

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-199
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,)
)
 6 and)
)
 7 Labrie Auto Sales Inc, and Michael S.)
)
 8 Coyne,)
)
 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 15, 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 Labrie Auto Sales Inc ("Respondent Labrie Auto")
14 shall show cause why penalties in the amount of \$2,500.00
15 should not be imposed against it;
- 16 2. Respondent Michael S. Coyne ("Respondent Coyne") shall show
17 cause why penalties in the amount of \$5,000.00 should not be
18 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 \$500.00 examination fee should not be paid to the Department;
- 22 4. Respondents shall be jointly and severally liable for the
23 above amounts alleged in Paragraphs 1 through 3 above;
- 24 5. The above named Respondents shall show cause why, in addition
25 to the penalties listed in Paragraphs 1 through 4 above,

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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 Labrie Auto Sales Inc (hereinafter "Respondent Labrie
15 Auto") was licensed as a Sales Finance Company from at least
16 1997 (with an amended license date of November 9, 2006) until
17 its license expired on December 31, 2007.
- 18 2. Respondent Michael S. Coyne (hereinafter "Respondent Coyne") was
19 the 100% owner and President of Respondent Labrie Auto, when
20 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 Labrie Auto
2 on August 6, 2007, while Respondent Labrie Auto was still
3 licensed with the Department.
- 4 5. On October 26, 2007, the Department mailed the report of
5 examination and invoice for \$500.00 to Respondent Labrie Auto,
6 via U.S. Certified Mail Return Receipt requested, which
7 Respondents received on October 30, 2007.
- 8 6. The above named Respondents failed to respond to the October 26,
9 2007 correspondence from the Department.
- 10 7. The Department, via U.S. mail, mailed a second notice on December
11 7, 2007 and a third notice on January 17, 2008.
- 12 8. The above named Respondents did not respond to any of the three
13 notices for payment of the \$500.00 invoice.
- 14 9. To date, the above named Respondents still owe the \$500.00
15 examination fee for the one day examination.

16 **II. ISSUES OF LAW**

17 The staff of the Department, alleges the following issues of law:

- 18 1. The Department realleges the above stated facts in Paragraphs 1
19 through 9 as fully set forth herein.
- 20 2. The Department has jurisdiction over the licensing and regulation
21 of persons engaged in retail seller and sales finance activities
22 pursuant to NH RSA 361-A:2.
- 23 3. RSA 361-A:6-a,IV provides that the expense of such examination
24 shall be chargeable to and paid by the licensee. Each of the
25 above named Respondents violated this provision on at least one

1 occasion as alleged above. To date, the above named Respondents
2 have failed to pay the \$500.00 examination invoice.

3 4. RSA 361-A:2-b,VI provides that any officer, owner, manager or
4 agent of any licensee shall reply promptly in writing, or other
5 designated form, to any written inquiry from the Commissioner.
6 Respondent Coyne violated this provision on at least one occasion
7 as alleged above.

8 5. RSA 361-A:3,I provides that the Commissioner may issue an order
9 requiring a person to whom any license has been granted or any
10 person under the Commissioner's jurisdiction to show cause why
11 the license should not be revoked or penalties should not be
12 imposed, or both, for violations of this chapter.

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. RSA 361-A:11, VII provides that any person who, either knowingly
22 or negligently, violates any provision of RSA Chapter 361-A, may
23 upon hearing, and in addition to any other penalty provided for
24 by law, be subject to an administrative fine not to exceed
25 \$2,500.00, or both. Each of the acts specified shall constitute

1 a separate violation, and such administrative action or fine may
2 be imposed in addition to any criminal penalties or civil
3 liabilities imposed by New Hampshire Banking laws.

4 8. RSA 361-A:11,VIII provides that every person who directly or
5 indirectly controls a person liable under this section, every
6 partner, principal executive officer or director of such person,
7 every person occupying a similar status or performing a similar
8 function, every employee of such person who materially aids in the
9 act constituting the violation, and every licensee or person acting
10 as a common law agent who materially aids in the acts constituting
11 the violation, either knowingly or negligently, may, upon notice
12 and opportunity for hearing, and in addition to any other penalty
13 provided for by law, be subject to suspension, revocation, or
14 denial of any registration or license, including the forfeiture of
15 any application fee, or the imposition of an administrative fine
16 not to exceed \$2,500, or both. Each of the acts specified shall
17 constitute a separate violation, and such administrative action or
18 fine may be imposed in addition to any criminal or civil penalties
19 imposed.

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

