

1 State of New Hampshire Banking Department

2	In re the Matter of:	) Case No.: 09-132
		)
3	State of New Hampshire Banking	)
4	Department,	) Order to Show Cause and
		)
5	Petitioner,	) Cease and Desist Order
		)
6	and	)
		)
7	LHF Inc (d/b/a Pelham Auto Finance),	)
		)
8	and James Kemos,	)
		)
9	Respondents	)
		)
10		)

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 and RSA 361-A:3-a) and RSA Chapter 541-A.

15 LEGAL AUTHORITY AND JURISDICTION

16 Pursuant to RSA 361-A:2,I, persons subject to RSA Chapter 361-A shall  
17 be responsible for the supervision of their employees, agents, and branch  
18 offices.

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

23 Pursuant to RSA 361-A:2-a,I(a), a licensee who ceases to engage in  
24 the business of a sales finance company or retail seller at any time during  
25 a license year for any cause, including but not limited to bankruptcy,

1 license revocation or voluntary dissolution, shall surrender such license  
2 in person or by registered or certified mail to the Commissioner within 15  
3 calendar days of such cessation.

4 Pursuant to RSA 361-A:3,I the Commissioner has the authority to issue  
5 an order to show cause why license revocation and penalties for violations  
6 of New Hampshire Banking laws should not be imposed.

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

21 Pursuant to RSA 361-A:3-a, the Commissioner has the authority to  
22 issue and cause to be served an order requiring any person about to engage  
23 in who or has engaged in any act or practice constituting a violation of  
24 RSA Chapter 361-A or any rule or order thereunder, to cease and desist from  
25 violations of RSA Chapter 361-A.

1 Pursuant to RSA 361-A:4-a,I, retail sellers or sales finance  
2 companies shall, within 30 days after receipt of a complaint, send a  
3 written acknowledgment thereof to the consumer and the Department. Not  
4 later than 60 days following receipt of such complaint, the retail seller  
5 or sales finance company shall conduct an investigation of the complaint  
6 and either (a) make appropriate corrections in consumer's account and  
7 notify both the consumer and the New Hampshire Banking Department  
8 ("Department") with documentation or (b) submit a written explanation or  
9 clarification to the consumer and Department, setting forth reasons why the  
10 licensee believes its actions are correct, including copies of documentary  
11 evidence thereof.

12 Pursuant to RSA 361-A:4-a,II, the retail seller or sales finance  
13 company who fails to respond to the consumer complaint as required by RSA  
14 361-A:4-a shall pay to the Commissioner the sum of \$50.00 for each day such  
15 response is overdue.

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

19 Pursuant to RSA 361-A:10-c,I, when a person enters into a retail  
20 installment transaction where a consumer trades in or sells a vehicle that  
21 is subject to a lien, the person shall, within 21 calendar days of the date  
22 of sale, remit payment to the lien holder to pay off the lien on the  
23 traded-in or sold motor vehicle, unless the underlying contract has been  
24 rescinded before expiration of 21 calendar days.

25 Pursuant to RSA 361-A:10-c,II, the term "date of sale" shall be the

1 date the parties entered into the transaction as evidenced by the date  
2 written in the contract executed by the parties, or the date the person  
3 took possession of the traded-in or sold vehicle. In the event the date of  
4 the contract differs from the date the person took possession of the  
5 traded-in vehicle, the "date of sale" shall be the date the person took  
6 possession of the traded-in vehicle.

7 Pursuant to RSA 361-A:11,I, any person who shall violate any  
8 provisions of RSA Chapter 361-A, or engage in the business of a sales  
9 finance company in this state without a license therefor as provided, shall  
10 be guilty of a misdemeanor if a natural person, or guilty of a felony if  
11 any other person.

12 Pursuant to RSA 361-A:11,I-a, any person who willfully violates any  
13 provisions of RSA 361-A:3-b,I or any cease and desist order or injunction  
14 issued pursuant to RSA 361-A:3-a shall be guilty of a class B felony. Each  
15 of the acts specified shall constitute a separate offense and a prosecution  
16 or conviction for any one of such offenses shall not bar prosecution or  
17 conviction of any other offense.

18 Pursuant to RSA 361-A:11,V and VII, any person who, either knowingly  
19 or negligently, violates any provision of RSA Chapter 361-A or any rules or  
20 orders of the Commissioner, may upon hearing, and in addition to any other  
21 penalty provided for by law, be subject to such suspension, revocation, or  
22 denial of any registration or license, including forfeiture of any  
23 application fee, or imposition of an administrative fine not to exceed  
24 \$2,500.00, or both. Each of the acts specified shall constitute a separate  
25 violation, and such administrative action or fine may be imposed in

1 addition to any criminal penalties or civil liabilities imposed by New  
2 Hampshire Banking laws.

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

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

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

24 The above named Respondents have the right to request a hearing on  
25 this Order to Show Cause and Cease and Desist Order, as well as the right

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

13 If any of the above named Respondents fails to request a hearing  
14 within 30 calendar days of receipt of such order or reach formal settlement  
15 with the Department within that time frame, then such person shall likewise  
16 be deemed in default, and the orders shall, on the thirty-first day, become  
17 permanent, and shall remain in full force and effect until and unless later  
18 modified or vacated by the Commissioner, for good cause shown.

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

20 The Staff Petition dated December 29, 2009 (a copy of which is  
21 attached hereto) is incorporated by reference hereto.

22 **ORDER**

23 WHEREAS, finding it necessary and appropriate and in the public  
24 interest, and consistent with the intent and purposes of the New Hampshire  
25 banking laws; and

1           WHEREAS, finding that the allegations contained in the Staff  
2 Petition, if proved true and correct, form the legal basis of the relief  
3 requested;

4           It is hereby ORDERED, that:

5           1. Respondents shall immediately cease and desist from  
6           violations of RSA Chapter 361-A;

7           2. Respondents shall immediately cease selling motor vehicles  
8           that will be under or subject to retail installment  
9           contracts;

10          3. Respondents shall immediately cease taking trade-ins without  
11          paying them off in full within 21 calendar days of the sale  
12          date (date parties entered into the transaction) as required  
13          by RSA 361-A:10-c, I and II;

14          4. Respondents shall immediately provide a list to the  
15          Department of all transactions in which the trade-in balance  
16          was not paid within the statutory time period, including  
17          copies of all attendant retail installment contracts. Said  
18          list shall include the consumer's name(s), contact  
19          information, amount of the trade-in, fees charged by  
20          Respondents and the current ownership status and location of  
21          the trade-in;

22          5. Respondents shall immediately provide information to the  
23          Department on the exact storage location of the company's  
24          files;

1 It is hereby further ORDERED, that:

2 6. Respondent LHF Inc (d/b/a Pelham Auto Finance) (hereinafter,  
3 "Respondent LHF") shall show cause why penalties in the  
4 amount of \$70,000.00 should not be imposed against it;

5 7. Respondent James Kemos (hereinafter, "Respondent Kemos")  
6 shall show cause why penalties in the amount of \$70,000.00  
7 should not be imposed against him;

8 8. Respondents shall show cause why, in addition to the  
9 penalties listed in Paragraphs 1 through 7 above, penalties  
10 in the amount of \$5,150.00 (and still accruing) should not  
11 be imposed for failing to respond to the Consumer A  
12 complaint;

13 9. Respondents shall show cause why, in addition to the  
14 penalties listed in Paragraphs 1 through 8 above, penalties  
15 in the amount of \$2,350.00 (and still accruing) should not  
16 be imposed for failing to respond to the Consumer B  
17 complaint;

18 10. Respondents shall show cause why, in addition to the  
19 penalties listed in Paragraphs 1 through 9 above, the pay  
20 off amount of \$16,698.62 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 11. Respondents shall show cause why, in addition to the  
25 penalties listed in Paragraphs 1 through 10 above, the pay



1 off amount of \$1,294.51 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 (even though the Consumer was essentially forced to  
5 take the vehicle back);

6 12. Respondents shall show cause why, in addition to the  
7 penalties listed in Paragraphs 1 through 11 above, letters  
8 to the credit bureaus and lenders explaining the late  
9 payments regarding Consumer A and Consumer B should not be  
10 sent by Respondents;

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

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

19 15. Respondents shall show cause why, in addition to the  
20 penalties listed in Paragraphs 1 through 14 above,  
21 Respondent LHF's license should not be revoked (or in the  
22 alternative not be allowed to renew);

23 16. Respondent Kemos shall show cause why, in addition to the  
24 penalties listed in Paragraphs 1 through 15 above, he  
25 should not be barred from licensure;



1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 09-132  
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 3 State of New Hampshire Banking )  
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 4 Department, ) Staff Petition  
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 5 Petitioner, ) December 29, 2009  
 )  
 6 and )  
 )  
 7 LHF Inc (d/b/a Pelham Auto Finance), )  
 )  
 8 and James Kemos, )  
 )  
 9 Respondents )  
 )  
 10 )

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 LHF Inc (d/b/a Pelham Auto Finance) (hereinafter,
- 16 "Respondent LHF") has been licensed as a Retail Seller since 1999.
- 17 2. Respondent James Kemos (hereinafter, "Respondent Kemos") is the
- 18 owner/director and President of Respondent LHF.

19 DEFRAUDING THE LENDER - CONSUMER A LOAN FILE

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

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

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

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

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

1 Counts):

2 Violation of RSA 361-A:3-b,I(a) Employing any Scheme, Device or Artifice to

3 Defraud (1 Count):

4 Violation of RSA 361-A:3-b,I(b) Making Untrue Statements of a Material Fact

5 in Order to Make Such Statements Appear Not Misleading (1 Count):

6 Violation of RSA 361-A:3-b,I(c) Engaging in Any Act, Practice or Course of

7 Business which Operates as a Fraud or Deceit Upon Any Person (1 Count):

8 Violation of RSA 361-A:4-a,I Failure to Properly and Timely Respond to a

9 Consumer Complaint (1 Count):

10 Violation of RSA 361-A:10-c,I Failure to Pay-Off Lien Holder of Vehicle

11 Trade-In (1 Count):

12 3. Paragraphs 1 through 2 are hereby realleged as fully set forth  
13 herein.

14 4. Consumer A initially filed a complaint with the Department on or  
15 about June 26, 2009. The complaint alleged that Respondents  
16 failed to pay off the remaining loan on the vehicle trade-in by  
17 bouncing the check mailed to the lender. The copy of the check,  
18 which was not honored by the bank, indicates the amount of pay-off  
19 to be \$16,698.62.

20 5. The Department mailed, via U.S. Certified Mail Return Receipt  
21 requested, the complaint to Respondents, which Respondents  
22 received on July 1, 2009.

23 6. Respondents had 30 days from July 1, 2009 to acknowledge the June  
24 26, 2009 complaint and 60 days total from July 1, 2009 to respond  
25 to the Department.

1 7. Respondents' counsel acknowledged the complaint on July 7, 2009  
2 but submitted an insufficient response on August 17, 2009, thus  
3 failing to respond.

4 8. The August 17, 2009 response merely indicates the company is  
5 defunct and insolvent and places the burden on the Department to  
6 handle the matter. Respondents, via their counsel, blatantly  
7 disregarded their requirement to substantively respond to any and  
8 all complaints sent to them by the Department, defunct or  
9 otherwise.

10 9. Respondents' substantive response to the Consumer A consumer  
11 complaint was due on August 30, 2009 (60 days from Respondents'  
12 July 1, 2009 receipt of the initial complaint).

13 10. Respondents incur a daily fine of \$50.00 until the Department  
14 receives the response. As of the date of this petition, the  
15 response is 103 days past due, which means Respondents have  
16 incurred a fine of \$5,150.00 (and still accruing) (103 days x  
17 \$50.00 per day).

18 11. Respondents have still failed to respond. Respondents, in  
19 addition to owing the fine of \$3,450.00 (and still accruing) must  
20 pay off the outstanding loan balance on the vehicle-trade in  
21 (\$16,698.62). Further, Respondents should reimburse Consumer A  
22 any fees and or charges associated with a late pay-off.  
23 Respondents are also responsible for submitting explanations to  
24 the three credit reporting agencies, as well as paying or  
25 covering any costs associated with negative reporting.

1 12. Respondent Kemos failed to supervise employees regarding the  
2 Consumer A complaint and underlying matter.

3 13. Respondents fraudulently wrote a check to Consumer A's original  
4 lender to pay off the lien because the check bounced due to  
5 insufficient funds. To date, Consumer A cannot locate  
6 Respondents and has no idea what happened to the vehicle Consumer  
7 A traded-in.

8 DEFRAUDING THE LENDER - CONSUMER B LOAN FILE

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

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

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

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

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

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

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

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

22 Violation of RSA 361-A:4-a, I Failure to Properly and Timely Respond to a  
23 Consumer Complaint (1 Count):

24 Violation of RSA 361-A:10-c, I Failure to Pay-Off Lien Holder of Vehicle  
25 Trade-In (1 Count):

1 14. Paragraphs 1 through 13 are hereby realleged as fully set forth  
2 herein.

3 15. Consumer B initially filed a complaint with the Department on or  
4 about August 26, 2009. The complaint alleged (among other  
5 matters) that Respondents failed to pay off the remaining loan on  
6 the vehicle trade-in by bouncing the check mailed to the lender.  
7 The copy of the check, which was not honored by the bank,  
8 indicates the amount of pay-off to be \$1,294.51.

9 16. The Department mailed, via U.S. Certified Mail Return Receipt  
10 requested, the complaint to Respondents, which Respondents  
11 received on September 4, 2009.

12 17. Respondents had 30 days from September 4, 2009 to acknowledge the  
13 August 26, 2009 complaint and 60 days total from August 26, 2009  
14 to respond to the Department.

15 18. Respondents' counsel acknowledged the complaint on September 11,  
16 2009 but submitted an insufficient response on October 19, 2009,  
17 thus failing to respond.

18 19. Respondents' counsel merely indicated that Consumer B took the  
19 trade-in vehicle back.

20 20. However, Consumer B still had to finish making payments on that  
21 vehicle (in the amount of \$1,294.51) plus continue to make  
22 payments on the vehicle Consumer B purchased, which was the  
23 reason for trade-in.

24 21. Respondents' substantive response to the Consumer B consumer  
25 complaint was due on October 25, 2009 (60 days from Respondents'

1 August 26, 2009 receipt of the initial complaint).

2 22. Respondents incur a daily fine of \$50.00 until the Department  
3 receives the response. As of the date of this petition, the  
4 response is 47 days past due, which means Respondents have  
5 incurred a fine of \$2,350.00 (and still accruing) (47 days x  
6 \$50.00 per day).

7 23. Respondents have still failed to respond. Respondents, in  
8 addition to owing the fine of \$2,350.00 (and still accruing) must  
9 pay off the outstanding loan balance on the vehicle-trade in  
10 (\$1,294.51). Further, Respondents should reimburse Consumer B  
11 any fees and or charges associated with a late pay-off.  
12 Respondents are also responsible for submitting explanations to  
13 the three credit reporting agencies, as well as paying or  
14 covering any costs associated with negative reporting.

15 **Violation of RSA 361-A:2,XII Failure to Update Information on File with the**

16 **Commissioner (1 Count):**

17 **Violation of 361-A:2-a,I(a) Failure to Inform Commissioner of Business**

18 **Closure (1 Count):**

19 24. Paragraphs 1 through 23 are hereby realleged as fully set forth  
20 herein.

21 25. The above named Respondents failed to inform the Department that  
22 Respondents are out of business, insolvent and no longer in  
23 operation.

24 26. Respondents' counsel, in an attempted response to Consumer B's  
25 consumer complaint, informed the Department that Respondents



1 (whether through their counsel or otherwise) informed the New  
2 Hampshire Attorney General's office of its closure.

3 27. A licensee must surrender its license to the Commissioner when it  
4 ceases conducting business. Accordingly, alleged notice to the  
5 New Hampshire Attorney General's office is insufficient notice.

6 28. Therefore, the above named Respondents have failed to inform the  
7 Department of its closure in a timely manner.

## 8 **II. ISSUES OF LAW**

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

10 1. The Department realleges the above stated facts in Paragraphs 1  
11 through 28 as fully set forth herein.

12 2. The Department has jurisdiction over the licensing and regulation  
13 of persons engaged in retail seller and sales finance activities  
14 pursuant to RSA 361-A:2.

15 3. RSA 361-A:2,I provides that persons subject to RSA Chapter 361-A  
16 shall be responsible for the supervision of their employees,  
17 agents, and branch offices. Each of the above named Respondents  
18 violated this provision on at least four occasions as alleged  
19 above.

20 4. RSA 361-A:2,II(c) provides that a person may renew a valid license  
21 under RSA Chapter 361-A only if the person is in compliance with  
22 RSA Chapter 361-A and has paid the required fee. Failure to renew  
23 shall result in the license terminating on December 31 of the same  
24 year. This provision serves as an alternative to revocation.

25 5. RSA 361-A:2,XII provides that retail sellers and sales finance

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

13 6. RSA 361-A:2-a,I(a) provides that a licensee who ceases to engage  
14 in the business of a sales finance company or retail seller at any  
15 time during a license year for any cause, including but not  
16 limited to bankruptcy, license revocation or voluntary  
17 dissolution, shall surrender such license in person or by  
18 registered or certified mail to the Commissioner within 15  
19 calendar days of such cessation. Each of the above named  
20 Respondents violated this provision on at least one occasion as  
21 alleged above.

22 7. RSA 361-A:3,I provides that the Commissioner may issue an order  
23 requiring a person to whom any license has been granted or any  
24 person under the Commissioner's jurisdiction to show cause why the  
25 license should not be revoked or penalties should not be imposed,

1 or both, for violations of this chapter. The above named  
2 Respondents are still under the Commissioner's jurisdiction due to  
3 their failure to timely respond to the consumer complaint while  
4 still currently licensed. Therefore, the license should be  
5 revoked.

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

25 9. Pursuant to RSA 361-A:3-a, the Commissioner has the authority to

1 issue and cause to be served an order requiring any person about  
2 to engage in who or has engaged in any act or practice  
3 constituting a violation of RSA Chapter 361-A or any rule or order  
4 thereunder, to cease and desist from violations of RSA Chapter  
5 361-A.

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

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

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

25 13. RSA 361-A:4-a,I provides that retail sellers or sales finance

1 companies shall, within 30 days after receipt of a complaint,  
2 send a written acknowledgment thereof to the consumer and the  
3 Department. Not later than 60 days following receipt of such  
4 complaint, the retail seller or sales finance company shall  
5 conduct an investigation of the complaint and either (a) make  
6 appropriate corrections in consumer's account and notify both the  
7 consumer and the Department with documentation or (b) submit a  
8 written explanation or clarification to the consumer and  
9 Department, setting forth reasons why the licensee believes its  
10 actions are correct, including copies of documentary evidence  
11 thereof. Each of the above named Respondents violated this  
12 provision on at least two occasions as alleged above. The fines  
13 are collected according to RSA 361-A:4-a,II below.

14 14. RSA 361-A:4-a,II provides the retail seller or sales finance  
15 company who fails to respond to the consumer complaint as  
16 required by RSA 361-A:4-a shall pay to the Commissioner the sum  
17 of \$50.00 for each day such response is overdue. Respondents owe  
18 \$5,150.00 regarding Consumer A's complaint and \$2,350.00  
19 regarding Consumer B's complaint.

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

23 16. RSA 361-A:10-c,I provides that when a person enters into a retail  
24 installment transaction where a consumer trades in or sells a  
25 vehicle that is subject to a lien, the person shall, within 21

1 calendar days of the date of sale, remit payment to the lien  
2 holder to pay off the lien on the traded-in or sold motor  
3 vehicle, unless the underlying contract has been rescinded before  
4 expiration of 21 calendar days. Each of the above named  
5 Respondents violated this provision on at least two occasions as  
6 alleged above.

7 17. RSA 361-A:10-c,II provides that the term "date of sale" shall be  
8 the date the parties entered into the transaction as evidenced by  
9 the date written in the contract executed by the parties, or the  
10 date the person took possession of the traded-in or sold vehicle.  
11 In the event the date of the contract differs from the date the  
12 person took possession of the traded-in vehicle, the "date of  
13 sale" shall be the date the person took possession of the traded-  
14 in vehicle.

15 18. Pursuant to RSA 361-A:11,I, any person who shall violate any  
16 provisions of RSA Chapter 361-A, or engage in the business of a  
17 sales finance company in this state without a license therefor as  
18 provided, shall be guilty of a misdemeanor if a natural person,  
19 or guilty of a felony if any other person.

20 19. Pursuant to RSA 361-A:11,I-a, any person who willfully violates  
21 any provisions of RSA 361-A:3-b,I or any cease and desist order  
22 or injunction issued pursuant to RSA 361-A:3-a shall be guilty of  
23 a class B felony. Each of the acts specified shall constitute a  
24 separate offense and a prosecution or conviction for any one of  
25 such offenses shall not bar prosecution or conviction of any

1 other offense.

2 20. Pursuant to RSA 361-A:11,V and VII, any person who, either  
3 knowingly or negligently, violates any provision of RSA Chapter  
4 361-A or any rules or orders of the Commissioner, may upon  
5 hearing, and in addition to any other penalty provided for by  
6 law, be subject to such suspension, revocation, or denial of any  
7 registration or license, including forfeiture of any application  
8 fee, or imposition of an administrative fine not to exceed  
9 \$2,500.00, or both. Each of the acts specified shall constitute  
10 a separate violation, and such administrative action or fine may  
11 be imposed in addition to any criminal penalties or civil  
12 liabilities imposed by New Hampshire Banking laws.

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

1 constitute a separate violation, and such administrative action or  
2 fine may be imposed in addition to any criminal or civil penalties  
3 imposed.

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

11 **III. RELIEF REQUESTED**

12 The staff of the Department requests the Commissioner take the following  
13 action:

- 14 1. Find as fact the allegations contained in section I of this Staff  
15 Petition;
- 16 2. Make conclusions of law relative to the allegations contained in  
17 section II of the this petition;
- 18 3. Pursuant to RSA 361-A:3-a, order each of the above named  
19 Respondents to immediately cease and desist from violations of  
20 this chapter;
- 21 4. Pursuant to RSA 361-A:3-a, Respondents shall immediately cease  
22 selling motor vehicles that will be under or subject to retail  
23 installment contracts;
- 24 5. Pursuant to RSA 361-A:3-a, Respondents shall immediately cease  
25 taking trade-ins without paying them off in full within 21



1 calendar days of the sale date (date parties entered into the  
2 transaction) as required by RSA 361-A:10-c, I and II;

3 6. Require Respondents to immediately provide a list to the  
4 Department of all transactions in which the trade-in balance was  
5 not paid within the statutory time period, including copies of all  
6 attendant retail installment contracts. Said list should include  
7 the consumer's name(s), contact information, amount of the trade-  
8 in, fees charged by Respondents and the current ownership status  
9 and location of the trade-in;

10 7. Require Respondents to immediately provide information on the  
11 exact storage location of the company's files;

12 8. Find the Commissioner's order to be in the public interest;

13 9. Pursuant to RSA 361-A:3, order each of the above named Respondents  
14 to show cause why their license should not be revoked (or in the  
15 alternative not allowed to renew);

16 10. Pursuant to RSA 361-A:3,I-a Respondent Kemos shall show cause why  
17 he should not be barred from licensure; and

18 11. Assess fines and administrative penalties in accordance with RSA  
19 361-A:11, for violations of RSA Chapter 361-A, in the number and  
20 amount equal to the violations set forth in section II of this  
21 Staff Petition; and

22 12. Take such other administrative and legal actions as necessary for  
23 enforcement of the New Hampshire Banking Laws, the protection of  
24 New Hampshire citizens, and to provide other equitable relief.

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IV. RIGHT TO AMEND

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

Respectfully submitted by:

                  /s/                    
Maryam Torben Desfosses  
Hearings Examiner

  12/29/09    
Date