

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW HAMPSHIRE

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IN RE:	)	
	)	
AFTOKINITO RALLY, INC.,	)	No. 17-10184-BAH
	)	Chapter 11
	)	
Debtor	)	
	)	
_____	)	

OBJECTION TO THE DEBTOR’S EX PARTE EMERGENCY MOTION  
FOR ORDER AUTHORIZING USE OF CASH COLLATERAL AND  
PROVISIONS OF ADEQUATE PROTECTION

NOW COMES the State of New Hampshire, by and through its attorney, the Office of the Attorney General, and respectfully objects to the Debtor’s Ex Parte Emergency Motion for Order Authorizing Use of Cash Collateral and Provisions of Adequate Protection (the “Motion”). In support thereof, the State of New Hampshire states as follows:

1. Immediately prior to the commencement of this case by the Debtor, the State was prepared to bring an action against the Debtor Aftokinito Rally, Inc. and an affiliated non-debtor entity, Aftokinito Properties, Inc. d/b/a Dusty Old Cars and dustyoldcars.com (collectively “DOC”) seeking injunctive relief for violations by DOC of the New Hampshire Consumer Protection Act, N.H. Rev. Stat. Ann. 358-A, and Regulation of Motor Vehicle Repair Facilities, N.H. Rev. Stat. Ann. 358-D.

2. The State’s action was intended to permanently enjoin DOC from engaging in the business of acquiring and selling motor vehicles by consignment and from selling motor vehicles without paying the owner what is due under the consignment or sales contract. The State’s petition was to seek an injunction on the grounds that DOC has engaged in numerous and serious violations of the Consumer Protection Act through its motor vehicle consignment

and sales business. The State's investigation into DOC continues and includes consideration of all of the enforcement actions provided in N.H. Rev. Stat. Ann. C. 358-A as well as any other applicable State law.

3. Aftokinito Rally, Inc. and non-debtor Aftokinito Properties, Inc. have conducted business in this state as DOC and dustyoldcars.com. [dustyoldcars.com](http://dustyoldcars.com) is a domain name belonging to Stephan Condodemetraky possibly through a non-debtor entity known as CF Partners, LLC, of which Mr. Condodemetraky is managing partner.

4. The State has received more than 80 written consumer complaints against DOC for issues arising from its motor vehicle consignment program. Some of these complaints involving more recent incidents are summarized below:

- a. Complainant #1, "T.A.," bought a 1968 Mercury Cougar from DOC on January 8, 2015 for \$7,500. T.A. paid additional money for the car to be shipped to Texas. On arrival, the car's transmission did not work and the car did not run. T.A. contacted DOC and DOC arranged to swap the first car for a 1967 Mercury Cougar. T.A. paid to ship the first car back to NH. DOC delayed shipping the new car for months because of alleged mechanical issues. T.A. demanded a partial refund for the car to settle the situation. DOC refused to issue the refund, instead telling T.A. that the only way to receive any of his money back was to consign the second car with DOC. DOC told T.A. that he would make \$5,000 in net proceeds from the consignment of the second car. T.A. agreed. DOC sold the car and mailed T.A. a check for \$500 for the net proceeds of the sale. DOC charged T.A. for the repairs to the second car despite the fact that DOC

advertised the car as “running well” and that DOC had originally delayed shipping the second car to T.A. on the promise that they would fix the problems. DOC retained the second car for the entire transaction and T.A. lost \$9,000. T.A. later wrote a negative Yelp review and Condodemetraky threatened T.A. with a lawsuit.

- b. Complainant #2, “T.A.,” consigned eight vehicles with DOC on April 30, 2015. DOC sold all eight cars by the spring of 2016. DOC has only paid T.A. for the sale of two vehicles. DOC sold one of T.A.’s cars, a 1967 Chevrolet Chevelle, for \$53,000 despite agreeing to a GMSA of \$55,000. DOC misrepresented the sale price of another vehicle, a 1963 Chevrolet Corvette, by stating that it sold for \$61,500 when the car actually sold for \$65,000. DOC performed unauthorized repairs to at least four of T.A.’s cars. DOC charged T.A. for a previously undisclosed \$250 “pre-sale check” fees on two vehicles, including charging him twice for “general pre-sale checkover” on one of those two vehicles. T.A. estimates that DOC owes him more than \$100,000 for the six outstanding vehicle payments. T.A. recovered the 1991 Toyota Celica that he consigned with DOC by having a personal friend purchase the car from DOC in August, 2015. After the sale, DOC invoiced T.A. \$1,329.80 for repairs to the car’s radiator, starter, and floor pans. State investigators and a New Hampshire Department of Safety inspection expert examined the Celica in March, 2016 and discovered that none of the repairs that DOC charged T.A. for were actually performed.

- c. Complainant #3, "D.B.," consigned a 1966 Rambler 770 with DOC on July 17, 2015. DOC and D.B. agreed to a 90 day consignment term. DOC contacted D.B. in August, 2015 and falsely told him that he had to sign a newer variation of their consignment agreement because "the State of New Hampshire required it." DOC sold D.B.'s car shortly thereafter, but refused to provide a bill of sale and charged him for excessive repairs and labor totaling \$3,131, including billing 17 hours of work to replace a rear main seal and 15 hours of work for a "shaft seal." D.B. did not authorize any of these repairs. DOC falsely represented to D.B. that the vehicle sold for \$12,000. DOC paid D.B. \$7,268.80 as net sale proceeds. DOC business records show that the business actually sold D.B.'s car for \$14,999. A Bureau investigator interviewed the end purchaser of D.B.'s vehicle, who stated that he paid \$14,999 for the car.
- d. Complainant #4, "P.B.," consigned a 1955 Buick Super with DOC on January 15, 2015. DOC and P.B. orally agreed to a 90 day contract. After the 90 days, P.B. contacted DOC to return the car. DOC refused to let P.B. out of the 90-day contract because the 90 day term was not included in the written contract. P.B. went to DOC and removed his vehicle from their lot. Condodemetraky sent text messages to P.B. threatening to report the vehicle as stolen to the Nashua, NH Police Department. When P.B. stated that he held the title to the vehicle, Condodemetraky replied that the car was titled to them and that "our title and ownership documents supersede this document due to the consignment agreement and mechanism [sic] lien

it created.” Condodemetraky then threatened, “you can pay a fee for mutual termination or you can get arrested, up to you.”

- e. Complainant #6, “E.B.,” consigned a 1987 Pontiac Fiero GT on March 30, 2016. The GMSA for the vehicle was \$6,000. DOC told E.B. that his vehicle sold on November 30, 2016. DOC later contacted E.B. on January 25, 2017 and informed him that his vehicle sold for \$6,250 and that he would receive a check for an unspecified amount within 30 days. As of this date, DOC has not provided any proceeds from the sale of the car to E.B.
- f. Complainant #21, “R.H.,” consigned a 1955 Ford Thunderbird with DOC on August 16, 2016. R.H. was approached by “G.B.” on August 26, 2016. G.B. lives near R.H. and told R.H. that he had purchased the Thunderbird from DOC for \$43,000. G.B. had paid DOC the full sales price on August 25, 2016 and the check had been processed. To date, DOC has not provided R.H. with any proceeds from the sale of his car despite repeated requests for payment.
- g. Complainant #22, “B.J.,” consigned a vehicle with DOC in April, 2016. DOC informed B.J. in June that his vehicle sold for \$9,999 to a person in North Carolina. DOC told B.J. that he will receive \$5,036 in net proceeds from the sale. To date, DOC has not provided B.J. with any proceeds from the sale of his car.
- h. Complainant #25, “J.L.,” consigned a 1984 Pontiac Trans Am on June 23, 2016. DOC came to J.L.’s house on Cape Cod in June, 2016 to inspect the

car. The DOC representative commented on the car's low mileage and mint condition. In August, 2016, J.L. called DOC. DOC told J.L. that the car had sold for \$11,000 and that his "paperwork is in accounting." DOC told him that "he would hear from us soon." On January 20, 2017, DOC mailed documents to J.L. Those documents represented that DOC owes J.L. \$7,645.50 in net proceeds. DOC charged J.L. more than \$1,300 for repairs. To date, DOC has not paid J.L. despite J.L. contacting DOC numerous times.

- i. Complainant #34, "J.M.," consigned a Jeep with DOC in August, 2016. DOC sold J.M.'s car in October, 2016 for \$12,000. DOC told J.M. at that time that he would receive \$10,000 in net proceeds from the sale. J.M. repeatedly inquired with DOC over the course of the following few months about the status of payment. To date, DOC has not paid J.M. any proceeds from the sale of his car.
- j. Complainant #35, "R.M.," consigned a 1991 Chevrolet Corvette with DOC on March 24, 2016. The GMSA was \$9,000. In July, 2016, R.M. contacted DOC and was informed that his vehicle had sold for \$10,500 and that he would be paid in four to eight weeks. DOC did not remit payment within the four to eight weeks. On September 20, 2016, R.M. contacted DOC again. DOC called R.M. and left a message stating that R.M.'s paperwork "was still upstairs" and that it would take another two weeks for payment. R.M. unsuccessfully attempted to contact DOC again on October

17, 2016. DOC has not provided R.M. with any payment from the sale of his car.

- k. Complainant #36, "W.N.," consigned a 1985 Cadillac Eldorado on May 12, 2016. DOC sold the car in August, 2016 for \$17,000. DOC informed W.N. that they would pay him \$12,583 as the net proceeds of the sale. W.N. contacted DOC repeatedly during the fall of 2016 to discuss the payment. DOC promised to make payment by numerous dates but failed to provide any payment as promised. DOC paid W.N. a partial payment of \$5,000 in December, 2016, but to date has not paid W.N. the remaining balance of \$7,583.
- l. Complainant #37, "K.P.," consigned three vehicles with DOC on July 21, 2015. DOC agreed to not perform any repair work on the vehicles during the consignment period. The DOC representatives demanded copies of the titles for K.P.'s vehicles, falsely stating that they had to have copies of the owner's title in house to meet "state guidelines." DOC contacted K.P. in September, 2015 stating that there was an interested buyer for one of the vehicles, a 1968 Ford Mustang, however the buyer was looking for a lower price due to several perceived defects. K.P. agreed to either sell the car at \$39,000 and cover the repair costs himself or to lower his price to \$32,900 if the buyer took the car without any repairs. DOC later provided documents to K.P. showing that his vehicle was sold for \$31,000 and that DOC had charged him \$2,024.30 for unauthorized repairs. DOC paid K.P. \$10,000 in September, 2015 as a deposit for the sale proceeds of the

Mustang. DOC still owes K.P. \$15,675.70 in net proceeds from the sale of the Mustang. DOC sold K.P.'s two other vehicles, a 1973 Plymouth Duster and a 1976 Cadillac Deville, in January and April 2016, respectively. DOC paid K.P. a deposit of \$7,000 from the sales proceeds of the Duster in September, 2016 but has not disclosed the final sale price to K.P. or paid the balance owed. To date, DOC has not provided any payment for the Deville to K.P. DOC business records show that DOC sold K.P.'s 1968 Ford Mustang for \$34,000. A Bureau investigator contacted the end buyer of that car on September 1, 2016. The buyer stated that he purchased the Mustang for \$33,000.

- m. Complainant #38, "W.P.," consigned a 1928 Buick with DOC on December 11, 2015. In October, 2016, Condodemetraky told W.P. that DOC had sold the Buick for \$15,000 and that he could expect to receive \$7,000 in net proceeds because DOC had to put a lot of work into the vehicle. To date, DOC has not provided any payment or documentation regarding the sale of the car to W.P.
- n. Complainant #39, "P.R.," consigned a 1978 Chevrolet Corvette with DOC on March 2, 2016. DOC assured P.R. that he would receive \$12,000 in net proceeds from the sale of the car. On May 3, 2016, DOC told P.R. that his car was sold on March 12, 2016 but did not disclose the sale price or what P.R.'s net proceeds would be. DOC did not provide a motor vehicle inspection report to P.R. until after his car was sold. To date, DOC has not

provided any payment or documentation regarding the sale of the car to P.R.

- o. Complainant #45, "T.S.," consigned a 1955 Chevrolet Delivery Sedan with DOC on October 20, 2015. DOC informed T.S. that his car sold in July, 2016 for \$19,950 and that he would be paid in four to eight weeks. DOC did not contact T.S., so T.S. reached out to the business for a meeting with Condodemetraky. Condodemetraky told T.S. that the car sold for \$15,000 and that he would receive around \$10,000 in net proceeds. DOC produced an invoice showing that T.S. was owed \$10,738.85 in proceeds from the sale of his car. DOC charged T.S. \$1,851.15 for repairs to the car, including a \$250 "Pre Sale Check" fee for "General Pre-Sale Checkover." To date, DOC has not remitted any payment to T.S.
- p. Complainant #46, "A.S.," consigned a 1977 MGB with DOC on August 27, 2015. The agreed GMSA was \$6,200. DOC agreed not to do any future repair work to A.S.'s car without receiving her authorization. A.S. contacted DOC in June, 2016 and learned that her car had sold for \$6,500 and that she would be paid by the end of the month. DOC failed to make any payment to A.S. in June. DOC provided a mechanical repairs invoice to A.S. on September 6, 2016 showing that DOC had performed \$3,211.96 worth of repairs on the vehicle. DOC paid A.S. \$2,438.04 in net proceeds on September 6, 2016.
- q. Complainant #47, "D.S.," consigned two cars with DOC in September, 2016. DOC quickly sold one of D.S.'s cars, a 1933 Pontiac Eight, on Ebay

for \$35,500. DOC gave D.S. evasive information about when he would be paid and the total amount of fees. DOC has represented to D.S. that it owes him \$29,631.88 in net proceeds from the sale. To date, DOC has not paid D.S. any money from the sale of the car.

- r. Complainant #49, "R.T.," consigned a 1970 Chevrolet Impala with DOC on June 30, 2015. On January 6, 2016, DOC had R.T. sign the "seller" section of his title and mail it to them so they could sell the car to a buyer. DOC did not provide any payment or documentation to R.T. until April, 2016. DOC charged a \$200 transportation fee even though R.T. drove the car to the business himself. DOC also charged R.T. \$1,133 for repairs despite never providing R.T. with an estimate of costs or notice of repair work.
- s. Complainant #51, "L.U.," consigned 15 vehicles with DOC on October 27, 2015. As of September 7, 2016, DOC had sold eight of L.U.'s cars. DOC has paid the proceeds from the sale of three cars to L.U. To date, DOC has failed to pay the proceeds from the sale of the other five cars to L.U. DOC has represented to L.U. that he is owed \$31,000 for the five cars. DOC continues to possess and market L.U.'s remaining seven cars.
- t. Complainant #52, "R.V.," purchased a Chevrolet C-10 from DOC on January 16, 2016. DOC advertised the truck as having 65,967 miles on it. The Massachusetts RMV later informed R.V. that the truck had been previously registered with over 70,000 miles on it. R.V. confronted DOC about the truck's mechanical problems and told the business that he would

post a negative review online. DOC replied by threatening to enforce their anti-disparagement clause and by telling R.V. that “you may get a legal letter in the mail that may cause you some heartburn.”

- u. Complainant #53, “J.W.,” consigned a 1967 American Rambler with DOC on September 21, 2015. An acquisitions employee of DOC verbally agreed to consign the vehicle with the condition that DOC would sell the car as an “as is” drivable restoration project car. DOC told J.W. that he would have final approval of any sale. J.W. only signed a consignment agreement and did not sign a bill of sale. DOC did not provide a motor vehicle inspection report to J.W. until December 23, 2015. J.W. traveled to DOC on February 24, 2016. A DOC employee told him that the car sold for \$3,200 and that he would receive a check for \$2,680. DOC refused to produce any documents relating to the sale. J.W. returned on February 26, 2016 and DOC again refused to produce any sales documents. DOC eventually gave J.W. a check for \$223.75. DOC charged J.W. \$1,931.25 for repairs to the vehicle. Some of the items that were repaired were in normal working order when J.W. dropped the car off at DOC.
- v. Complainant #55, “C.Z.,” consigned five cars with DOC on February 26, 2016. DOC sold one of C.Z.’s vehicles on July 5, 2016, and paid him \$874 in net proceeds from the sale. DOC charged C.Z. \$4,483.07 for unauthorized repair work, including a \$250 “pre-sale check” fee that DOC failed to previously disclose to C.Z. DOC has not provided any payment for the sales of the other four vehicles to C.Z.

5. Among the complaints received by the State about the Debtor are those made by purchasers of cars from it alleging unfair and deceptive practices. In two recent instances buyers have obtained judgments against the Debtor from the Superior Courts where the courts specifically found that the Debtor's sales practices violated the state Consumer Protection Act. *See* attached Exhibit "A".

6. Upon information and belief, over a 2-3 year period the Debtor has sold cars consigned by over 113 individuals under unfair and deceptive consignment terms and failed to pay some or all of the proceeds of those sales to the consignors, which claims total between \$500,000 and \$661,702, and that the Debtor presently holds 85 (or more) additional unlawfully consigned cars for sale with contingent liabilities associated with them estimated by the Debtor at \$165,780. Pre-petition, the Debtor refused to provide the State access to coherent information documenting the claims and the amounts owed to the many consignors.

7. Many, if not all of the Debtor's sales of consigned cars violate provisions of the State's Consumer Protection Act for failing to pay consignors the proceeds from the sale of their property, failures to disclose fees and costs associated with the transactions, misrepresenting final sales price in order to falsely claim higher percentage returns, and falsely charging for repairs that were unneeded or not performed. It also appears that the Debtor's business has been operated with a certain amount of threats and intimidation directed at customers who complained. *See* David Segal, "*Complaints Pile Up Against a Vintage Car Dealer*", THE NEW YORK TIMES, Feb. 26, 2017, Business p. 3 (reporting that DOC's principal told a customer, "You know it took me about 5 minutes for me to locate you, sir. So it's going to take about 5 minutes for my lawyer to find you, too. And then

we're going to come after you personally. That's after we file criminal charges with the police departments.”)(“*Complaints Pile Up*”).

8. Upon information and belief, the Debtor continues to possess and offer for sale numerous cars consigned under unlawful terms. Their sale under the Debtor's business model, including the terms of the consignment contracts, would likely violate the Consumer Protection Act.

9. A defrauded consignor that had not yet contacted the State, Mr. LaForte, has objected to the Debtor's continued sales on the basis that the proposal would allow the Debtor to use property that is not property of the estate to run the Debtor's business. The State concurs in and shares this objection. Cars that the Debtor holds in trust are not property of the estate and the Debtor should not be allowed to use unlawful means and ill gotten gains to sell those cars out of trust to run its deceptive business.

10. Instead of allowing the Debtor to continue in business, the Court should order the appointment of a trustee or the conversion of the case to chapter 7. Given the Debtor's long record of pre-petition unfair and deceptive practices as an apparent business model and its likely continuation in chapter 11 (as described in the Motion, *see also Complaints Pile Up* (reporting that Mr. Condodemetraky said “we continue to operate ... we consigned cars today and we sold cars today.”)), the State and likely the creditors have no confidence in the Debtor's ability to operate or reorganize honestly and lawfully. Bankruptcy is “not intended to be a haven for wrongdoers.” *Richmond v. New Hampshire S. Ct. Comm. on Prof'l Conduct*, 542 F.3d 913, 917 (1st Cir. 2008). The Debtor's “Ex Parte Emergency” motion seeks the Court's authorization to make it so and should be denied.

11. The State also objects because the Motion also improperly seeks to make payments to AFA, and certain lessors without documentation or a demonstration that any adequate protection is needed or sought.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorney,

JOSEPH A. FOSTER  
ATTORNEY GENERAL

Dated: March 2, 2017

/s/ Peter C.L. Roth

Peter C.L. Roth  
Senior Assistant Attorney General  
James T. Boffetti  
Senior Assistant Attorney General  
John W. Garrigan  
Assistant Attorney General  
New Hampshire Department of Justice  
33 Capitol Street  
Concord, New Hampshire 03301  
(603) 271-3643

Certificate of Service

I, Peter C.L. Roth, do hereby certify that on March 2, 2017, I caused a true copy of the foregoing objection to be served by the Court's ECF system on those parties receiving electronic delivery of documents through that service.

Dated: March 2, 2017

/s/ Peter C.L. Roth

Peter C.L. Roth