

1 State of New Hampshire Banking Department

)Case No.: 08-117

2 In re the Matter of:

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3 State of New Hampshire Banking

)

)Order to Show Cause

4 Department,

)

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5 Petitioner,

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)

6 and

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)

7 Kingsway Auto Sales - Seabrook, LLC,

)

)

8 and George Dilorenzo,

)

)

9 Respondents

)

10 NOTICE OF ORDER

11 This Order commences an adjudicative proceeding under the provisions  
12 of RSA 361-A and RSA 541-A.

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 order  
16 to show cause why license revocation and penalties for violations of New  
17 Hampshire Banking laws should not be imposed.

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

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

25 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct

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

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

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

22 If any of the above named Respondents fails to request a hearing within  
23 30 calendar days of receipt of such order or reach formal settlement with the  
24 Department within that time frame, then such person shall likewise be deemed  
25 in default, and the orders shall, on the thirty-first day, become permanent,

1 and shall remain in full force and effect until and unless later modified or  
2 vacated by the Commissioner, for good cause shown.

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

4 The Staff Petition dated January 30, 2009 (a copy of which is attached  
5 hereto) is incorporated by reference hereto.

6 **ORDER**

7 WHEREAS, finding it necessary and appropriate and in the public  
8 interest, and consistent with the intent and purposes of the New Hampshire  
9 banking laws, and

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

12 It is hereby ORDERED, that:

- 13 1. Respondent Kingsway Auto Sales - Seabrook, LLC ("Respondent  
14 Kingsway - Seabrook") shall show cause why penalties in the  
15 amount of \$7,500.00 should not be imposed against it;
- 16 2. Respondent George Dilorenzo ("Respondent Dilorenzo") shall  
17 show cause why penalties in the amount of \$12,500.00 should  
18 not be imposed against him;
- 19 3. The above named Respondents shall show cause why, in addition  
20 to the penalties listed in Paragraphs 1 through 2 above, the  
21 \$3,185.00 examination fee should not be paid to the  
22 Department;
- 23 4. The above named Respondents shall show cause why, in addition  
24 to the penalties listed in Paragraphs 1 through 3 above, a  
25

1 statutory penalty of \$2,500.00 should not be imposed for  
2 failing to file the 2007 annual report;

3 5. Respondents shall be jointly and severally liable for the  
4 above amounts alleged in Paragraphs 1 through 4 above;

5 6. The above named Respondents shall show cause why, in addition  
6 to the penalties listed in Paragraphs 1 through 5 above,  
7 Respondent Kingsway - Seabrook's license should not be  
8 revoked.

9 It is hereby further ORDERED that:

10 7. Along with the administrative penalties listed for the above  
11 named Respondents, the outstanding statutory penalty of  
12 \$5,685.00 shall be immediately paid; and

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

17  
18  
19 SIGNED,

20  
21 Dated: 01/30/09

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22 /s/  
PETER C. HILDRETH  
23 BANK COMMISSIONER  
24  
25

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 08-117  
3 State of New Hampshire Banking )  
4 Department, ) Staff Petition  
5 Petitioner, ) January 30, 2009  
6 and )  
7 Kingsway Auto Sales - Seabrook, LLC, )  
8 and George Dilorenzo, )  
9 Respondents )

10 I. STATEMENT OF ALLEGATIONS

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

13 Facts Common on All Counts:

- 14 1. Respondent Kingsway Auto Sales - Seabrook, LLC (hereinafter  
15 "Respondent Kingsway - Seabrook") was licensed as a Sales  
16 Finance Company from at least March 27, 2006 until its license  
17 expired on December 31, 2007.
- 18 2. Respondent George Dilorenzo (hereinafter "Respondent Dilorenzo")  
19 was the 100% owner and President of Respondent Kingsway -  
20 Seabrook, when licensed by the Department.

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

22 Violation of RSA 361-A:2-b, VI Failure of Officer and Owner to Respond to  
23 Department Inquiries (1 Count):

- 24 3. Paragraphs 1 through 2 are hereby realleged as fully set forth  
25 herein.

1 4. The Department conducted an examination of Respondent Kingsway -  
2 Seabrook on April 2, 2007, while Respondent Kingsway - Seabrook  
3 was still licensed with the Department.

4 5. On December 12, 2007, the Department mailed the report of  
5 examination and invoice for \$3,185.00 to Respondent Kingsway -  
6 Seabrook, via U.S. Certified Mail Return Receipt requested, which  
7 Respondents received on December 18, 2007.

8 6. The above named Respondents failed to respond to the December 12,  
9 2007 correspondence from the Department.

10 7. The Department, via U.S. mail, mailed a second notice on December  
11 19, 2007 and a third notice on February 5, 2008.

12 8. The above named Respondents did not respond to any of the three  
13 notices for payment of the \$3,185.00 invoice.

14 9. To date, the above named Respondents still owe the \$3,185.00  
15 examination fee for the 6.37 day examination.

16 Violation of RSA 361-A:2-a, I Failure to Properly Surrender License (1  
17 Count):

18 Violation of RSA 361-A:2-b, I Failure to File Annual Report (1 Count):

19 Violation of RSA 361-A:2-b, VI Failure of Officer and Owner to Respond to  
20 Department Inquiries (1 Count):

21 10. Paragraphs 1 through 9 are hereby realleged as fully set forth  
22 herein.

23 11. The 2007 Annual Report was due on or before February 1, 2008.

24 12. On January 18, 2008, the Department sent a certified letter  
25 advising that Respondent Kingsway - Seabrook's license had

1 expired on December 31, 2007 and that surrender/expiration form  
2 documents needed to be submitted to the Department. The  
3 Respondents received the correspondence on January 23, 2008.

4 13. On February 5, 2008, the Department mailed via U.S. Certified Mail  
5 Return Receipt requested a reminder letter that the annual report  
6 was due on February 1, 2008. The letter was returned to the  
7 Department with no forwarding address.

8 14. On February 19, 2008, the Department mailed via U.S. Certified  
9 Mail Return Receipt requested a reminder letter that the  
10 surrender/expiration form, publication and annual report still  
11 needed to be completed. The letter was returned as unclaimed.

12 15. To date, the accrued penalty for failure to file an annual report  
13 has reached the maximum cap of \$2,500.00 (\$25.00 per day).

## 14 **II. ISSUES OF LAW**

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

- 16 1. The Department realleges the above stated facts in Paragraphs 1  
17 through 15 as fully set forth herein.
- 18 2. The Department has jurisdiction over the licensing and regulation  
19 of persons engaged in retail seller and sales finance activities  
20 pursuant to NH RSA 361-A:2.
- 21 3. RSA 361-A:2-a,I provides that a licensee who ceases to engage in  
22 the business of a sales finance company or retail seller at any  
23 time during a license year for any cause shall surrender such  
24 license in person or by registered or certified mail to the  
25 Commissioner within 15 calendar days of such cessation. Each of

1 the above named Respondents violated this provision on at least  
2 one occasion as alleged above.

3 4. RSA 361-A:2-b,I provides that a licensee shall file its annual  
4 report on or before February 1 each year concerning operations  
5 for the preceding year or license period ending December 31.  
6 Each of the above named Respondents violated this provision on at  
7 least one occasion as alleged above. To date, the statutory  
8 penalty is now \$2,500.00.

9 5. RSA 361-A:6-a,IV provides that the expense of such examination  
10 shall be chargeable to and paid by the licensee. Each of the  
11 above named Respondents violated this provision on at least one  
12 occasion as alleged above. To date, the above named Respondents  
13 have failed to pay the \$3,185.00 examination invoice.

14 6. RSA 361-A:2-b,VI provides that any officer, owner, manager or  
15 agent of any licensee shall reply promptly in writing, or other  
16 designated form, to any written inquiry from the Commissioner.  
17 Respondent Dilorenzo violated this provision on at least two  
18 occasions as alleged above.

19 7. RSA 361-A:3,I provides that the Commissioner may issue an order  
20 requiring a person to whom any license has been granted or any  
21 person under the Commissioner's jurisdiction to show cause why  
22 the license should not be revoked or penalties should not be  
23 imposed, or both, for violations of this chapter.

24 8. RSA 361-A:3,I-a provides that the Commissioner may, by order,  
25 revoke any license if the Commissioner finds that the order is in

1 the public interest and the respondent, or licensee, any partner,  
2 officer, member, or director, any person occupying a similar  
3 status or performing similar functions, or any person directly or  
4 indirectly controlling the respondent, or licensee, has among  
5 other types of violations, violated RSA Chapter 361-A or any rule  
6 or order thereunder.

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

15 10. RSA 361-A:11, VIII provides that every person who directly or  
16 indirectly controls a person liable under this section, every  
17 partner, principal executive officer or director of such person,  
18 every person occupying a similar status or performing a similar  
19 function, every employee of such person who materially aids in the  
20 act constituting the violation, and every licensee or person acting  
21 as a common law agent who materially aids in the acts constituting  
22 the violation, either knowingly or negligently, may, upon notice  
23 and opportunity for hearing, and in addition to any other penalty  
24 provided for by law, be subject to suspension, revocation, or  
25 denial of any registration or license, including the forfeiture of

1 any application fee, or the imposition of an administrative fine  
2 not to exceed \$2,500, or both. Each of the acts specified shall  
3 constitute a separate violation, and such administrative action or  
4 fine may be imposed in addition to any criminal or civil penalties  
5 imposed.

6 **III. RELIEF REQUESTED**

7 The staff of the Department requests the Commissioner take the following  
8 action:

- 9 1. Find as fact the allegations contained in section I of this Staff  
10 Petition;
- 11 2. Make conclusions of law relative to the allegations contained in  
12 section II of this Staff Petition;
- 13 3. Find the Commissioner's order to be in the public interest;
- 14 4. Pursuant to RSA 361-A:3, order each of the above named Respondents  
15 to show cause why their license should not be revoked;
- 16 5. Assess fines and administrative penalties in accordance with RSA  
17 397-A:11, for violations of RSA Chapter 361-A, in the number and  
18 amount equal to the violations set forth in section II of this  
19 Staff Petition; and
- 20 6. Take such other administrative and legal actions as necessary for  
21 enforcement of the New Hampshire Banking Laws, the protection of  
22 New Hampshire citizens, and to provide other equitable relief.

