

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-026
)
 3 State of New Hampshire Banking)
)
 4 Department,) Notice of Hearing - Order to Show
)
 5 and) Cause and Cease and Desist Order
)
 6 Automart of New England Inc (d/b/a)
)
 7 Automart of New England and d/b/a) May 7, 2009
)
 8 Automart of Plaistow), Jeffrey G.)
)
 9 Legendre, and Daniel J. Nickerson,)
)
 10 Respondents)
)

11 NOTICE OF HEARING

12 Pursuant to RSA 361-A:3, the Banking Department of the State of New
13 Hampshire (hereinafter the "Department") has the authority to issue an order
14 to show cause why license revocation penalties for violations of New
15 Hampshire Banking laws should not be imposed.

16 Pursuant to RSA 361-A:3-a, the Department has the authority to issue
17 and cause to be served an order requiring any person about to engage in or
18 who has engaged in any act or practice constituting a violation of RSA 361-A
19 or any rule or order thereunder, to cease and desist from violations of RSA
20 361-A.

21 Pursuant to RSA 361-A:5, the Commissioner may issue, amend, or rescind
22 such orders as are reasonably necessary to comply with the provisions of the
23 Chapter.

24 Pursuant to RSA 361-A:11, the Commissioner has the authority to
25 suspend, revoke or deny any license and to impose administrative penalties

1 of up to \$2,500.00 for each violation of New Hampshire banking law and
2 rules.

3 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct
4 that is or may be an unfair or deceptive act or practice under RSA 358-A and
5 exempt under RSA 358-A:3,I or that may violate any of the provisions of
6 Titles XXXV and XXXVI and administrative rules adopted thereunder. The
7 Commissioner may hold hearings relative to such conduct and may order
8 restitution for a person or persons adversely affected by such conduct.

9 On March 30, 2009, the Department issued an Order to Show Cause and
10 Cease and Desist Order to Automart of New England Inc (d/b/a Automart of New
11 England and d/b/a Automart of Plaistow) ("Respondent Automart"), Jeffrey G.
12 Legendre ("Respondent Legendre") and Daniel J. Nickerson ("Respondent
13 Nickerson"). Respondent Automart and Respondent Legendre have filed a
14 timely request for a hearing. No request was filed by Respondent Nickerson.

15 The Department alleges the following:

16 **Issue 1: Violation of 12 CFR 202, Section 202.9 and Regulation B of the**
17 **Equal Credit Opportunity Act (RSA 361-A:3,I-a(i));**

18 **Issue 2: Fraudulent Representations to Consumer (RSA 361-A:3,I-a(c));**

19 **Issue 3: Failure to Supervise (RSA 361-A:3,I-a(d));**

20 **Issue 4: Dishonest and Unethical Practices (RSA 361-A:3,I-a(h));**

21 **Issue 5: Violation of RSA Chapter 361-A by Engaging in Activity Without a**
22 **Sales Finance Company License (RSA 361-A:3,I-a(i));**

23 **Issue 6: Employing any Scheme, Device or Artifice to Defraud (RSA 361-**
24 **A:3-b,I(a));**

25 **Issue 7: Making Untrue Statements of a Material Fact in Order to Make**

1 Such Statements Appear Not Misleading (RSA 361-A:3-b,I(b));

2 Issue 8: Engaging in Any Act, Practice or Course of Business which
3 Operates as a Fraud or Deceit Upon Any Person (RSA 361-A:3-b,I(c)); and

4 Issue 9: Failure to Properly and Timely Respond to a Consumer Complaint
5 (RSA 361-A:4-a);

6 Accordingly, an adjudicative proceeding shall be commenced pursuant to
7 RSA 541-A:31 ("Availability of Adjudicative Proceeding; Contested Cases;
8 Notice, Hearing and Record"), and Chapter 800 of the Department of Justice's
9 rules (NH Code of Administrative Rules JUS 800) for the purpose of
10 permitting the Respondents to show compliance with RSA 361-A and the rules
11 adopted thereunder.

12 Each party has the right to have an attorney present to represent the
13 party at the party's expense, or each party may represent itself. Each
14 party has the right to have the Department provide a certified shorthand
15 court reporter at the requesting party's expense. Any such request must be
16 submitted in writing to the Department at least 5 days prior to a scheduled
17 hearing date.

18 THEREFORE, IT IS ORDERED, that the above named Respondents appear
19 before the New Hampshire Banking Department on **Thursday, May 28, 2009**
20 **at 10:00 am at the New Hampshire Banking Department, 53 Regional**
21 **Drive, Suite 200, Concord, NH 03301**, for the purpose of participating
22 in an adjudicative proceeding, at which time each Respondent will have
23 the opportunity to show cause as to why relief sought in the Order to
24 Show Cause should not become permanent; and

25 IT IS FURTHER ORDERED, that Maryam Torben Desfosses, Hearings

1 Examiner, New Hampshire Banking Department, is designated as Hearings
2 Examiner in this matter with authority to represent the public interest
3 within the scope of the Department's authority. Hearing Examiner shall have
4 the status of a party to this proceeding;

5 IT IS FURTHER ORDERED, Presiding Officer Ingrid White shall issue a
6 RECOMMENDED DECISION in this matter which shall be reviewed and approved,
7 disapproved or modified by the Banking Commissioner; and

8 IT IS FURTHER ORDERED, that any proposed exhibits shall be pre-marked,
9 for identification only, and filed with the Department and provided to the
10 opposing party **on or before Friday, May 22, 2009**. Hearing Examiner shall
11 pre-mark the Department's exhibits with Arabic numbers. **Respondents shall**
12 **pre-mark exhibits with capital letters.** An index/list of exhibits providing
13 a brief description of each exhibit with its corresponding pre-marked number
14 or letter shall be filed by both parties simultaneous with the filing of
15 exhibits; and

16 IT IS FURTHER ORDERED, that the parties shall exchange a list of all
17 exhibits and witnesses to be called at the hearing with a brief summary, and
18 shall at the same time file a copy of their respective lists with the
19 Presiding Officer; and

20 IT IS FURTHER ORDERED, that all periods referenced in this notice
21 shall be calendar days. If the last day of the period so computed falls on
22 a Saturday, Sunday, or legal holiday, then the time period shall be extended
23 to include the first business day that is not a Saturday, Sunday, or legal
24 holiday; and

25 IT IS FURTHER ORDERED, that the Banking Department shall have the

1 burden of setting forth a *prima facie* case. Each Respondent shall have the
2 burden of showing compliance with applicable law by a preponderance of the
3 evidence; and

4 IT IS FURTHER ORDERED, that Respondents failure to appear at the time,
5 date, and place specified may result in the hearing being held *in absentia*
6 and/or default ruling in favor of the Complainant, without further notice or
7 opportunity to be heard; and

8 IT IS FURTHER ORDERED, that the entirety of all oral proceedings shall
9 be recorded verbatim by the Department. Upon request of any party, or upon
10 the Presiding Officer's own initiative, such record shall be transcribed by a
11 certified court reporter designated by the Presiding Officer, and that all
12 costs shall be borne solely by the requesting party. Any such request shall
13 be submitted in writing to the Presiding Officer prior to hearing.

14 IT IS FURTHER ORDERED, that all documents shall be filed with the
15 Presiding Officer in the form of an original and one (1) copy and shall bear
16 a certification that a copy is being delivered to any other parties to this
17 matter. All documents shall be filed by mailing or delivering them to the
18 New Hampshire Banking Department, ATTN: Ingrid White, Presiding Officer, 53
19 Regional Drive, Suite 200, Concord, NH 03301. Filing by facsimile or
20 electronic transmission shall not be accepted; and

21 IT IS FURTHER ORDERED, that the parties may submit Proposed Orders,
22 which shall include findings of fact and conclusions of law, separately
23 stated, no later than ten (10) days following conclusion of the hearing(s) in
24 this matter; and

25 IT IS FURTHER ORDERED, that routine procedural inquiries may be made
by telephoning Ingrid White, Presiding Officer at (603)271-3561, but all

