

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-089
)
 3 State of New Hampshire Banking) Order to Show Cause
)
 4 Department,)
)
 5 Petitioner,)
)
 6 and)
)
 7 Martin and Sheehan PDAL, Inc.,)
)
 8 Respondent)
)

9
10 NOTICE OF ORDER

11 This Order commences an adjudicative proceeding under the provisions of
12 RSA 399-A, RSA 541-A, BAN 200 and JUS 800.

13 LEGAL AUTHORITY AND JURISDICTION

14 Pursuant to RSA 399-A:7, the Banking Department of the State of New
15 Hampshire (hereinafter the "Department") has the authority to issue an order
16 to show cause why license revocation penalties for violations of New
17 Hampshire Banking laws should not be imposed.

18 Pursuant to RSA 399-A:18, the Commissioner has the authority to
19 suspend, revoke or deny any license and to impose administrative penalties of
20 up to \$2,500.00 for each violation of New Hampshire banking law and rules.

21 NOTICE OF RIGHT TO REQUEST A HEARING

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

1 Banking Department, State of New Hampshire, 64B Old Suncook Road, Concord, NH
2 03301. Such hearings will be scheduled within 10 days of the request. If the
3 Respondent fails to appear at the hearing after being duly notified, such
4 person shall be deemed in default, and the proceeding may be determined against
5 the Respondent upon consideration of the Order to Show Cause, the allegations
6 of which may be deemed to be true.

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

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

14 The Staff Petition dated May 1, 2008 (a copy of which is attached
15 hereto) is incorporated by reference hereto.

16 **ORDER**

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

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

22 It is hereby ORDERED, that the Respondent shall show cause why:

- 23 1. Administrative penalties of \$27,500.00 should not be imposed
24 against the Respondent; and
- 25 2. Respondent's license should not be revoked; and

It is hereby ORDERED that:

3. Failure to request a hearing within 30 days of the date of
receipt of this Order shall result in a default judgment being

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rendered, license revocation and administrative penalties
imposed upon the defaulting Respondent.

SIGNED,

Dated: 5/1/08

/s/

PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-089
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 3 State of New Hampshire Banking) Staff Petition
)
 4 Department,)
)
 5 Petitioner,) May 1, 2008
)
 6 and)
)
 7 Martin & Sheehan PDAL, Inc.,)
)
 8 Respondent)
)

9
10 STATEMENT OF ALLEGATIONS

11 The Staff of the Banking Department, State of New Hampshire (hereinafter
12 referred to as the "Department) alleges the following facts:

- 13 1. Martin & Sheehan PDAL, Inc. (hereinafter "Respondent") is
- 14 licensed to do business as a small loan lender by the Department
- 15 under the trade name Colortyme Payday Loans.
- 16 2. Respondent is owned by David Martin and Peter Sheehan.

17 Violation of NH RSA 399-A:13 XII (5 Counts)

- 18 3. Respondent's owners are also the owners of a local franchise of
- 19 Colortyme, a rent-to-own consumer goods business (hereinafter
- 20 referred to as Colortyme RTO).
- 21 4. These two businesses are collocated on the same premises.
- 22 5. There is no physical barrier between the waiting/merchandise area
- 23 for the two businesses.
- 24 6. The Respondent verbally and in writing advises its customers that
- 25 the proceeds of a payday loan may not be used to pay for other
- merchandise in the store.

1 7. Upon information and belief the Respondent uses the same computer
2 system to record obligations of its loan customers as the system
3 used by Colortyme RTO employees to record obligations of their
4 rent-to-own customers.

5 8. Both Respondent's employees and Colortyme RTO's employees would
6 be able to view each other's business transactions.

7 9. Nevertheless examiners found evidence of thirty-two (32)
8 consumers who simultaneously held an obligation on a payday loan
9 and an obligation to pay on a rent-to-own item.

10 10. At least five of those customers received loan proceeds on the
11 same day they made payments on rent-to-own merchandise.

12 **Violation of RSA 399-A:6 VI (2 Counts)**

13 11. The Respondent records partial payments made by its customers
14 into the aforementioned computer system.

15 12. At that time a two part duplicate receipt is printed which is
16 time-stamped.

17 13. The Respondent's computer system does not record the time of
18 these payments.

19 14. The Respondent destroys its original receipt immediately.

20 15. The Respondent is therefore without ability to demonstrate when
21 loan payments were made.

22 16. Upon information and belief the Respondent licenses its software
23 for loans from Colortyme headquarters.

24 17. The Respondent professes to be without ability to change aspects
25 of the software due to the agreement of the Colortyme RTO
franchise with Colortyme headquarters.

1 18. All documents printed by the system are time stamped.

2 19. The time stamp is inaccurate, due, according to Respondent's
3 employees, to a glitch in the Colortyme software.

4 20. Respondent is aware of this inaccuracy and occasionally requests
5 Colortyme corporate headquarters to fix it.

6 21. No effort is made to fix documents printed by the system at the
7 time they are printed.

8 **Violation of RSA 399-A:4 VI (4 Counts)**

9 22. As a result of their business activity Respondent regularly have in
10 their possession consumer information of a confidential nature.

11 23. At the time of examination, licensee was unable to produce a written
12 privacy policy which was distributed to customers.

13 24. The licensee was further unable to produce an adequate written
14 safeguarding policy for confidential consumer information.

15 25. In response to the report of examination highlighting this fact,
16 Respondent failed to acknowledge the observation or produce any
17 evidence that they actually have any safeguarding policy.

18 26. This failure to maintain a written policy may have contributed to their
19 further failures to protect non-public consumer information.

20 27. Respondent has a practice of making physical visits to their loan
21 customers with overdue loan obligations.

22 28. Respondent's employee is accompanied by a Colortyme RTO employee who is
23 then able to hear the nonpublic personal information and all the
24 collection efforts discussed by the Respondent's employee.

25 29. Said visits have included visits to the customer's place of business.

ISSUES OF LAW

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

- 1 1. The Department realleges the above stated facts in paragraphs 1
2 through 29.
- 3 2. The Department has jurisdiction over the licensing and
4 regulation of persons engaged in small loan activities pursuant
5 to NH RSA 399-A:2.
- 6 3. RSA 399-A:13 XII prohibits lenders from making loans to enable a
7 borrower to pay for any other product or service sold at the
8 lender's business location. Respondent violated this statute on
9 at least five occasions by allowing loan customers to pay their
10 rent-to-own fees from their loan proceeds.
- 11 4. RSA 399-A:6 VI mandates that licensees keep original business
12 records. The Respondent violated this statute by destroying
13 time-stamped payment receipts.
- 14 5. RSA 399-A:6 VI mandates that licensees keep accurate records
15 that allow the Commissioner to make compliance determinations.
16 Respondent violated this statute by knowingly allowing
17 inaccurate documents to be produced by their computer system.
- 18 6. RSA 399-A:4 VI mandates that licensees comply with all
19 applicable federal and state laws. Respondent violated this
20 statute on at least four occasions as follows:
- 21 a. 16 C.F.R. §313.4 requires companies such as licensee to
22 provide their customers with notice of their privacy policy
23 and practices. Respondent violated this federal rule and
24 therefore violated the Chapter as alleged above.
- 25 b. 16 C.F.R. §314.3 requires companies such as licensee to
 maintain a written comprehensive security policy.

1 Respondent violated this federal rule and therefore
2 violated the Chapter as alleged above.

3 c. 18 U.S.C. §6801 requires all financial institutions to
4 maintain the integrity of nonpublic personal information.
5 Respondent violated this federal statute and therefore
6 violated the Chapter by sharing the information with
7 employees of Colortyme RTO as alleged above.

8 d. RSA 358-C:3 I(c) prohibits a debt collector from
9 communicating with the debtor at their place of
10 employment in person. Respondent violated this statute
11 and therefore violated the Chapter as alleged above.

12 7. RSA 399-A:18 V provides that any person who, either knowingly or
13 negligently, violates any provision of Chapter 399-A, may upon
14 hearing, and in addition to any other penalty provided for by
15 law, be subject to suspension, revocation, or an administrative
16 fine not to exceed \$2,500, or both. Each of the acts specified
17 shall constitute a separate violation, and such administrative
18 action or fine may be imposed in addition to any criminal
19 penalties or civil liabilities imposed by New Hampshire Banking
20 laws.

21
22 **RELIEF REQUESTED**

23 The staff of the Department requests the Commissioner take the following
24 Action:

- 25
1. Find as fact the allegations contained in section I of this petition;
 2. Make conclusions of law relative to the allegations contained in

