

1	In re the Matter of:)	Case No.: 11-001
)	
2	State of New Hampshire Banking)	
)	
3	Department,)	
)	
4	Petitioner,)	Adjudicative Hearing Decision
)	
5	and)	
)	
6	Inofin Incorporated, Michael Joseph)	
)	
7	Cuomo, Kevin J. Mann, Sr., Donald K.)	
)	
8	Heap, and Melissa M. George,)	
)	
9	Respondents)	

I. PROCEDURAL BACKGROUND

A hearing was held on May 17, 2011 regarding an Order to Show Cause and Cease and Desist dated January 6, 2011 ("Initial Order") and an Amended Order to Show Cause dated April 4, 2011 ("Amended Order"). The Parties are the New Hampshire Banking Department ("Department"), as Petitioner, and Inofin Incorporated ("Inofin Inc."), Michael Joseph Cuomo ("Cuomo"), Kevin J. Mann, Sr. ("Mann"), Donald K. Heap ("Heap") and Melissa M. George ("George"), Respondents (collectively "Respondents").

A request for hearing on the Initial Order was filed by Attorney Hindlian on behalf of Inofin Inc., Mann, Cuomo, and George but not Heap. Subsequently, Attorney Hindlian and his firm withdrew from its representation because a Petition for Relief under Chapter 7 of the U.S. Bankruptcy Code was filed by Inofin, Inc.

Respondent Heap failed to respond to the Initial Order (or the Amended Order) and defaulted on February 10, 2011. RSA 361-A:3-a provides that if a

1 person fails to request a hearing then such person shall be deemed to be in
2 default and the order shall become permanent and shall remain in full force
3 and effect unless later modified or vacated by the [Presiding Officer].

4 A hearing notice for the Initial Order was issued on March 29, 2011.
5 The Remaining Respondents were provided 30 days to request a hearing or else
6 be defaulted. RSA 361-A:3.

7 Attorney Michael E. Coghlan filed an appearance for Inofin Inc. only
8 and requested a consolidated hearing on the Initial Order and the Amended
9 Order. Heap remained in Default. Cuomo, Mann and George never requested a
10 hearing within the time limit and are procedurally DEFAULTED.¹

11 2. ISSUES

12 The issues to be determined regarding Inofin, Inc. pursuant to the
13 Amended Order are:

- 14 a. Violation #1: Failure to facilitate (RSA 361-A:6-a,V) - 1
15 Count;
- 16 b. Violation #2: Violation of Department's January 6, 2011 Cease
17 and Desist Order (RSA 361-A:3,I-a,(i)) - 1 Count; and
- 18 c. Violation #3: Failure to update information with the
19 Commissioner (RSA 361-A:2,XII) - 1 Count.

20 The Initial Order alleged three (3) violations against Inofin, Inc:

- 21 a. Violation #1: Failure to update information with the
22 Commissioner (RSA 361-A:2,XII) (2 counts);
- 23 b. Violation #2: Filing of materially false and misleading
24

25 ¹ The Presiding Officer describes the process as a "procedural" default because, as described below, JUS Rule 810.02(b) requires the Department to prove its case even where a Party has procedurally defaulted.

1 statement (RSA 361-A:3-b,II) (1 count); and

2 c. Violation #3: Failure to maintain financial integrity (RSA
3 361-A:3,I-a(g)) (1 count).

4 The Department seeks up to a \$2,500.00 fine per violation, revocation
5 of Inofin Inc.'s license, a cease and desist order prohibiting violations of
6 RSA Chapter 361-A and information regarding New Hampshire consumers.

7 The Department and Inofin Inc. exchanged witness lists and exhibits.

8 At the hearing, the Department and Inofin Inc. entered into a
9 Stipulation. In its Post-Hearing Memorandum, Inofin, Inc. represented that
10 it "does not dispute the factual allegations contained in the [Initial]
11 Order or the Amended Order." The factual allegations in the Stipulation, the
12 Initial Order, and the Amended Order are GRANTED and are set out below:

13 **3. FACTS: INITIAL ORDER**

14 On July 6, 2001, the Department approved and licensed Respondent
15 Inofin, Inc.'s Sales Finance Company license application, which included an
16 affirmation signed by Cuomo on January 23, 2001 and attested to by a Notary
17 Public. The affirmation indicated Inofin, Inc. will be operated in
18 accordance with the New Hampshire Revised Statutes Annotated (the "RSAs")
19 and rules of the New Hampshire Banking Department.

20 Sales finance company licensees are under a continuing obligation to
21 update information on file with the Commissioner. *RSA 361-A:2,XII.*

22 On June 18, 2010, the Massachusetts Division of Banks
23 ("Massachusetts") entered into a Consent Order with Inofin, Inc.
24 ("Massachusetts Consent Agreement") as a result of the Massachusetts's
25 concern with Inofin, Inc.'s ability to "maintain the minimum financial

1 requirements for holding a motor vehicle sales finance company license in
2 Massachusetts."

3 On November 18, 2010, Respondents electronically renewed Inofin,
4 Inc.'s New Hampshire Sales Finance Company license with the Department. The
5 electronic renewal required Respondents to affirm by checking a box that the
6 statements in the filing are true, correct and complete and that the person
7 submitting the affirmation has reviewed the licensee's records and that all
8 documents on file with the Department in connection with the licensee's file
9 are true and accurate. Respondents also had to affirm Inofin, Inc. will be
10 operated in accordance with the RSAs and rules of the New Hampshire Banking
11 Department.²

12 On December 30, 2010, Massachusetts issued an Order to Cease and
13 Desist, Order to Show Cause and Notice of Intent to Revoke Motor Vehicle
14 Sales Finance Company License ("Massachusetts Cease and Desist Order")
15 against Inofin, Inc. The Massachusetts Cease and Desist Order was based on
16 two main issues: the uncertainty of Inofin, Inc.'s ability to meet the
17 minimum financial requirements for holding a motor vehicle sales finance
18 company license and the material failure to comply with the terms of the
19 June 18, 2010 Massachusetts Consent Order. One of the material failures of
20 the Massachusetts Consent Order was the Respondents' inability to submit an
21 audit of the financial statements for 2009 and an opinion audit in
22 conformity with the Generally Accepted Accounting Principles ("GAAP").

24 ² While not contained in the allegations, the Presiding Officer notes that
25 the Department conducted an onsite examination of Inofin, Inc. on December
16, 2010. As a result of this examination, the Department uncovered the
Massachusetts Consent Agreement.

1 As described in Paragraphs 19 to 23 of the Initial Order, Respondents
2 failed to notify the Department of the June 18, 2010 Massachusetts Consent
3 Order.

4 As described in Paragraphs 19 to 23 of the Initial Order, Respondents
5 failed to notify the Department of the December 30, 2010 Massachusetts Cease
6 and Desist Order.

7 As described in Paragraphs 19 to 23 of the Initial Order, Respondents
8 lack the financial integrity to maintain a Sales Finance Company license
9 with the Department.

10 As described in Paragraphs 19 to 23 of the Initial Order, Respondents
11 filed renewal documents with the Department which were, at the time, and in
12 light of the June 18, 2010 Massachusetts Consent Order filed against Inofin,
13 Inc., materially false and misleading.

14 **4. FACTS: AMENDED ORDER**

15 **Failure to Facilitate:**

16 On December 16, 2010, the Department conducted an on-site, unannounced
17 examination of Inofin, Inc. The Department's Examiners completed loan file
18 review while on-site but left the officers questionnaire and schedules A & B
19 with Respondents to complete and immediately submit to the Department.

20 On January 4, 2011, a Department's Examiner sent an e-mail with a read
21 receipt request to Cuomo requesting the examination materials be immediately
22 provided. Cuomo received the e-mail but failed to respond to the Department.

23 On January 4, 2011, a Department's Examiner telephoned the individual
24 who was on-site for the December 16, 2010 examination. The Department's
25 Examiner left a message with the Secretary stating the examination

1 information needed to be received immediately and that Respondents needed to
2 fax schedules A & B to the Department. The Department received no response.

3 On January 4, 2011, the Department's Examiner sent a letter via
4 certified mail to Cuomo again requesting the examination materials be
5 immediately forwarded to the Department.

6 On January 6, 2011, the Department received a package of examination
7 materials sent by the Respondents. The materials the Department received
8 were incomplete and therefore, on January 7, 2011, the Department e-mailed
9 Cuomo for additional materials.

10 On January 25, 2011, the Department's Examiner left another message
11 for Cuomo regarding production of the examination materials. On the same
12 day, the Department's Examiner spoke with Inofin, Inc.'s Executive Secretary
13 and then had a message forwarded to Mann.

14 On February 1, 2011, the Department's Examiner sent a certified letter
15 to Cuomo asking for the materials again. To date [April 4, 2011], no
16 response has been received from the Respondents.

17 Respondents failed to provide the requested examination materials to
18 the Department.

19 Cuomo and Mann, both as owners and officers of Inofin, Inc., failed to
20 reply promptly in writing to the Commissioner's written inquiries regarding
21 examination materials.

22 Violation of the January 6, 2011 Order to Show Cause and Cease and Desist:

23 On January 6, 2011, the Department issued an Order to Show Cause and
24 Cease and Desist against Respondents for failing to update information with
25 the Commissioner, filing a materially false and misleading statement, and

1 for failure to maintain financial integrity, all arising out of acts that
2 occurred with the Massachusetts Division of Banks. This Order to Show Cause
3 and Cease and Desist required Respondents to "immediately provide the
4 Department a list of all New Hampshire consumers for whom Respondents have
5 conducted sales finance company activity and a status of the loans (both
6 transferred and non-transferred loans)" and documentation related to the
7 sales finance activity.

8 To date [April 4, 2011], the Department has not received this consumer
9 list as directed by the January 6, 2011 Order to Show Cause and Cease and
10 Desist.

11 Failure to Update the Commissioner:

12 Respondents had previously failed to inform the Department's
13 Commissioner about the June 18, 2010 Massachusetts Consent Order with
14 Inofin, Inc. and the December 30, 2010 Order to Cease and Desist, Order to
15 Show Cause and Notice of Intent to Revoke Motor Vehicle Sales Finance
16 Company License by the same agency.

17 On January 20, 2011, Inofin, Inc. entered into a Consent Order with
18 Massachusetts but failed to inform the Department's Commissioner.

19 **5. FACTS: STIPULATION**

20 Respondents³ did not notify the Department of the June 18, 2010 Consent
21 Order by Massachusetts.

22 Respondents did not notify the Department of the December 30, 2010
23 Cease and Desist Order issued by Massachusetts.

24
25

³ The Stipulation was entered into by Counsel of Inofin, Inc.; as such, it is not binding on George; see discussion below.

1 Respondents did not notify the Department that Inofin, Inc. had
2 entered into a Consent Order dated January 20, 2011 with Massachusetts.

3 On January 4, 2011, a Department Examiner sent an e-mail with a read
4 receipt request to Cuomo requesting certain examination materials (Officer's
5 Questionnaire and Schedules A&B with Respondents to complete and immediately
6 submit to the Department.

7 On January 4, 2011 a Department Examiner sent an e-mail with a read
8 receipt request to Cuomo requesting the examination materials be immediately
9 provided. Cuomo received this e-mail but failed to respond to the
10 Department.

11 On January 4, 2011, a Department Examiner telephoned Inofin, Inc. to
12 speak to the individual who was on-site for the December 16, 2010
13 examination. The Department's Examiner left a message with the Receptionist
14 stating that the examination information needed to be received immediately
15 and that the Respondents needed to fax the Schedules A & B to the
16 Department. The Department received no response.

17 On January 4, 2011, the Department's Examiner sent a letter via
18 certified mail to Cuomo again requesting the examination materials be
19 immediately forwarded to the Department.

20 On January 6, 2011, the Department received a package of examination
21 materials sent by the Respondents. The Department deemed the materials
22 received to be incomplete and therefore, on January 7, 2011, the Department
23 e-mailed Respondent Cuomo for additional materials.

24 On January 25, 2011, the Department's Examiner left another message
25 for Cuomo regarding production of the examination materials. On the same

1 day, the Department's Examiner spoke with Inofin, Inc.'s Executive Secretary
2 and then had a message forwarded to Mann.

3 On February 1, 2011, the Department's Examiner sent a certified letter
4 Cuomo asking for the materials again. To date [May 17, 2011], no response
5 has been received from the Respondents.

6 6. ANALYSIS OF INOFIN, INC.

7 Inofin Inc. is the subject of a bankruptcy case in the United States
8 Bankruptcy Court for the District of Massachusetts. *Ex. A. (Docket 11-11010)*

9 The case was filed on February 9, 2011. *Id.* A bankruptcy trustee,
10 Attorney Mark F. DeGiacomo, was appointed by the Bankruptcy Court in
11 February, 2011. As part of the bankruptcy process, the prior management of
12 Inofin, Inc., including Cuomo, Mann, Heap, and George were dismissed.
13 Inofin, Inc. is being liquidated. It will never again lend to consumers.
14 Inofin, Inc. owes approximately \$60,000,000.00 to bankruptcy claimants. Its
15 assets are far less than this amount. Shareholders in Inofin, Inc. will not
16 recover anything.⁴

17 The entities that are the focus for the Department in the regulated
18 liquidation of Inofin, Inc. are the New Hampshire consumers who borrowed
19 from Inofin, Inc. (currently, about 20 loans) and New Hampshire residents
20 and businesses who are bankruptcy claimants of Inofin, Inc. *Ex.C, P.83.*

21 In the bankruptcy process, any fines levied against Inofin, Inc. will
22 have priority and will, therefore, reduce the amount to pay bankruptcy
23

24 ⁴ In Exhibit 3, the shareholders are identified as Cuomo and Heap. In Exhibit
25 5, Cuomo and Mann each have 43% ownership of Inofin, Inc. and Heap has 14%.
George has 0% ownership interest.

1 claimants, including New Hampshire residents and businesses. While the
2 Department has established all alleged violations against Inofin, Inc., the
3 levying of fines at this time in the bankruptcy process would be
4 counterproductive.⁵

5 A similar issue arises with Inofin, Inc.'s license. The license was
6 renewed on the basis of material misrepresentations and ordinarily would be
7 revoked. There is a question about whether Inofin, Inc. can continue to
8 service its existing New Hampshire contracts if it has no license.
9 Therefore, Inofin, Inc.'s license shall remain in effect at this time.

10 In order for Inofin, Inc. to temporarily fend off fines and
11 revocation, the Department must have complete cooperation from the
12 bankruptcy trustee and Inofin, Inc. to monitor the liquidation of Inofin
13 Inc. and the activities involving New Hampshire loans.

14 Inofin, Inc., with all necessary assistance from the bankruptcy
15 trustee, is ordered to provide weekly status reports to the Department
16 regarding New Hampshire loans, New Hampshire residents, and all aspects of
17 the Bankruptcy reasonably requested by the Department.

18 Given Inofin Inc.'s pre-bankruptcy lack of candor and the difficulty
19 Inofin, Inc. has had in producing information, the hearing and the record in
20 this matter remain open. The Presiding Officer orders that a monthly status
21 report be filed by the Department with the Presiding Officer. If matters are
22 proceeding in a satisfactory manner, the report may say no more than that.
23 Any difficulty, however, shall be brought to the attention of the Presiding
24

25 ⁵ Inofin, Inc. is required by RSA 361-A:2, III to file and maintain a
\$25,000.00 bond with the Department. The Department may elect to seek fines
against Inofin, Inc. and recovery against the Bond at an appropriate time.

1 Officer.

2 This does not end the matter. Inofin Inc. is ORDERED to Cease and
3 Desist from violating RSA 361-A or any other relevant New Hampshire law.
4 Inofin, Inc. is put on notice that its license shall be revoked at the
5 appropriate time when it will not diminish its ability to service its
6 existing New Hampshire contracts. The Department shall file a request with
7 the Presiding Officer when, in its judgment, revocation is warranted. While
8 no fines or penalties are levied at this time, the Presiding Officer retains
9 jurisdiction over the matter and the Department shall provide notice if
10 Inofin, Inc. fails to perform in a manner that includes full cooperation
11 with the Department and the protection of consumers. After notice and an
12 opportunity to be heard, the Presiding Officer may order all appropriate
13 relief including fines, penalties, and license revocation.

14 Based on the foregoing, the Presiding Officer holds as follows:

- 15 a. Inofin Inc. has committed all six violations alleged by
16 the Department.
- 17 b. The Presiding Officer notes that Inofin, Inc. has alleged
18 without objection that it has cooperated since the hearing
19 and provided all of the information requested by the
20 Department.
- 21 c. Inofin, Inc. is ordered to cooperate with the Department
22 and provide information as described above.
- 23 d. Inofin, Inc., as assisted by the Bankruptcy Trustee, shall
24 give notice to the Department within one business day if
25 it is ordered to pay a fine or a penalty by any

1 governmental entity.

2
3 **7. INOFIN INC'S FINDINGS OF FACT**

4 Having considered the record, including exhibits submitted by the
5 Parties, the Stipulations made by Inofin Inc., and the testimony taken at
6 the hearing, I hereby find that the Petitioner has met its burden to prove
7 the factual and legal allegations in the Initial Order and the Amended
8 Order.

9 Further, I hereby:

10 1. GRANT Inofin Inc.'s Findings of Fact paragraphs numbered 1 through 4.

11 2. NEITHER GRANT NOR DENY Inofin Inc.'s Findings of Fact paragraph 5.

12 This is a mixed question of law and fact.

13 3. GRANT Inofin Inc.'s Findings of Fact paragraph 6.

14 4. NEITHER GRANT NOR DENY Inofin Inc.'s Findings of Fact paragraph 7.

15 This is a mixed question of law and fact.

16 **8. INOFIN INC'S REQUEST FOR RULINGS OF LAW**

17 These requests all strike a similar chord: Inofin, Inc. is in the
18 process of winding up its operations under the supervision of a Chapter 7
19 Bankruptcy Trustee and any fines would deprive claimants of a portion of an
20 already reduced recovery. Inofin, Inc. is willing to surrender its license
21 so long as it can continue to service its remaining New Hampshire contracts.
22 Inofin, Inc. has alleged without objection that it is currently being
23 operated in compliance with New Hampshire law in a manner that protects
24 consumers and is fully cooperating with the Department or cooperating as
25 much as its financial circumstances will permit.

1 While many of the requests involve factual findings, there is no
2 evidence to the contrary in the record as it now exists. Inofin Inc.'s
3 request for Rulings of Law 1 through 6 are GRANTED.

4 **9. ORDER RE: RESPONDENTS CUOMO, MANN AND HEAP**

5 Cuomo, Mann and Heap failed to request a hearing and are procedurally
6 DEFAULTED. RSA 361-A:3-a. Cuomo and Mann attended the May 17, 2011 hearing
7 but were already procedurally defaulted and failed to file appearances,
8 witness lists and exhibits. They remain in Procedural Default. Under JUS
9 Rule 810.02(b), a procedural default authorizes the Presiding Officer to
10 hear the testimony and receive the evidence offered by [a party] if that
11 party has the burden of proof in the case. The Department has the burden of
12 proof.

13 The Department has established all violations alleged against Cuomo,
14 Mann, and Heap as set out in the uncontested facts and as follows:

15 Cuomo is 43% owner and therefore, a Control Person, a Direct Owner and
16 a Principal of Inofin, Inc. RSA 361-A:1.

17 Mann is 43% owner and therefore, a Control Person, a Direct Owner and
18 a Principal of Inofin, Inc. *Id.*

19 Heap is 14% owner and therefore, a Control Person, a Direct Owner and
20 a Principal of Inofin, Inc. *Id.*

21 Respondents Cuomo and Mann had direct contact with the Department and
22 failed to comply with RSA Chapter 361-A. On November 18, 2010, Cuomo, Mann
23 and Heap, as owners, caused Inofin Inc.'s New Hampshire license to be
24 electronically renewed by providing false information to the Department.

25 The issues that mitigate against fines for Inofin Inc., at this time,

1 are not present in regard to these individuals.

2 Respondents Cuomo and Mann each violated RSA 361-A:6-a,V (1 Count) for
3 failure to facilitate. *Amended Order P. 6 and 7, Violation #1.*

4 Respondents Cuomo and Mann each violated RSA 361-A:3,I-a,(i) (1 Count)
5 for a violation of Department's January 6, 2011 Cease and Desist Order.
6 *Amended Order P. 7, Violation #2.*

7 Respondents Cuomo and Mann each violated RSA 361-A:2,XII (1 Count) for
8 failure to update information with the Commissioner. *Amended Order P. 7,*
9 *Violation #3.*

10 Respondents Cuomo and Mann each violated RSA 361-A:2-b,VI for failure
11 of an owner to respond promptly in writing. *Amended Order P. 7, Violation*
12 *#4.*

13 Respondents Cuomo and Mann each violated RSA 361-A:3-b,II (1 count)
14 for filing of materially false and misleading statement. *Initial Order P. 7,*
15 *Violation #2.*

16 Respondents Cuomo and Mann each violated RSA 361-A:3,I-a(g) (1 count)
17 for failure to maintain financial integrity. *Initial Order P. 7 and 8,*
18 *Violation #3.*

19 Respondents Cuomo and Mann are each fined \$2,500.00 per violation
20 above. There are a total of six (6) violations each. Therefore, the total
21 fine for Cuomo and Mann is \$15,000.00 each to be paid immediately to the
22 Department.

23 Respondent Heap, as owner, violated RSA 361-A:6-a,V (1 count) for
24 failure to facilitate. *Amended Order P. 7, Violation #1.*

25 Respondent Heap, as owner, violated RSA 361-A:3,I-a,(i) (1 count) for

1 a violation of the Department's January 6, 2011 Cease and Desist Order.
2 *Amended Order P. 7, Violation #2.*

3 Respondent Heap, as owner, violated RSA 361-A:2,XII (1 Count) for
4 failure to update information with the Commissioner. *Amended Order P. 8,*
5 *Violation #3.*

6 Respondent Heap, as owner, violated RSA 361-A:3-b,II (1 count) for
7 filing a materially false and misleading statement. *Initial Order P. 8,*
8 *Violation #2.*

9 Respondent Heap, as owner, violated RSA 361-A:3,I-a(g) (1 count) for
10 failure to maintain financial integrity. *Initial Order P. 8, Violation #3.*

11 Respondent Heap is fined \$1,000.00 per violation above. There are a
12 total of five (5) violations. Therefore, the total fine for Heap is
13 \$5,000.00 to be paid immediately to the Department.

14 Respondents Cuomo, Mann and Heap are substantively DEFAULTED in light
15 of the Department's proof of a *prima facie* case against each of them.

16 **10. ORDER RE: GEORGE**

17 All of the Respondents, including George, are described collectively
18 as "Respondents." In the Initial Order and the Amended Order, the question
19 arises whether the Department has proved that George, the Chief Operating
20 Officer of Inofin, Inc (Exhibit 2), violated RSA Chapter 361-A.

21 The allegation in the Order to Show Cause, Paragraph 22, is that the
22 "Respondents" filed an electronic renewal form for Inofin, Inc.'s license
23 which was materially false and misleading. Exhibit 7 establishes that Cuomo
24 completed the renewal form, not George.

25 The allegations in Paragraphs 24 and 26 are that "Respondents" failed

1 to notify the Department of the June 18, 2010 Massachusetts Consent Order;
2 failed to notify the Department of the December 30, 2010 Cease and Desist
3 Order from the Massachusetts Division of Financial Institutions
4 ("Massachusetts Cease and Desist"); and, lacked the financial integrity to
5 maintain a license.

6 The Massachusetts Consent Agreement is contained in Exhibit 5 and is
7 directed at Inofin, Inc. No individuals are identified.

8 The Massachusetts Cease and Desist is at Exhibit 4; again, no
9 individuals are identified.

10 There is no evidence in the record that George knew or should have
11 known of the financial integrity of Inofin, Inc. While one can assume that a
12 Chief Operating Officer ("COO") should know about this, a mere assumption
13 absent the allegation is not enough.

14 The allegations contained in the Department's April 4, 2011 Amended
15 Order to Show Cause described actions by Cuomo and Mann (PP 14-21);
16 otherwise, the allegations are against the "Respondents".

17 RSA 361-A:6-a, V creates an obligation to facilitate the examination.
18 There is, however, no evidence that George was involved in the examination.

19 RSA 361-A:3,I-a(i) establishes a violation if an officer has violated
20 an order. The allegation is that George violated the January 6, 2011 Cease
21 and Desist Order. Again, there is no evidence that she received the order or
22 violated it.

23 RSA 361-A:2, XII creates an obligation for a licensee to update
24 information. George is not a licensee and, as opposed to Cuomo, Mann, and
25 Heap, has no ownership interest that could bring her into the arena of a

1 licensee.

2 The Department established that Cuomo, Mann and Heap were owners and
3 shareholders in Inofin, Inc. and that Cuomo and Mann made material
4 misrepresentations or failed to provide requested information. The only
5 allegation specifically against George is that she was the Chief Operating
6 Officer, a control person, a person, and a principal. This legal conclusion
7 is correct. *RSA 361-A:1, III-b(a); VII; and VIII-a.*

8 The issue, therefore, boils down to whether the status of Chief
9 Operating Officer in and of itself is sufficient to constitute a *prima facie*
10 case for the specific alleged violations of RSA Chapter 361-A.

11 There are a number of assumptions that can be made about an individual
12 with the title of Chief Operating Officer ("COO"). Such a person is
13 regulated by RSA Chapter 361-A. For the purposes of this hearing, however,
14 based on the evidence, the Presiding Officer is not prepared to hold that
15 George committed the alleged violations solely as a result of her position.
16 I have detailed the allegations against her and have identified the
17 difficulties with each of them. It may seem unusual that George can be
18 procedurally defaulted and not held liable but it is fitting that the
19 Department continue to bear the burden of proof, even in the situation of a
20 procedural default. In my experience, the Department has presented well
21 prepared cases whether the Respondent contests the case or is in procedural
22 default.

23 For the foregoing reasons, the allegations against George are DENIED.

24 **11. CONCLUSION**

25 This is a final order regarding Cuomo, Mann, Heap and George. RSA

1 Chapter 541 provides the appeals process.

2 The record remains open for Inofin, Inc. as described in this order
3 and there will be a further order regarding revocation of Inofin Inc.'s
4 license and any other relief including fines and penalties.

5 SO ORDERED.

6 SIGNED,

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8 Dated: 8/3/11

/s/
STEPHEN J. JUDGE, ESQ.
PRESIDING OFFICER

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