

) Case No.: 09-206

1 In re the Matter of:)
)
 2 State of New Hampshire Banking Department,)
)
 3 Petitioner,)
)
 4 and)
) Order to Show Cause and
 5 Frank Coffey (a/k/a Frank Coffey, Inc, and) Cease and Desist
)
 6 d/b/a Frank Coffey Auto & Truck Sales [a/k/a)
)
 7 frankcoffeyauto,com]),)
)
 8 Respondent)
 9)

NOTICE OF ORDER TO SHOW CAUSE AND CEASE AND DESIST ("ORDER")

- 11 1. This Order commences an adjudicative proceeding under the provisions
 12 of RSA Chapter 361-A (including RSA 361-A:3,I and I-a, RSA 361-A:3-a,I and
 13 II, and RSA 361-A:5,IV) and RSA Chapter 541-A.
- 14 2. The Commissioner may impose administrative penalties of up to \$2,500
 15 for each violation. RSA 361-A:11,VII and VIII.
- 16 3. Any person who engages in the business of a sales finance company
 17 without a license as required by RSA Chapter 361-A shall be barred from
 18 recovering any finance charge, delinquency, or collection charge on the
 19 contract. Where no finance charge is payable under the terms of the
 20 contract, a person engaging in the business of a sales finance company
 21 without a license shall be barred from recovering any amount in excess of
 22 the wholesale market value of the vehicle, if the vehicle was purchased by
 23 the seller at a wholesale auction or other wholesale outlet, or the trade-in
 24 value of the vehicle if the seller acquired the vehicle in trade.

1 RESPONDENTS

2 4. Frank Coffey (a/k/a Frank Coffey, Inc, and d/b/a Frank Coffey Auto &
3 Truck Sales [a/k/a frankcoffeyauto.com]) ("Respondent Coffey") is an active
4 trade name registered with the New Hampshire Secretary of State on April 23,
5 2009 with a principal office location in Milford, New Hampshire. Frank
6 Coffey, Inc was registered with the Secretary of State on December 16, 2003
7 with the same principal office location Milford, New Hampshire. Respondent
8 Coffey is a Person (RSA 361-A:1,VIII), a Direct Owner (RSA 361-A:1,III-d), a
9 Principal (RSA 361-A:1, VIII-a) and a Control Person (RSA 361-A:1,III-b).

10 5. Respondent Coffey was licensed as a Retail Seller by the New Hampshire
11 Banking Department ("Department") from 1999 to April 30, 2000, when
12 Respondent Coffey's Retail Seller license expired. Respondent Coffey was
13 then licensed as a Sales Finance Company by the Department from January 8,
14 2002 until Respondent Coffey's Sales Finance Company license expired on
15 December 31, 2006.

16 RIGHT TO REQUEST A HEARING

17 6. Respondent Coffey has a right to request a hearing on this Order. A
18 hearing shall be scheduled not later than ten (10) days after the
19 Commissioner receives the Respondent Coffey's written request for a hearing.
20 Respondent Coffey may request a hearing and waive the ten (10) day hearing
21 requirement. The hearing shall comply with RSA Chapter 541-A, RSA 361-A:3,I
22 and I-a, RSA 361-A:3-a,I and II.

23 7. If any person fails to request a hearing within thirty (30) days of
24 receiving this Order, then such person shall be deemed in default, and the
25 Order shall, on the thirty-first (31st) day, become permanent, all

1 allegations may be deemed true, and shall remain in full force and effect
2 until modified or vacated by the Commissioner for good cause shown. RSA 361-
3 A:3,I and I-a, RSA 361-A:3-a,I and II.

4 8. A default may result in administrative fines and restitution as
5 described in Paragraphs 2 and 3 above.

6 **STATEMENT OF ALLEGATIONS**

7 9. On or about September 18, 2009, the Department became aware of an
8 advertisement by Respondent Coffey in Auto Solutions. The Week 38
9 publication (from September 18, 2009 to September 25, 2009 had an
10 advertisement (full page) for Frank Coffey with a statement of "financing
11 available" in bold print. At this time, the website of frankcoffeyauto.com
12 also advertised "buy here, pay here."

13 10. On October 16, 2009, the Department sent a letter to Respondent Coffey
14 via US Certified Mail Return Receipt requested, which Respondent Coffey
15 received on October 20, 2009.

16 11. On October 20, 2009, the Department received documentation from the
17 New Hampshire Department of Safety, Division of Motor Vehicle, Bureau of
18 Title and Anti-Theft, which indicated that Respondent Coffey was listed as
19 the lien holder on 455 titles.

20 12. With no response from Respondent Coffey, the Department sent another
21 correspondence on February 8, 2010 via U.S. Certified Mail, Return Receipt
22 requested, which Respondent Coffey received on February 10, 2010.

23 13. As of April 8, 2010, the frankcoffeyauto.com website still advertised
24 "buy here, pay here."

25 14. As of April 8, 2010, the frankcoffeyauto.com website still advertised

1 "buy here, pay here."

2 15. On May 31, 2011, the Department sent a letter via facsimile to
3 Respondent Coffey, indicating he must respond in 10 days and apply to the
4 Department for licensure and submit a consumer list with supporting
5 documentation. The same letter was also sent via U.S. Certified Mail, Return
6 Receipt requested, which Respondent Coffey received on June 10, 2011.

7 16. On August 18, 2011, the Department spoke with Respondent Coffey and
8 pursuant to that conversation, the Department sent Respondent Coffey copies
9 of the titles for liens held by Respondent Coffey from January 1, 2007 to
10 the current time.

11 17. The Department's follow-up written correspondence dated August 19,
12 2011 indicated the Department needed a full payment history, how much
13 Respondent Coffey purchased the vehicles for and sold them for and how much
14 the Consumers paid. The Department requested copies of retail installment
15 contracts, purchase and sales agreements and the contracts from the auctions
16 and/or trade-ins if Respondent Coffey did not charge interest on these motor
17 vehicle loans. Respondent Coffey received this correspondence on August 24,
18 2011. Respondent Coffey has failed to provide any of the requested
19 documentation.

20 18. On September 23, 2011, the Department spoke with Respondent Coffey,
21 who confirmed receipt of the August 19, 2011 correspondence and indicated
22 Respondent Coffey's position is that "[they] have not engaged in sales
23 finance company activity since 2006."

24 19. Respondent Coffey engaged in the business of a sales finance company
25 (on at least 455 occasions) without a Sales Finance Company license issued

1 by the Department, in violation of RSA 361-A:2,I.

2 _____ /s/
3 Maryam Torben Desfosses
3 Hearings Examiner

September 30, 2011
Date

4 ORDER

5 20. I hereby find as follows:

6 a. Pursuant to RSA 361-A:3,I and I-a, the facts as alleged above,
7 if true, show Respondent Coffey is operating or has operated in violation of
8 RSA Chapter 361-A and form the legal basis for this Order;

9 b. Pursuant to RSA 361-A:5,VI, this Order is necessary and
10 appropriate to the public interest and for the protection of consumers and
11 consistent with the purpose and intent of New Hampshire banking laws;

12 c. The Department finds pursuant to RSA 361-A:3,I and RSA 361-A:3-
13 a,I, reasonable cause to issue an order to cease and desist; and

14 d. Pursuant to RSA 361-A:3 and RSA 397-A:3-a, if Respondent Coffey
15 fails to respond to this Order and/or defaults then all facts as alleged
16 herein are deemed as true.

17 21. Accordingly, it is hereby ORDERED that:

18 a. Respondent Coffey shall cease and desist from violating RSA
19 Chapter 361-A and rules or orders thereunder;

20 b. Respondent Coffey shall show cause why an administrative fine of
21 up to a maximum of \$2,500.00 per violation should not be imposed as follows:

22 (1). Respondent Coffey:

23 Violation #1: Unlicensed Sales Finance Company activity

24 (RSA 361-A:2,I) - 455 Counts;

25 c. Respondent Coffey shall show cause why reimbursement to

1 Consumers 1 through 455 as described above should not be made; and

2 d. Nothing in this Order:

3 (1). shall prevent the Department from taking any further
4 administrative and legal action as necessary under New Hampshire law; and

5 (2). shall prevent the New Hampshire Office of the Attorney General
6 from bringing an action against the above named Respondents in any New
7 Hampshire superior court, with or without prior administrative action by the
8 Commissioner.

9 **SO ORDERED.**

10 _____
11 /s/

Dated: September 30, 2011

12 RONALD A. WILBUR
13 BANK COMMISSIONER
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