

1 State of New Hampshire Banking Department

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3 In re the Matter of: ) Case No.: 09-026  
 )  
 4 State of New Hampshire Banking )  
 )  
 5 Department, )  
 ) Adjudicative Hearing Decision:  
 6 Petitioner, ) Order to Pay Penalties  
 )  
 7 and )  
 )  
 8 Automart of New England Inc (d/b/a )  
 )  
 9 Automart of New England and d/b/a )  
 )  
 10 Automart of Plaistow), Jeffrey G. )  
 )  
 11 Legendre, and Daniel J. Nickerson, )  
 )  
 12 Respondent )  
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13  
14 DECISION

15 An Order to Show Cause and Cease and Desist was issued in the above-  
 16 captioned matter by the New Hampshire Banking Department ("Department") on  
 17 March 30, 2009. Respondent Daniel J. Nickerson failed to timely request a  
 18 hearing or reach a settlement with the Department, and a Default Order was  
 19 issued against him on June 8, 2009. Presiding Officer Ingrid White conducted  
 20 a hearing on May 28, 2009 with respect to Remaining Respondents Automart of  
 21 New England Inc. (d/b/a Automart of New England and d/b/a Automart of  
 22 Plaistow), ("Respondent Automart") and Jeffrey G. Legendre ("Respondent  
 23 Legendre"), together known as "Respondents". Based on the evidence presented  
 24 at that hearing, the Proposed Findings of Fact and Conclusions of Law  
 25 submitted by Hearings Examiner Maryam Torben Desfosses on behalf of the  
 Petitioner, the undersigned issues the following Decision:

**FACTUAL FINDINGS**

Based on the testimony and exhibits received during the course of the hearing, I hereby:

1. GRANT Petitioner's Findings of Fact at paragraphs 1-4.
2. GRANT Petitioner's Findings of Fact at paragraph 5. Respondent Legendre failed to respond to the consumer complaint concerning Consumer A until 471 days after it was due. No testimony or other evidence was received that could be considered a mitigating factor in this instance. (Testimony of Bank Examiner Kathleen Sheehan ("Examiner Sheehan") and Respondent Legendre, Confidential Exhibits 7 and 8, and Exhibits 9 and 10)
3. GRANT Petitioner's Findings of Fact at paragraphs 6-10 and DENY Petitioner's Findings of Fact at paragraph 11.

- a. Consumer A submitted her personal information and that of her mother's to an Automart of New England, Inc. ("Automart") employee for vehicle financing. The mother's information was submitted in the event a cosigner was needed for the loan. The Automart employee pulled credit reports, including credit scores, for both Consumer A and Consumer A's mother. The Automart employee filled out a computer application form through the Credit Union Direct Loan ("CUDL") Program for Consumer A using material information that belonged to Consumer A's mother. (Testimony of Respondent Legendre; Confidential Exhibits 3 and 5, and Exhibit 10)
- b. A few days later, Respondent Legendre completed the hard copy loan application and submitted it to the lender. He completed the form from information in his computer system that had been entered by

1 the first Automart employee. That employee is no longer employed  
2 by Automart. (Testimony of Respondent Legendre, Exhibit 10).

3 c. Respondent Legendre completed the loan application with Consumer A  
4 sitting in his office, and presented the application to her for  
5 signature. (Testimony of Legendre)

6 d. At no time did Consumer A indicate that the information contained  
7 in the loan application was that of her mother's, and not her.  
8 (Testimony of Legendre)

9 e. The lender would not have accepted Consumer A's loan application  
10 on the terms it did, had it known that information in the loan  
11 application was not Consumer A's information. (Confidential  
12 Exhibits 2 and 5)

13 f. The lender was alerted to the problem when Consumer A inquired why  
14 the loan wasn't showing up on her credit report. (Confidential  
15 Exhibits 2 and 5)

16 4. I hereby GRANT Petitioner's Findings of Fact at paragraphs 12 and 15,  
17 and DENY Petitioner's Findings of Fact at paragraphs 16, 17, and 18. I  
18 GRANT IN PART and DENY IN PART Petitioner's Findings of Fact at  
19 paragraphs 13 and 14.

20 a. Respondent Legendre continued to pull credit reports for customers  
21 after January 1, 2009 (the date Respondent Automart's Retail Seller  
22 License expired) so that he could advise them as to which lending  
23 institutions would be most likely to work with them to secure a  
24 motor vehicle loan. (Testimony of Examiner Sheehan and Respondent  
25 Legendre; Exhibit 11)

1 b. Respondent Legendre testified "I never said 'you'll be approved' or  
2 'you won't be approved'. . . it wasn't my call to make." (Testimony  
3 of Respondent Legendre)

4 c. Respondent Legendre has sold and financed cars since 1991 and drew on  
5 that experience when advising customers about financing. (Testimony  
6 of Respondent Legendre)

7 d. No evidence was offered that Respondent Automart, after January 1,  
8 2009, earned a profit from providing this information and advice to  
9 customers. No evidence was offered that Respondent Automart's  
10 employees continued to fill out loan applications or forward loan  
11 applications to lenders.

12  
13 **CONCLUSIONS OF LAW**

14 Based on the above findings of fact, I hereby:

15 A. GRANT IN PART and DENY IN PART Petitioner's Conclusions of Law at  
16 paragraph A.

17 B. GRANT Petitioner's Conclusions of Law at paragraph D. Respondent  
18 Automart and Respondent Legendre violated RSA 361-A:4-a because neither  
19 responded to the consumer complaint until 471 days after the response  
20 was due.

21 C. GRANT Petitioner's Conclusions of Law at paragraph B. Respondent  
22 Legendre and Respondent Automart violated RSA 361-A:3, I-a(d) (Failure  
23 to Supervise) on one occasion. An Automart employee entered incorrect  
24 information about Consumer A and submitted it through the CUDL system.  
25 Respondent Legendre had an opportunity to correct this error when he  
reviewed the loan information with Consumer A, filled out the form, had

1 Consumer A sign the application, and submitted it to the lender. At  
2 the time he did this, the loan file contained the credit reports of  
3 both consumer A and consumer A's mother. At any point during this  
4 process, Respondent Legendre had an opportunity to verify the loan  
5 information entered erroneously by the other employee, and he failed to  
6 do so.

7 D. GRANT Petitioner's Conclusions of Law at paragraph F. Respondents  
8 violated RSA 361-A:3-b, I(C) because switching the social security  
9 numbers and other personal information of Consumer A with Consumer A's  
10 mother operated as a material deception to the lender.

11 E. DENY Petitioner's Conclusions of Law at paragraph C and E. Respondents  
12 did not violate RSA 361-A:3, I-a(h) or RSA 361-A:3-b, I(a) because the  
13 record does not contain enough evidence to conclude that any employee  
14 of Automart intended to defraud or deceive Consumer A or the lender.

15 F. DENY Petitioner's Conclusions of Law at paragraph G.

16 1. RSA 361-A:1, XII states a retail seller is one who "sells a motor  
17 vehicle in this state or to a retail buyer under or subject to a  
18 retail installment contract." A "retail installment contract" is  
19 defined as an agreement, secured by a lien on a motor vehicle,  
20 which is the subject matter of a retail installment transaction,  
21 and that is "retained or taken by a sales finance company  
22 indirectly from a retail seller" as security for the retail  
23 buyer's obligation. RSA 361-A:1, X.

24 2. The record shows that the extent of Respondent Legendre's  
25 activities since January 1, 2009 was pulling credit reports for  
customers, which he then used to advise the customer about which

1 lender(s) would be likely to help them get financing for a motor  
2 vehicle purchase.

3 3. Examiner Shaheen testified that pulling credit reports for  
4 potential customers is an activity in which retail sellers or  
5 sales finance companies engage. This may be part of what they  
6 do. However, based on the statutory definitions stated above, it  
7 does not follow that this activity alone rises to the level of  
8 acting as a "retail seller" which requires licensure from the  
9 state.

10 4. No evidence was offered that Respondent Automart received money  
11 for providing this service to customers, nor was evidence  
12 received that any employee of Automart continue to fill out  
13 applications or "shop" the loans to lenders. Whether these  
14 additional factors, or others, would have led to a different  
15 result is not decided here.

16 5. A "sales finance company" is defined in part as a "person  
17 engaged, in whole or in part, in the business of providing motor  
18 vehicle financing in this state." For the reasons stated above  
19 in paragraph (F)1-4, Respondents did not engage in whole or in  
20 part in providing motor vehicle financing in New Hampshire.

21 Therefore, Respondents did not violate RSA 361-A:3-b, I(c).

22 G. DENY Petitioner's Conclusions of Law at paragraph H. Respondents did  
23 not violate 12 CFR 202, Section 202.9 and Regulation B of the Equal  
24 Credit Opportunity Act ("ECOA"). Respondents were not required to  
25 provide notices of denial of credit to customers whose credit scores  
were low. The record showed that Respondent Legendre engaged in

1 activity in which he, "in the ordinary course of business, regularly  
2 refer(ed) applicants or prospective applicants to creditors, or  
3 select(ed) or offer(ed) to select creditors to whom requests for credit  
4 may be made." See 12 CFR 202.2(L) (definition of "creditor.") Persons  
5 engaging in this limited activity are only required to comply with the  
6 anti-discrimination sections of the ECOA under Section 202.4(a) and (b)  
7 of those regulations. A violation of those provisions is not alleged  
8 here.

9 H. GRANT Petitioner's Conclusions of Law at paragraph I.

10 I. DENY Petitioner's Conclusions of Law at paragraph J. It would not be  
11 in the public interest to revoke Respondent Automart's license as a  
12 consequence of these violations. The monetary penalties to be imposed  
13 herein are sufficient.

14 J. DENY Petitioner's Conclusions of Law at paragraph K, because the  
15 provisions of the Cease and Desist Order have either been rendered moot  
16 or inapplicable due to the legal conclusions drawn in this Adjudicative  
17 Hearing Decision.

18  
19 **ORDER**

20 Having considered the evidence submitted by the parties and the Presiding  
21 Officer, I hereby ORDER:

- 22 1. That the Cease and Desist Order be vacated for the reasons set forth  
23 above;
- 24 2. Respondents Automart and Legendre shall immediately pay to the  
25 Department an administrative fine in the amount of \$2,500 (joint and  
severally) for a violation of RSA 361-A:3, I-a(d);

1 3. Respondents Automart and Legendre shall immediately pay to the  
2 Department an administrative fine in the amount of \$2,500 (joint and  
3 severally) for a violation of RSA 361-A:3-b, I(c); and

4 4. Respondents Automart and Legendre shall immediately pay to the  
5 Department an administrative fine in the amount of \$23,550 (joint and  
6 severally) for violations of RSA 361-A:4-a (representing a \$50 fine for  
7 471 days), but that \$13,550.00 of the fine be HELD IN ABEYANCE on the  
8 condition that Respondents Automart and Legendre shall commit no  
9 further infractions of RSA Chapter 361-A for a period of two years.

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13 Date: 6/29/09

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14 /s/  
Peter C. Hildreth  
Bank Commissioner