2008, which also included fees that were
4 not statutorily allowed. The five (5) consumers need to be
5 reimbursed such fees as indicated below.

6 14. Consumer A's retail installment contract dated April 10, 2008
7 included an origination fee and documentation fee totaling
8 \$225.00.

9 15. Consumer A's retail installment contract and evidence of lien
10 from the New Hampshire Department of Motor Vehicles indicate the
11 retail seller is Licensee A. The evidence of lien also indicates
12 the lien holder is Respondent Colburn.

13 16. Consumer B's retail installment contract dated April 12, 2008
14 included an origination fee and documentation fee totaling
15 \$225.00.

16 17. Consumer B's retail installment contract and evidence of lien
17 from the New Hampshire Department of Motor Vehicles indicate the
18 retail seller is Licensee A. The evidence of lien also indicates
19 the lien holder is Respondent Colburn.

20 18. Consumer C's retail installment contract dated April 11, 2008
21 included an origination fee and documentation fee totaling
22 \$225.00.

23 19. Consumer C's retail installment contract and evidence of lien
24 from the New Hampshire Department of Motor Vehicles indicate the
25 retail seller is Licensee A. The evidence of lien also indicates

1 the lien holder is Respondent Colburn.

2 20. Consumer D's retail installment contract dated April 14, 2008
3 included an origination fee and documentation fee totaling
4 \$225.00.

5 21. Consumer D's retail installment contract and evidence of lien
6 from the New Hampshire Department of Motor Vehicles indicate the
7 retail seller is Licensee A. The evidence of lien also indicates
8 the lien holder is Respondent Colburn.

9 22. Consumer E's retail installment contract dated April 8, 2008
10 included an origination fee and documentation fee totaling
11 \$225.00.

12 23. Consumer E's retail installment contract and evidence of lien
13 from the New Hampshire Department of Motor Vehicles indicate the
14 retail seller is Licensee A. The evidence of lien also indicates
15 the lien holder is Respondent Colburn.

16 **II. ISSUES OF LAW**

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

- 18 1. The Department realleges the above stated facts in Paragraphs 1
19 through 23 as fully set forth herein.
- 20 2. The Department has jurisdiction over the licensing and regulation
21 of persons engaged in retail seller and sales finance activities
22 pursuant to NH RSA 361-A:2.
- 23 3. RSA 361-A:1,XIII provides that a "sales finance company" means a
24 person engaged, in whole or in part, directly or indirectly, in
25 the business of providing motor vehicle financing in this state to

1 one or more retail buyers, or in the business of purchasing retail
2 installment contracts from one or more retail sellers. The above
3 named Respondents are a sales finance company as described above.

4 4. RSA 361-A:3,I provides that the Commissioner may issue an order
5 requiring a person to whom any license has been granted or any
6 person under the Commissioner's jurisdiction to show cause why the
7 license should not be revoked or penalties should not be imposed,
8 or both, for violations of this chapter. Respondent Colburn is
9 still under the Commissioner's jurisdiction due to his unlicensed
10 activity.

11 5. RSA 361-A:3,I-a provides that the Commissioner may, by order,
12 revoke any license if the Commissioner finds that the order is in
13 the public interest and the respondent, or licensee, any partner,
14 officer, member, or director, any person occupying a similar
15 status or performing similar functions, or any person directly or
16 indirectly controlling the respondent, or licensee, has among
17 other types of violations, violated RSA Chapter 361-A or any rule
18 or order thereunder. Respondent Colburn violated this provision on
19 at least five occasions as alleged above.

20 6. RSA 361-A:3-a provides that the Department may issue a Cease and
21 Desist Order against anyone it has reasonable cause to believe is
22 engaging in the business of a retail seller or sales finance
23 company without the required license as provided for in RSA
24 Chapter 361-A.

25 7. RSA 361-A:7 provides that the retail installment contract shall

1 contain, among other items, the amount of the documentary fees.

2 Documentary fees are defined under RSA 361-A:1,IV.

3 8. RSA 361-A:1,IV provides that the definition of documentary fees is
4 "fees for filing, recording or investigating, perfecting and
5 releasing or satisfying a retained title or a lien created by a
6 retail installment contract, and shall not exceed the actual cost
7 assessed by the department of safety, division of motor vehicles,
8 or other state or local agency for filing, recording or
9 investigating, perfecting and releasing or satisfying such title
10 or lien.

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

16 10. RSA 361-A:11,I-a provides that any person who willfully violates
17 any provisions of RSA 361-A:3-b,I or any cease and desist order
18 or injunction issued pursuant to RSA 361-A:3-a shall be guilty of
19 a class B felony. Each of the acts specified shall constitute a
20 separate offense and a prosecution or conviction for any one of
21 such offenses shall not bar prosecution or conviction of any
22 other offense.

23 11. RSA 361-A:11,III provides that any person engaging in the
24 business of a sales finance company without a license if the
25 license is required under RSA Chapter 361-A shall be barred from

1 recovering any finance charge, delinquency, or collection charge
2 on the contract. Where no finance charge is payable under the
3 terms of the contract, a person engaging in the business of a
4 sales finance company without a license shall be barred from
5 recovering any amount in excess of the wholesale market value of
6 the vehicle, if the vehicle was purchased by the seller at a
7 wholesale auction or other wholesale outlet, or the trade-in
8 value of the vehicle if the seller acquired the vehicle in trade.
9 Such value shall be that quoted for New Hampshire or the New
10 England region in a value quotation publication generally
11 recognized by the motor vehicle industry and as specified by the
12 Commissioner in rules adopted pursuant to RSA 541-A.

13 12. RSA 361-A:11,VII provides that any person who, either knowingly
14 or negligently, violates any provision of RSA Chapter 361-A, may
15 upon hearing, and in addition to any other penalty provided for
16 by law, be subject to an administrative fine not to exceed
17 \$2,500.00, or both. Each of the acts specified shall constitute
18 a separate violation, and such administrative action or fine may
19 be imposed in addition to any criminal penalties or civil
20 liabilities imposed by New Hampshire Banking laws.

21 13. RSA 361-A:11,VIII provides that every person who directly or
22 indirectly controls a person liable under this section, every
23 partner, principal executive officer or director of such person,
24 every person occupying a similar status or performing a similar
25 function, every employee of such person who materially aids in the

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

12 **III. RELIEF REQUESTED**

13 The staff of the Department requests the Commissioner take the following
14 Action:

- 15 1. Find as fact the allegations contained in section I of this Staff
16 Petition;
- 17 2. Make conclusions of law relative to the allegations contained in
18 section II of the this petition;
- 19 3. Pursuant to RSA 361-A:3-a order the above named Respondent to
20 immediately Cease and Desist from violations of this chapter;
- 21 4. Find the Commissioner's order to be in the public interest;
- 22 5. Assess fines and administrative penalties in accordance with RSA
23 361-A:11, for violations of RSA Chapter 361-A, in the number and
24 amount equal to the violations set forth in section II of this
25 Staff Petition; and

