

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 10-021  
 )  
 3 State of New Hampshire Banking )  
 4 Department, ) Order to Show Cause  
 )  
 5 Petitioner, )  
 )  
 6 and )  
 )  
 7 Geoff Gray Corporation, Ana Paula )  
 )  
 8 Horta, and Sergio Rebelo Horta, )  
 )  
 9 Respondents )

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10 NOTICE OF ORDER

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

13 LEGAL AUTHORITY AND JURISDICTION

14 Pursuant to RSA 361-A:3, the Commissioner of the New Hampshire Banking  
15 Department (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 Chapter  
12 541-A. 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 a Respondent fails to  
18 appear at the hearing after being duly notified, such person shall be deemed  
19 in default, and the proceeding may be determined against the Respondent upon  
20 consideration of this 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 a formal written and  
24 executed settlement with the Department within that time frame, then such  
25 person shall likewise be deemed in default, and the orders shall, on the

1 thirty-first day, become permanent, and shall remain in full force and effect  
2 until and unless later modified or vacated by the Commissioner, for good cause  
3 shown.

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

5 The Staff Petition dated June 14, 2010 (a copy of which is attached  
6 hereto) is incorporated by reference hereto.

7 **ORDER**

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

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

13 It is hereby ORDERED, that:

- 14 1. Respondent Geoff Gray Corporation ("Respondent Geoff Gray  
15 Corporation") shall show cause why penalties in the amount of  
16 \$7,500.00 should not be imposed against it;
- 17 2. Respondent Ana Paula Horta ("Respondent A. Horta") shall show  
18 cause why penalties in the amount of \$12,500.00 should not be  
19 imposed against her;
- 20 3. Respondent Sergio Rebelo Horta ("Respondent S. Horta") shall  
21 show cause why penalties in the amount of \$12,500.00 should  
22 not be imposed against him;
- 23 4. The above named Respondents shall show cause why, in addition  
24 to the penalties listed in Paragraphs 1 through 3 above, the  
25 \$4,505 examination fee for the March 2008 examination should

1 not be paid to the Department;

2 5. The above named Respondents shall show cause why, in addition  
3 to the penalties listed in Paragraphs 1 through 4 above, the  
4 \$3,340.00 examination fee for the September 2009 examination  
5 should not be paid to the Department;

6 6. The above named Respondents shall show cause why, in addition  
7 to the penalties listed in Paragraphs 1 through 5 above,  
8 \$900.00 for the late filing of the financial statement should  
9 not be paid to the Department;

10 7. Respondents shall be jointly and severally liable for the  
11 above amounts alleged in Paragraphs 1 through 6 above;

12 8. The above named Respondents shall show cause why, in addition  
13 to the penalties listed in Paragraphs 1 through 7 above,  
14 Respondent Geoff Gray Corporation's license should not be  
15 revoked.

16 It is hereby further ORDERED that:

17 9. Along with the administrative penalties listed for the above  
18 named Respondents, the outstanding sum of \$8,745.00 shall be  
19 immediately paid; and

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22  
23 [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]  
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1           10. Failure to request a hearing within 30 days of the date of  
2           receipt or valid delivery of this Order to Show Cause shall  
3           result in a default judgment being rendered and  
4           administrative penalties imposed upon the defaulting  
5           Respondent (s) .  
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7                           SIGNED,

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9   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.: 10-021  
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 3 State of New Hampshire Banking )  
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 4 Department, ) Staff Petition  
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 5 Petitioner, ) June 14, 2010  
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 7 Geoff Gray Corporation, Ana Paula )  
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 8 Horta, and Sergio Rebelo Horta, )  
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 9 Respondents )

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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 Geoff Gray Corporation (hereinafter "Respondent Geoff  
15 Gray Corporation") was licensed as a Sales Finance Company from  
16 at least March 27, 2007 (with an amended license date of May 22,  
17 2007) until its license expired on December 31, 2009.
- 18 2. Respondent Ana Paula Horta (hereinafter "A. Horta") was the  
19 Treasurer, Secretary and Control Person of Respondent Geoff Gray  
20 Corporation, when licensed by the Department.
- 21 3. Respondent Sergio Rebelo Horta (hereinafter "S. Horta) was the  
22 100% owner, President, Secretary and Control Person of Respondent  
23 Geoff Gray Corporation, when licensed by the Department.

24 March 2008 Examination

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

1 Violation of RSA 361-A:2-b,VI Failure of Officer and Owner to Respond to

2 Department Inquiries (1 Count):

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

5 5. The Department conducted an examination of Respondent Geoff Gray  
6 Corporation on March 24, 2008, while Respondent Geoff Gray  
7 Corporation was still licensed with the Department.

8 6. On March 2, 2009, the Department mailed the report of examination  
9 and invoice for \$4,505.00 to Respondent Geoff Gray Corporation,  
10 via U.S. Certified Mail Return Receipt requested, which  
11 Respondents received on March 4, 2009.

12 7. The above named Respondents failed to respond to the March 2,  
13 2009 correspondence from the Department.

14 8. The Department, via U.S. mail, mailed a second notice on April  
15 17, 2009 and a third notice on May 21, 2009.

16 9. To date, the above named Respondents still owe the \$4,505.00  
17 examination fee for the 9.01 day examination.

18 September 2009 Examination:

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

20 Violation of RSA 361-A:2-b,VI Failure of Officer and Owner to Respond to

21 Department Inquiries (1 Count):

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

24 11. The Department conducted an examination of Respondent Geoff Gray  
25 Corporation on September 7, 2009, while Respondent Geoff Gray

1 Corporation was still licensed with the Department.

2 12. On February 10, 2010, the Department mailed the report of  
3 examination and invoice for \$3,340.00 to Respondent Geoff Gray  
4 Corporation, via U.S. Certified Mail Return Receipt requested,  
5 which Respondents received on February 11, 2010.

6 13. The above named Respondents failed to respond to the February 10,  
7 2010 correspondence from the Department.

8 14. The Department, via U.S. mail, mailed a second notice on March 3,  
9 2010 and a third notice on March 15, 2010.

10 15. The above named Respondents finally responded, indicating they  
11 would like to seek financial relief due to economic conditions.  
12 Such relief was not granted by the Department.

13 16. To date, the above named Respondents still owe the \$3,340.00  
14 examination fee for the 4 day examination.

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

16 **Filing of Financial Statement (1 Count):**

17 17. Paragraphs 1 through 16 are hereby realleged as fully set forth  
18 herein.

19 18. Respondent Geoff Gray Corporation was licensed in 2009 and  
20 therefore, subject to the filing of the financial statement.

21 19. Respondent Geoff Gray Corporation's financial statement was due  
22 on or before March 31, 2010.

23 20. Respondent Geoff Gray Corporation filed its financial statement  
24 on May 6, 2009 (36 days late), generating a fine of \$900.00  
25 (\$25.00 a day x 36 days).



1 21. The Department sent the above named Respondents three invoices,  
2 with the third and final one on September 29, 2009.

3 22. To date, Respondent Geoff Gray Corporation has failed to pay the  
4 \$900.00 late filing of the financial statement fee.

5 **II. ISSUES OF LAW**

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

7 1. The Department realleges the above stated facts in Paragraphs 1  
8 through 22 as fully set forth herein.

9 2. RSA 361-A:2-b,I(c) provides that each sales finance company shall  
10 file under oath its financial statement with the Commissioner  
11 within 90 days of the date of its fiscal year end. The above  
12 named Respondents filed the financial statement thirty-six days  
13 late as alleged above and therefore the fee is calculated as  
14 pursuant to RSA 361-A:2-b,III below.

15 3. RSA 361-A:2-b,III provides that any sales finance company failing  
16 to file either the annual report or the financial statement  
17 required by RSA 361-A:2 within the time period prescribed shall  
18 pay to the Commissioner a penalty of \$25.00 for each calendar day  
19 the annual report or financial statement is overdue to a maximum  
20 penalty of \$2,500.00 per report or statement and shall be subject  
21 to suspension or revocation of its license. Each of the above  
22 named Respondents violated this provision on at least one  
23 occasion by submitting the financial statement thirty-six (36)  
24 days late as alleged above and owe \$900.00.

25 4. RSA 361-A:2-b,VI provides that any officer, owner, manager or

1 agent of any licensee shall reply promptly in writing, or other  
2 designated form, to any written inquiry from the Commissioner.  
3 Respondent A. Horta and Respondent S. Horta violated this  
4 provision on at least two occasions as alleged above.

5 5. RSA 361-A:3,I provides that the Commissioner may issue an order  
6 requiring a person to whom any license has been granted or any  
7 person under the Commissioner's jurisdiction to show cause why  
8 the license should not be revoked or penalties should not be  
9 imposed, or both, for violations of this chapter. The above named  
10 Respondents are still under the Commissioner's jurisdiction due  
11 to their failure to pay for two examination fees and a late filed  
12 financial statement. Therefore, the license should be revoked.

13 6. RSA 361-A:3,I-a provides that the Commissioner may, by order,  
14 revoke any license if the Commissioner finds that the order is in  
15 the public interest and the respondent, or licensee, any partner,  
16 officer, member, or director, any person occupying a similar  
17 status or performing similar functions, or any person directly or  
18 indirectly controlling the respondent, or licensee, has among  
19 other types of violations, violated RSA Chapter 361-A or any rule  
20 or order thereunder.

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

1 or deny the application.

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

5 9. RSA 361-A:6-a,IV provides that the expense of such examination  
6 shall be chargeable to and paid by the licensee. Each of the  
7 above named Respondents violated this provision on at least two  
8 occasions as alleged above. To date, the above named Respondents  
9 have failed to pay the \$4,505.00 March 2008 examination invoice  
10 and the \$3,340 September 2009 examination invoice.

11 10. Pursuant to RSA 361-A:11,V and VII, any person who, either  
12 knowingly or negligently, violates any provision of RSA Chapter  
13 361-A or any rules or orders of the Commissioner, may upon  
14 hearing, and in addition to any other penalty provided for by  
15 law, be subject to such suspension, revocation, or denial of any  
16 registration or license, including forfeiture of any application  
17 fee, or imposition of an administrative fine not to exceed  
18 \$2,500.00, or both. Each of the acts specified shall constitute  
19 a separate violation, and such administrative action or fine may  
20 be imposed in addition to any criminal penalties or civil  
21 liabilities imposed by New Hampshire Banking laws.

22 11. Pursuant to RSA 361-A:11,VIII, every person who directly or  
23 indirectly controls a person liable under this section, every  
24 partner, principal executive officer or director of such person,  
25 every person occupying a similar status or performing a similar

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

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

20 **III. RELIEF REQUESTED**

21 The staff of the Department requests the Commissioner take the following  
22 action:

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

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section II of this petition;

- 3. Find the Commissioner's order to be in the public interest;
- 4. Pursuant to RSA 361-A:3, order each of the above named Respondents to show cause why their sales finance company license should not be revoked;
- 5. Assess fines and administrative penalties in accordance with RSA 361-A:11, for violations of RSA Chapter 361-A, in the number and amount equal to the violations set forth in section II of this Staff Petition; and
- 6. Take such other administrative and legal actions as necessary for enforcement of the New Hampshire Banking Laws, the protection of New Hampshire citizens, and to provide other equitable relief.

**IV. RIGHT TO AMEND**

The Department reserves the right to amend this Staff Petition and to request that the Commissioner take additional administrative action. Nothing herein shall preclude the Department from bringing additional enforcement action under RSA Chapter 397-A or the regulations thereunder.

Respectfully submitted by:

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

\_\_\_\_\_  
06/14/10  
Date