

1 State of New Hampshire Banking Department

2	In re the Matter of:) Case No.: 09-126
)
3	State of New Hampshire Banking)
4	Department,) Order to Show Cause and
)
5	Petitioner,) Cease and Desist Order
)
6	and)
)
7	Auto Exchange Inc (d/b/a Auto)
)
8	Exchange), and Donald F. Reis, and John)
)
9	Murphy,)
)
10	Respondents)

11 NOTICE OF ORDER

12 This Order to Show Cause and Cease and Desist Order ("Order")
13 commences an adjudicative proceeding under the provisions of RSA Chapter
14 361-A (including RSA 361-A:3-a) and RSA Chapter 541-A.

15 LEGAL AUTHORITY AND JURISDICTION

16 Pursuant to RSA 361-A:2,II(c), a person may renew a valid license
17 under RSA Chapter 361-A only if the person is in compliance with RSA
18 Chapter 361-A and has paid the required fee. Failure to renew shall result
19 in the license terminating on December 31 of the same year.

20 Pursuant to RSA 361-A:3,I the Banking Department of the State of New
21 Hampshire (hereinafter the "Department") has the authority to issue an
22 order to show cause why license revocation and penalties for violations of
23 New Hampshire Banking laws should not be imposed.

24 Pursuant to RSA 361-A:3,I-a, the Commissioner may, by order, deny,
25 suspend, or revoke any license or application and bar any person from

1 licensure if the Commissioner finds that the order is in the public
2 interest and the applicant, respondent, or licensee, any partner, officer,
3 member, or director, any person occupying a similar status or performing
4 similar functions, or any person directly or indirectly controlling the
5 applicant, respondent, or licensee has (c) made fraudulent
6 misrepresentations, has circumvented or concealed, through whatever
7 subterfuge or device, any of the material particulars required to be stated
8 or furnished to a borrower under the provisions of RSA Chapter 361-A; (d)
9 has failed to supervise its agents, managers, or employees; (h) has engaged
10 in dishonest or unethical practices in the conduct of making retail
11 installment transactions or collecting on retail installment contracts;
12 and/or (i) has violated RSA Chapter 361-A.

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

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

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
2 and 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.

6 **NOTICE OF RIGHT TO REQUEST A HEARING**

7 The above named Respondents have the right to request a hearing on
8 this Order to Show Cause and Cease and Desist Order, as well as the right
9 to be represented by counsel at each Respondent's own expense. All hearings
10 shall comply with RSA Chapter 541-A. Any such request for a hearing shall be
11 in writing, and signed by the Respondent or the duly authorized agent of
12 the above named Respondent, and shall be delivered either by hand or
13 certified mail, return receipt requested, to the Banking Department, State
14 of New Hampshire, 53 Regional Drive, Suite 200, Concord, NH 03301. Such
15 hearings will be scheduled within 10 days of the Department's receipt of the
16 request. If the Respondent fails to appear at the hearing after being duly
17 notified, such person shall be deemed in default, and the proceeding may be
18 determined against the Respondent upon consideration of the Order to Show
19 Cause and Cease and Desist Order, the allegations of which may be deemed to
20 be true.

21 If any of the above named Respondents fails to request a hearing
22 within 30 calendar days of receipt of such order or reach formal settlement
23 with the Department within that time frame, then such person shall likewise
24 be deemed in default, and the orders shall, on the thirty-first day, become
25 permanent, and shall remain in full force and effect until and unless later

1 modified or vacated by the Commissioner, for good cause shown.

2 **STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF**

3 The Staff Petition dated November 24, 2009 (a copy of which is
4 attached hereto) is incorporated by reference hereto.

5 **ORDER**

6 WHEREAS, finding it necessary and appropriate and in the public
7 interest, and consistent with the intent and purposes of the New Hampshire
8 banking laws; and

9 WHEREAS, finding that the allegations contained in the Staff
10 Petition, if proved true and correct, form the legal basis of the relief
11 requested;

12 It is hereby ORDERED, that:

- 13 1. Respondents shall immediately cease selling motor vehicles
14 that will be subject to retail installment contracts from
15 Respondents, cease having signage indicating it is a "buy
16 here, pay here" establishment, and cease advertising as "buy
17 here, pay here";

18 It is hereby further ORDERED, that:

- 19 2. Respondent Auto Exchange Inc (d/b/a Auto
20 Exchange) (hereinafter, "Respondent Auto Exchange") shall
21 show cause why penalties in the amount of \$80,000.00 should
22 not be imposed against it;

- 23 3. Respondent Donald F. Reis (hereinafter, "Respondent Reis")
24 shall show cause why penalties in the amount of \$80,000.00
25 should not be imposed against him;

1 4. Respondent John Murphy (hereinafter, "Respondent Murphy")
2 shall show cause why penalties in the amount of \$80,000.00
3 should not be imposed against him;

4 5. Respondents shall show cause why, in addition to the
5 penalties listed in Paragraphs 1 through 4 above, penalties
6 in the amount of \$25,300.00 (and still accruing) should not
7 be imposed for failing to respond to the Consumer A
8 complaint;

9 6. Respondents shall show cause why, in addition to the
10 penalties listed in Paragraphs 1 through 5 above, penalties
11 in the amount of \$14,550.00 (and still accruing) should not
12 be imposed for failing to respond to the Consumer B
13 complaint;

14 7. Respondents shall show cause why, in addition to the
15 penalties listed in Paragraphs 1 through 6 above,
16 Respondents should not reimburse the Department \$11.88 for
17 UPS charges to mail the Consumer B complaint;

18 8. Respondents shall show cause why, in addition to the
19 penalties listed in Paragraphs 1 through 7 above, the pay
20 off amount of \$11,000.00 for Consumer A's trade-in vehicle,
21 plus any and all fees/charges incurred as a result of
22 failing to properly payoff said trade-in should not be
23 imposed;

24 9. Respondents shall show cause why, in addition to the
25 penalties listed in Paragraphs 1 through 8 above, the pay

1 off amount of \$11,000.00 for Consumer B's trade-in vehicle,
2 plus any and all fees/charges incurred as a result of
3 failing to properly payoff said trade-in should not be
4 imposed;

5 10. Respondents shall show cause why, in addition to the
6 penalties listed in Paragraphs 1 through 9 above, letters
7 to the credit bureaus and lenders explaining the late
8 payments regarding Consumer A and Consumer B should not be
9 sent by Respondents;

10 11. Respondents shall show cause why, in addition to the
11 penalties listed in Paragraphs 1 through 10 above, any and
12 all costs incurred to remove any and all negative reporting
13 from all three credit bureaus should not be paid by
14 Respondents concerning Consumer A's and Consumer B's credit
15 reports;

16 12. Respondents shall show cause why, in addition to the
17 penalties listed in Paragraphs 1 through 11 above,
18 Respondents should not reimburse Consumer A and Consumer B
19 \$75.00 each as a result of an illegal administration fee
20 charged on the Retail Installment Contract;

21 13. Respondents shall show cause why, in addition the penalties
22 listed in Paragraphs 1 through 12 above, Respondents should
23 not reimburse those consumers pursuant to RSA 361-A:11,III
24 for whom they financed vehicle loans without a sales finance
25 license by the Department;

1 14. Respondents shall be jointly and severally liable for the
2 above amounts alleged in Paragraphs 2 through 13 above; and

3 15. Respondents shall show cause why, in addition to the
4 penalties listed in Paragraphs 1 through 14 above,
5 Respondent Auto Exchange's license should not be revoked (or
6 in the alternative not be allowed to renew);

7 16. Respondent Reis shall show cause why, in addition to the
8 penalties listed in Paragraphs 1 through 15 above, he should
9 not be barred from licensure; and

10 17. Respondent Murphy shall show cause why, in addition to the
11 penalties listed in Paragraphs 1 through 15 above, he should
12 not be barred from licensure.

13 It is hereby further ORDERED that:

14 18. Along with the administrative and statutory penalties
15 listed for the above named Respondents, restitution should
16 be given to Consumer A and Consumer B, to the consumers
17 whom Respondents have financed pursuant to the formula in
18 RSA 361-A:11,III, and the fee of \$11.88 should be paid to
19 the Department, as described above; and

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22
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1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-126
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 3 State of New Hampshire Banking)
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 4 Department,) Staff Petition
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 5 Petitioner,) November 24, 2009
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 6 and)
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 7 Auto Exchange Inc (d/b/a Auto)
)
 8 Exchange), and Donald F. Reis, and John)
)
 9 Murphy,)
)
 10 Respondents)

11 I. STATEMENT OF ALLEGATIONS

12 The Staff of the Banking Department, State of New Hampshire (hereinafter,
13 "Department") alleges the following facts:

14 Facts Common on All Counts:

- 15 1. Respondent Auto Exchange Inc (d/b/a Auto Exchange) (hereinafter,
16 "Respondent Auto Exchange") has been licensed as a Retail Seller
17 since 1998.
- 18 2. Respondent Donald F. Reis (hereinafter, "Respondent Reis") is a
19 owner and President of Respondent Auto Exchange.
- 20 3. Respondent John Murphy (hereinafter, "Respondent Murphy") appears
21 to be the manager and control person of Respondent Auto Exchange.

22 DEFRAUDING THE LENDER - CONSUMER A LOAN FILE

23 Violation of RSA 361-A:2,I Failure to Supervise (2 Counts):

24 Violation of RSA 361-A:3,I-a(c) Fraudulent Representations To Consumer (1

25 Count):

1 Violation of RSA 361-A:3,I-a(d) Failure to Supervise (2 Counts):

2 Violation of RSA 361-A:3,I-a(h) Dishonest or Unethical Practices (1 Count):

3 Violation of RSA 361-A:3,I-a(i) Violation of RSA Chapter 361-A:4-a (2
4 Counts):

5 Violation of RSA 361-A:4-a Failure to Properly and Timely Respond to a
6 Consumer Complaint (1 Count):

7 Violation of RSA 361-A:4-a Failure to Properly and Timely Acknowledge a
8 Consumer Complaint (1 Count):

9 Violation of RSA 361-A:3-b,I(a) Employing any Scheme, Device or Artifice to
10 Defraud (1 Count):

11 Violation of RSA 361-A:3-b,I(b) Making Untrue Statements of a Material Fact
12 in Order to Make Such Statements Appear Not Misleading (1 Count):

13 Violation of RSA 361-A:3-b,I(c) Engaging in Any Act, Practice or Course of
14 Business which Operates as a Fraud or Deceit Upon Any Person (1 Count):

15 Violation of RSA 361-A:7,II Charging an Administrative Fee on the Retail
16 Installment Contract (1 Count):

17 4. Paragraphs 1 through 3 are hereby realleged as fully set forth
18 herein.

19 5. Consumer A initially filed a complaint with the Department on or
20 about May 4, 2008. The complaint alleged that Respondents failed
21 to pay off the remaining loan on the vehicle trade-in, which the
22 Retail Installment Contract indicates was \$11,000.00 still owing
23 to the lender.

24 6. The Department mailed, via U.S. Certified Mail Return Receipt
25 requested, the complaint to Respondents, which Respondents

1 received on May 7, 2008.

2 7. Respondents had 30 days from May 7, 2008 to acknowledge the May
3 4, 2008 complaint and 60 days total from May 7, 2008 to respond
4 to the Department.

5 8. Respondents failed to acknowledge the complaint and failed to
6 respond to the complaint.

7 9. On or about May 21, 2009, Consumer A submitted additional
8 documentation to the Department. The Department then mailed, via
9 U.S. Certified Mail Return Receipt requested, a follow-up letter,
10 which Respondents received on May 28, 2009. Respondents again
11 failed to respond to the Department.

12 10. On July 21, 2009, three Department Examiners arrived at
13 Respondent Auto Exchange to gather information on Consumer A's
14 and Consumer B's unanswered complaints.

15 11. While onsite, the Department Examiners were informed by John
16 Murphy, the Manager (of whom the Department has no record) that
17 he had been in contact with Consumer A. To date, Respondents
18 have not informed the Department the matter has been resolved.

19 12. Respondents' response to the Consumer A consumer complaint was
20 due on July 6, 2008 (60 days from Respondents' May 7, 2008
21 receipt of the initial complaint).

22 13. Respondents incur a daily fine of \$50.00 until the Department
23 receives the response. As of the date of this petition, the
24 response is 506 days past due, which means Respondents have
25 incurred a fine of \$25,300.00 (and still accruing) (506 days x

1 \$50.00 per day).

2 14. Respondents have still failed to respond. Respondents, in
3 addition to owing the fine of \$25,300.00 (and still accruing)
4 must pay off the outstanding loan balance on the vehicle-trade in
5 (\$11,000.00). Further, Respondents should reimburse Consumer A
6 any fees and or charges associated with a late pay-off.
7 Respondents are also responsible for submitting explanations to
8 the three credit reporting agencies, as well as paying or
9 covering any costs associated with negative reporting.

10 15. During the on-site examination, the Department Examiners also
11 observed the Consumer A Retail Installment Contract included a
12 \$100.00 administrative/documentary fee, which cannot be
13 separately charged on the Retail Installment Contract and further
14 must be equal to the amount charged by the Department of Safety
15 (\$25.00 total), or other state or local agency (\$27.00 total) for
16 filing, recording or investigating, perfecting and releasing or
17 satisfying such lien or title. Therefore, assuming the fee
18 actually charged by the Department of Safety was \$25.00, Consumer
19 A must be reimbursed \$75.00.

20 16. Respondents Reis and Murphy failed to supervise employees
21 regarding the Consumer A complaint and underlying matter.

22 DEFRAUDING THE LENDER - CONSUMER B LOAN FILE

23 Violation of RSA 361-A:2,I Failure to Supervise (2 Counts):

24 Violation of RSA 361-A:3,I-a(c) Fraudulent Representations To Consumer (1
25 Count):

1 Violation of RSA 361-A:3,I-a(d) Failure to Supervise (2 Counts):

2 Violation of RSA 361-A:3,I-a(h) Dishonest or Unethical Practices (1 Count):

3 Violation of RSA 361-A:3,I-a(i) Violation of RSA Chapter 361-A:4-a (2
4 Counts):

5 Violation of RSA 361-A:4-a Failure to Properly and Timely Respond to a
6 Consumer Complaint (1 Count):

7 Violation of RSA 361-A:4-a Failure to Properly and Timely Acknowledge a
8 Consumer Complaint (1 Count):

9 Violation of RSA 361-A:3-b,I(a) Employing any Scheme, Device or Artifice to
10 Defraud (1 Count):

11 Violation of RSA 361-A:3-b,I(b) Making Untrue Statements of a Material Fact
12 in Order to Make Such Statements Appear Not Misleading (1 Count):

13 Violation of RSA 361-A:3-b,I(c) Engaging in Any Act, Practice or Course of
14 Business which Operates as a Fraud or Deceit Upon Any Person (1 Count):

15 Violation of RSA 361-A:7,II Charging an Administrative Fee on the Retail
16 Installment Contract (if a retail installment contract is provided that
17 shows this charge) (1 Count):

18 Violation of RSA 361-A:9-a,I Failure to Keep Proper Books and Records (1
19 Count):

20 17. Paragraphs 1 through 16 are hereby realleged as fully set forth
21 herein.

22 18. Consumer B initially filed a complaint with the Department on or
23 about November 13, 2008. The complaint alleged that Respondents
24 failed to pay off the remaining loan on the vehicle trade-in,
25 which Consumer B indicates was \$7,600.00 still owing to the

1 lender.

2 19. The Department mailed, via U.S. Certified Mail Return Receipt
3 requested, the complaint to Respondents, which the post office
4 returned to the Department as unclaimed on December 2, 2008.

5 20. The Department then sent the Consumer B consumer complaint via
6 UPS, which Respondents received on December 8, 2008. The
7 Department incurred a cost of \$11.88, which Respondents must
8 reimburse.

9 21. The Department mailed, via U.S. Certified Mail Return Receipt
10 requested, a past-due letter, which Respondents received on May
11 28, 2009 and signed by Respondent Murphy. Respondents again
12 failed to respond to the Department.

13 22. On July 21, 2009, three Department Examiners arrived at
14 Respondent Auto Exchange to gather information on Consumer A's
15 and Consumer B's unanswered complaints.

16 23. While onsite, the Department Examiners were informed by John
17 Murphy, the Manager (of whom the Department has no record) that
18 the Consumer B file was at his attorney's office in
19 Massachusetts. The Department Examiners requested the Consumer B
20 file be provided to the Department, since it should have been
21 kept onsite and not at the attorney's office.

22 24. Respondent Murphy indicated that his attorney was returning July
23 24, 2009 and agreed to make a copy of the file to overnight to
24 the Department. To date, Respondents have failed to provide the
25 file or any response to the Consumer B complaint.

1 25. Respondents had 30 days from December 8, 2008 to acknowledge the
2 November 13, 2008 complaint and 60 days total from December 8,
3 2008 to respond to the Department.

4 26. Respondents failed to acknowledge the complaint by January 7,
5 2009 and failed to respond by the February 6, 2009 due date (60
6 days from Respondents' December 8, 2008 receipt of the initial
7 complaint).

8 27. Respondents incur a daily fine of \$50.00 until the Department
9 receives the response. As of the date of this petition, the
10 response is 291 days past due, which means Respondents have
11 incurred a fine of \$14,550.00 (291 days x \$50.00 per day).

12 28. Respondents have still failed to respond. Respondents, in
13 addition to owing the fine of \$14,550.00 must pay off the
14 outstanding loan balance on the vehicle-trade in (\$7,600.00).
15 Further, Respondents should reimburse Consumer B any fees and or
16 charges associated with a late pay-off. Respondents are also
17 responsible for submitting explanations to the three credit
18 reporting agencies, as well as paying or covering any costs
19 associated with negative reporting.

20 29. If the Consumer B Retail Installment Contract includes an
21 administrative/documentary fee, which cannot be separately
22 charged on the Retail Installment Contract and further must be
23 equal to the amount charged by the Department of Safety (\$25.00
24 total), or other state or local agency (\$27.00 total) for filing,
25 recording or investigating, perfecting and releasing or

1 satisfying such lien or title and is more than \$25.00 or \$27.00,
2 the difference must be reimbursed to Consumer B.

3 30. Respondents Reis and Murphy failed to supervise employees
4 regarding the Consumer B complaint and underlying matter.

5 **UNLICENSED ACTIVITY SALES FINANCE ACTIVITY "BUY HERE, PAY HERE"**

6 **Violation of 361-A:3,I-a(i) Violated RSA Chapter 361-A by Engaging in**

7 **Activity Without a Sales Finance Company License (1 Count):**

8 **Violation of RSA 361-A:2,I Provided Buy Here Pay Here Financing Without a**

9 **Sales Finance License (1 Count Minimum):**

10 31. Paragraphs 1 through 30 are hereby realleged as fully set forth
11 herein.

12 32. On July 21, 2009 three Department Examiners arrived at Respondent
13 Auto Exchange to gather information on two consumer complaints to
14 which Respondents have failed to respond to the Department.

15 33. Department Examiners observed signage on the building's exterior
16 stating consumers could "buy here, pay here".

17 34. The Department Examiners inquired with Respondent Murphy if
18 Respondents offered a "buy here, pay here" program which allowed
19 consumers to utilize an in-house financing program.

20 35. Respondent Murphy states he has not financed a deal in three
21 months, which essentially confirmed that indeed Respondents have
22 financed at least one motor vehicle purchase without a license.

23 36. The formula for consumer refunds due to financing made/purchases
24 made without a proper license is as follows pursuant to RSA 361-
25 A:11,III: the finance charge, delinquency, or collection charge

1 on any contract shall be refunded to the consumer; or where no
2 finance charge is payable under the terms of the contract, a
3 person engaging in the business of a sales finance company
4 without a license shall be barred from recovering any amount in
5 excess of the wholesale market value of the vehicle, if the
6 vehicle was purchased by the seller at a wholesale auction or
7 other wholesale outlet, or the trade-in value of the vehicle if
8 the seller acquired the vehicle in trade.

9 37. Respondents should submit the names, contact numbers, contracts
10 and amounts and fees charged for all consumers for whom they have
11 financed the vehicle purchase.

12 **Violation of 361-A:2,XII Failure to update information on file with the**

13 **Commissioner (1 Count):**

14 38. Paragraphs 1 through 37 are hereby realleged as fully set forth
15 herein.

16 39. The above named Respondents failed to inform the Department that
17 Respondent Murphy not only works for Respondent Auto Exchange but
18 is also a control person.

19 40. Respondent Murphy has been the sole contact with the Department
20 regarding the Consumer A and Consumer B complaints, as well as
21 regarding the issue of "buy here, pay here".

22 41. The Respondents were required to report Respondent Murphy as a
23 branch manager and a control person based on his level of
24 responsibility with Respondent Auto Exchange.

25

1 **II. ISSUES OF LAW**

2 The staff of the Department alleges the following issues of law:

- 3 1. The Department realleges the above stated facts in Paragraphs 1
4 through 41 as fully set forth herein.
- 5 2. The Department has jurisdiction over the licensing and regulation
6 of persons engaged in retail seller and sales finance activities
7 pursuant to RSA 361-A:2.
- 8 3. RSA 361-A:1,III-b provides that "control" means the power,
9 directly or indirectly, to direct the management or policies of a
10 company, whether through ownership of securities, by contract, or
11 otherwise. Any person is presumed to control a company if such
12 person (a) is a director, general partner, or executive officer;
13 (b) directly or indirectly has the right to vote 10 percent or
14 more of a class of a voting security or membership interest, or
15 has the power to sell or direct the sale of 10 percent or more of
16 a class of voting securities or membership interest; (c) in the
17 case of a limited liability company, is a managing member; or (d)
18 in the case of a partnership, has the right to receive upon
19 dissolution, or has contributed, 10 percent or more of the
20 capital. Respondent Murphy is a control person by virtue of his
21 level of responsibility and work with Respondent Auto Exchange as
22 described above.
- 23 4. RSA 361-A:1,XI provides that a "retail installment transaction"
24 means any consumer credit transaction as defined in RSA 358-K:1,V,
25 evidenced by a retail installment contract entered into between a

1 retail buyer and a retail seller, or between a sales finance
2 company and a retail buyer, wherein the retail buyer a motor
3 vehicle subject to a retail installment contract at a time price
4 payable in one or more deferred installments. The cash sale price
5 of the motor vehicle, the amount included for insurance and other
6 benefits if a separate charge is made therefore, documentary fees,
7 and the finance charge, which may include insurance and other
8 benefits, shall together constitute the time price.

9 5. RSA 361-A:1,XIII provides that a "sales finance company" means a
10 person engaged, in whole or in part, directly or indirectly, in
11 the business of providing motor vehicle financing in this state to
12 one or more retail buyers, or in the business of purchasing retail
13 installment contracts from one or more retail sellers. Respondent
14 Auto Exchange is a sales finance company since it admitted to
15 financing at least one motor vehicle purchase and has "buy here,
16 pay here" signage on the exterior of its building.

17 6. RSA 361-A:2,I provides that no person shall engage in the business
18 of a sales finance company or retail seller in New Hampshire
19 without a license as provided by RSA Chapter 361-A. Persons
20 subject to RSA Chapter 361-A shall be responsible for the
21 supervision of their employees, agents, and branch offices. Each
22 of the above named Respondents violated this provision on at least
23 five occasions as alleged above.

24 7. Pursuant to RSA 361-A:2,II(c), a person may renew a valid license
25 under RSA Chapter 361-A only if the person is in compliance with

1 RSA Chapter 361-A and has paid the required fee. Failure to renew
2 shall result in the license terminating on December 31 of the same
3 year. This provision serves as an alternative to revocation.

4 8. RSA 361-A:2,XII provides that retail sellers and sales finance
5 companies licensed under RSA Chapter 361-A are under a continuing
6 obligation to update information on file with the Commissioner.
7 If any information on file with the Commissioner becomes
8 materially inaccurate, the retail seller and sales finance company
9 shall promptly submit an amendment to the application records to
10 correct such information on file. A licensee shall submit written
11 notification to the Department of the addition or deletion of a
12 person required to be listed in the application, and shall provide
13 the name and address of each new person required to be listed no
14 later than 30 days after such change. Each of the above named
15 Respondents violated this provision on at least one occasion as
16 alleged above.

17 9. RSA 361-A:3,I provides that the Commissioner may issue an order
18 requiring a person to whom any license has been granted or any
19 person under the Commissioner's jurisdiction to show cause why the
20 license should not be revoked or penalties should not be imposed,
21 or both, for violations of this chapter. The above named
22 Respondents are still under the Commissioner's jurisdiction due to
23 their failure to timely respond to the consumer complaint while
24 still currently licensed and due to their current unlicensed
25 activity. Therefore, the license should be revoked.

1 10. Pursuant to RSA 361-A:3, I-a(c), (d), (h), and (i), the
2 Commissioner may, by order, deny, suspend, or revoke any license
3 or application and bar any person from licensure if the
4 Commissioner finds that the order is in the public interest and
5 the applicant, respondent, or licensee, any partner, officer,
6 member, or director, any person occupying a similar status or
7 performing similar functions, or any person directly or
8 indirectly controlling the applicant, respondent, or licensee
9 has: (c) made fraudulent misrepresentations, has circumvented or
10 concealed, through whatever subterfuge or device, any of the
11 material particulars required to be stated or furnished to a
12 borrower under the provisions of RSA Chapter 361-A; (d) has
13 failed to supervise its agents, managers, or employees; (h) has
14 engaged in dishonest or unethical practices in the conduct of
15 making retail installment transactions or collecting on retail
16 installment contracts; and/or (i) has violated RSA Chapter 361-A.
17 Each of the above named Respondents have violated sub-paragraphs
18 (c) and (h) on at least two occasions each (four counts total)
19 and subparagraphs (d) and (i) on at least four occasions each
20 (eight counts total) as alleged above.

21 11. RSA 361-A:3-a provides that the Department may issue a Cease and
22 Desist Order against anyone it has reasonable cause to believe is
23 engaging in the business of a sales finance company without the
24 required license as provided for in RSA Chapter 361-A.
25 Respondent Auto Exchange offers a "buy here, pay here" program

1 wherein it finances in-house motor vehicles it sells and has done
2 so on at least one occasion without a license.

3 12. RSA 361-A:3-b,I(a) provides that it is unlawful for any person in
4 connection with the solicitation, offer or closing of a loan,
5 directly or indirectly, to employ any device, scheme, or artifice
6 to defraud. Each of the above named Respondents violated this
7 provision on at least two occasions as alleged above.

8 13. RSA 361-A:3-b,I(b) provides that it is unlawful for any person in
9 connection with the solicitation, offer or closing of a loan,
10 directly or indirectly, to make any untrue statements of a
11 material fact or to omit to state a material fact necessary in
12 order to make the statements made, in light of the circumstances
13 under which they are made, not misleading. Each of the above
14 named Respondents violated this provision on at least two
15 occasions as alleged above.

16 14. RSA 361-A:3-b,I(c) provides that it is unlawful for any person in
17 connection with the solicitation, offer or closing of a loan,
18 directly or indirectly, to engage in any act, practice, course of
19 business which operates or would operate as a fraud or deceit
20 upon any person. Each of the above named Respondents violated
21 this provision on at least two occasions as alleged above.

22 15. RSA 361-A:4-a,I provides that retail sellers or sales finance
23 companies under RSA Chapter 361-A shall acknowledge a complaint
24 no later than 30 days following receipt of the complaint and
25 shall reply no later than 60 days following receipt of a consumer

1 complaint filed with the Department. Each of the above named
2 Respondents violated this provision on at least four occasions as
3 alleged above.

4 16. RSA 361-A:4-a,II provides that the retail seller or sales finance
5 company who fails to respond to the consumer complaint as
6 required by RSA 361-A:4-a shall pay to the Commissioner the sum
7 of \$50.00 for each day such response is overdue. Respondents owe
8 \$25,300.00 regarding Consumer A's complaint and \$14,550.00
9 regarding Consumer B's complaint.

10 17. RSA 361-A:7,II provides the calculations involved in determining
11 the stated time balance to be paid by the buyer under a Retail
12 Installment Contract, which includes a documentary
13 fee/administrative fee. The documentary fee, pursuant to RSA
14 361-A:1,IV, shall not exceed the actual cost charged by the
15 Department of Safety (which is usually \$25.00) or other state or
16 local agency (like a town clerk, which charges an additional
17 \$2.00).

18 18. RSA 361-A:9-a,I provides that a license shall keep and use
19 business records in such form and at such location as the
20 Commissioner shall by rule determine. Further, the records shall
21 enable the Commissioner to determine whether the licensee is
22 complying with the provisions of RSA Chapter 361-A. Each of the
23 above named Respondents violated this provision on at least one
24 occasion as alleged above.

25 19. RSA 361-A:11,I provides that any person who shall violate any

1 provisions of RSA Chapter 361-A, or engage in the business of a
2 sales finance company in this state without a license therefor as
3 provided, shall be guilty of a misdemeanor if a natural person,
4 or guilty of a felony if any other person.

5 20. RSA 361-A:11,I-a provides that any person who willfully violates
6 any provisions of RSA 361-A:3-b,I or any cease and desist order
7 or injunction issued pursuant to RSA 361-A:3-a shall be guilty of
8 a class B felony. Each of the acts specified shall constitute a
9 separate offense and a prosecution or conviction for any one of
10 such offenses shall not bar prosecution or conviction of any
11 other offense.

12 21. RSA 361-A:11,III provides that any person engaging in the
13 business of a sales finance company without a license if the
14 license is required under RSA Chapter 361-A shall be barred from
15 recovering any finance charge, delinquency, or collection charge
16 on the contract. Where no finance charge is payable under the
17 terms of the contract, a person engaging in the business of a
18 sales finance company without a license shall be barred from
19 recovering any amount in excess of the wholesale market value of
20 the vehicle, if the vehicle was purchased by the seller at a
21 wholesale auction or other wholesale outlet, or the trade-in
22 value of the vehicle if the seller acquired the vehicle in trade.
23 Such value shall be that quoted for New Hampshire or the New
24 England region in a value quotation publication generally
25 recognized by the motor vehicle industry and as specified by the

1 Commissioner in rules adopted pursuant to RSA 541-A.

2 22. RSA 361-A:11,VII provides that any person who, either knowingly
3 or negligently, violates any provision of RSA Chapter 361-A, may
4 upon hearing, and in addition to any other penalty provided for
5 by law, be subject to an administrative fine not to exceed
6 \$2,500.00, or both. Each of the acts specified shall constitute
7 a separate violation, and such administrative action or fine may
8 be imposed in addition to any criminal penalties or civil
9 liabilities imposed by New Hampshire Banking laws.

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

1 **III. RELIEF REQUESTED**

2 The staff of the Department requests the Commissioner take the following
3 action:

- 4 1. Find as fact the allegations contained in section I of this Staff
5 Petition;
- 6 2. Make conclusions of law relative to the allegations contained in
7 section II of the this petition;
- 8 3. Pursuant to RSA 361-A:3-a, order each of the above named
9 Respondents to immediately Cease and Desist from violations of
10 this chapter;
- 11 4. Pursuant to RSA 361-A:3-a, order each of the above named
12 Respondents to immediately cease selling motor vehicles that will
13 be subject to retail installment contracts from Respondents.
- 14 5. Pursuant to RSA 361-A:3-a, order each of the above named
15 Respondents to immediately take down signage that states "buy
16 here, pay here" and cease advertising as "buy here, pay here".
- 17 6. Find the Commissioner's order to be in the public interest;
- 18 7. Pursuant to RSA 361-A:3, order each of the above named Respondents
19 to show cause why their license should not be revoked (or in the
20 alternative not allowed to renew);
- 21 8. Pursuant to RSA 361-A:3,I-a Respondent Reis shall show cause why
22 he should not be barred from licensure; and
- 23 9. Pursuant to RSA 361-A:3,I-a, Respondent Murphy shall show cause
24 why he should not be barred from licensure.
- 25 10. Assess fines and administrative penalties in accordance with RSA

1 361-A:11, for violations of RSA Chapter 361-A, in the number and
2 amount equal to the violations set forth in section II of this
3 Staff Petition; and

4 11. Take such other administrative and legal actions as necessary for
5 enforcement of the New Hampshire Banking Laws, the protection of
6 New Hampshire citizens, and to provide other equitable relief.

7 **IV. RIGHT TO AMEND**

8 The Department reserves the right to amend this Staff Petition and to
9 request that the Commissioner take additional administrative action.
10 Nothing herein shall preclude the Department from bringing additional
11 enforcement action under RSA Chapter 361-A or the regulations thereunder.

12
13 Respectfully submitted by:

14 _____
15 /s/ Maryam Torben Desfosses
16 Hearings Examiner

11/24/09

Date