

STATE OF NEW HAMPSHIRE BANKING DEPARTMENT

In re the Matter of:

Joseph Harlow Bates (d/b/a Joe Bates' Citgo)

ORDER OF DENIAL FOR SALES FINANCE COMPANY LICENSE

I. Chronology of Events

In 2009, a New Hampshire consumer complained to the New Hampshire Banking Department about the purchase of two (2) motor vehicles from Joseph Harlow Bates (d/b/a Joe Bates' Citgo) (the "Applicant") as a "buy here/pay here." "Buy here/pay here" means the consumer purchased the motor vehicle from and had the sale financed by the Applicant, who then became the listed lien holder on the title filed with the New Hampshire Department of Safety ("DOS"), Title Bureau.

The Department investigated and learned from DOS records that the Applicant was listed on at least 600 motor vehicle titles as the registered lien holder with DOS' Title Bureau. The Department determined that the Applicant was acting as an unlicensed Sales Finance Company in violation of RSA 361-A.

To resolve this, in August of 2011, the Department requested that the Applicant submit an application for a sales finance company license, enter into a consent order for the prior unlicensed activity, and submit a full consumer list to the Department for further investigation.

On September 14, 2011, the Applicant submitted an application to the Department. The Department's Licensing Division determined that the application was insufficient and incomplete. Nonetheless, the Licensing Division and Legal Division worked with the Applicant and Applicant's counsel over the next ten (10) months to correct application deficiencies and attempt to resolve the unlicensed activity with a consent order. Over that period of time, the following occurred:

- a) The Department's Licensing Division worked with the Applicant to amend its sales finance contract, so that it would comply with the requirements of RSA Chapter 361-A.
- b) The Department's Legal Division attempted to obtain records from the Applicant about the 600 liens listed with DOS. Those records were never produced.
- c) Since the Applicant had failed to provide any financial statements, financial documents or accounting records to the Department as required by the license application, the Department worked with the Applicant to obtain these items.

- d) Financial documentation received by the Department on March 22, 2012 was incomplete and indicated the Applicant had negative net worth. The statements did not conform to Generally Accepted Accounting Principals (GAAP) standards.
- e) New financial statements received on April 9, 2012 were still incomplete. Correspondence received from the Applicant's counsel on April 19, 2012 stated the Applicant "does not have Balance Sheets, Cash Flow Statements, Income Statements and changes of Owners Equity Statements." The statements did not conform to Generally Accepted Accounting Principals (GAAP).
- f) The financial statements were not completed using GAAP standards until June of 2012. Balance Sheets, Cash Flow Statements, Income Statements and changes of Owners Equity Statements were also submitted.

On June 20, 2012, the Licensing Division was satisfied that the financial statements were adequate and the Applicant's license application was complete. At that time, the Department submitted a consent order to Applicant's counsel for review to resolve the prior unlicensed sales finance company activity.

On July 13, 2012, the Department's Legal Division received an email from Applicant's counsel stating that he did not believe a consent order was appropriate because DOS had already adjudicated the unlicensed "buy here/pay here" activity by an order issued October 3, 2011. The Department was not previously aware of this order.

The Department then contacted DOS and learned they had actually two (2) separate orders issued on August 19, 2011 and October 25, 2011.

The August 19, 2011 Order imposed a fine under DOS regulations of \$200.00 for each of 173 improperly conducted automobile sales that violated DOS' laws and rules which Mr. Bates carried out during the time of the DOS investigation. Further, the order suspended Mr. Bates' dealership privileges for a period of 60 days with all 60 days held in abeyance on probation until July 26, 2012. The fines and suspension were a result of the Dealer (Mr. Bates' dealership/garage) having failed to properly return over 30 Department of Motor Vehicles' copies of dealer plate forms and 14 Bills of Sales to the Department of Motor Vehicles. (The Department was unaware that the Applicant's dealership privileges were suspended until receipt of the Order from DOS on July 16, 2012.)

DOS' August order further found that Mr. Bates' inspection station improperly issued inspection stickers to motor vehicles with vehicle exhaust emission issues. Mr. Bates tested vehicles which would pass inspection on emission testing equipment in place of the vehicles requiring the inspection, for the purpose of having the faulty vehicles pass inspection. The defects that existed rendered the vehicles unsafe. The Hearing Examiner's final finding of fact was that by "placing the inspection sticker on the vehicle, the Respondent failed to conduct an

honest, thorough and efficient inspection.” The Hearing Examiner revoked Mr. Bates’ inspection station privileges with an August 19, 2011 effective date.

At the October 3, 2011 hearing (that resulted in a DOS Order with an effective date of October 25, 2011), the parties agreed to a fine of \$15,000.00 and to a lifetime suspension of Mr. Bates’ inspection privileges. Joe’s Citgo was suspended from inspections for two and a half years.

Based on this new information regarding DOS’s orders, on or about July 23, 2012 the Department withdrew the consent offer for previous unlicensed sales finance company activity. The Applicant had still not cooperated nor provided information about the retail installment contracts that resulted in titles issued with the Applicant as lienholder.

The Applicant’s New Hampshire Sales Finance Company Application Form received by the Department on September 14, 2011 includes several disclosure questions to which the applicant must respond with either yes or no. One such disclosure section involves regulatory actions (Questions 8C(1) through 8C(5), 8D and 8E. Question 8C(1) ask the applicant to disclose whether “any State or federal regulatory agency...ever found the applicant or a control affiliate to have made a false statement or omission or been dishonest, unfair or unethical.” The Applicant responded in the negative and never mentioned the finding of fact as emphasized in Paragraph 9 above, which is that DOS found that the Applicant failed to conduct an honest, thorough and efficient inspection. Question 8E also asked if the applicant or control affiliate is “now the subject of any regulatory proceeding that could result in a `yes’ answer to any part of 8C?” The Applicant again answered in the negative and failed to update his application form to answer in the affirmative after the October 3, 2011 DOS hearing.

The Applicant’s New Hampshire Individual Disclosure Form received by the Department on September 14, 2011 includes several disclosure questions to which the applicant must respond with either yes or no. One such disclosure section involves regulatory actions (Questions 6H(1) through 6H(8), 6I and 6J. Question 6H(1) ask the applicant to disclose whether “any State or federal regulatory agency...ever found [] [Mr. Bates] to have made a false statement or omission or been dishonest, unfair or unethical.” The Applicant responded in the negative and never referenced the finding of fact, which is that DOS found that the Applicant failed to conduct an honest, thorough and efficient inspection. Question 6J also asked if the Applicant (as an individual) is “now the subject of any regulatory proceeding that could result in a `yes’ answer to any part of 6H or 6I?” The Applicant again answered in the negative and failed to update his application form to answer in the affirmative after the October 3, 2011 DOS hearing.

The Applicant signed his application to the Department for a license under penalty of unsworn falsification.

II. Order

1. Pursuant to RSA 361-A:2 and RSA 361-A:2,I, the facts as alleged above show that Joseph Harlow Bates (d/b/a Joe Bates' Citgo):
 - a) is operating or has operated without a license in violation of RSA Chapter 361-A;
 - b) has failed to disclose administrative orders entered against him by the New Hampshire DOS as required by the Department's statutes and rules; and
 - c) has failed to provide information about or account for all 600 liens as listed on titles filed with the DOS Title Bureau;and thus form the legal basis for this Order of License Denial.
2. Pursuant to 361-A:5,VI, this Order is necessary and appropriate to the public interest and for the protection of consumers and consistent with the purpose and intent of New Hampshire banking laws.
3. Pursuant to RSA 361-A:2,VIII, and RSA 541-A:29, Joseph Harlow Bates' (d/b/a Joe Bates' Citgo) financial resources and responsibility, experience, personnel and record of past or proposed conduct do not warrant the public's confidence and do not indicate the business will be operated lawfully, honestly, and fairly within the purposes of RSA Chapter 361-A and therefore warrant the issuance of an Order of License Denial.
4. **Accordingly, it is hereby ORDERED that** Joseph Harlow Bates' (d/b/a Joe Bates' Citgo) Application for a New Hampshire Sales Finance Company License be denied effective 12:01 A.M., October 15, 2012, unless prior to 4:30 P.M., November 14, 2012, the Department receives a written request for a rehearing.
5. This is a final order of the Commissioner, subject to appeal in accordance with RSA Chapter 541.

SO ORDERED.

_____/s/
Ronald A. Wilbur
Bank Commissioner

Dated: 10/15/12