

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING, BUREAU
OF COMPLIANCE, INVESTIGATION
AND LICENSING

v.

C'S AUTO SALES

AND

C'S AUTO SALES 2

Docket No.: 08 0322 (ENF - CO)

FILED
2008 NOV 20 AM 10:54
PA DEPT OF BANKING

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking, (the "Department"), Bureau of Compliance, Investigation and Licensing (the "Bureau"), has conducted an investigation of C's Auto Sales and C's Auto Sales 2 (collectively, "C's Auto"), and their officers, employees and directors. Based on the results of the investigation, the Bureau believes that C's Auto operated in violation of the Motor Vehicle Sales Finance Act (the "MVSFA"), 69 P.S. § 601 *et seq.* The parties to the above captioned matter, in lieu of litigation, hereby stipulate that the following statements are true and correct in the settlement of the above-captioned matter and, intending to be legally bound, hereby agree to the terms of this Consent Agreement and Order (the "Order").

BACKGROUND

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the MVSFA.
2. The Bureau is primarily responsible for administering and enforcing the MVSFA for the Department.

3. C's Auto Sales is licensed as an installment seller, license no. 12108, and is located at 705 N. 22nd St., Lebanon, PA 17046 (the "Lebanon Location").

4. C's Auto Sales 2 is licensed as an installment seller, license no. 17309, and is located at 206 Cumberland St., Lebanon, PA 17042.

5. In or around July 2008 the Bureau became aware that C's Auto was advertising the sale of motor vehicles with the option of a "Cash" sales price or a "Financed" sales price where the "Cash" sales price was less than the "Financed" sales price. See Exhibit A.

6. On or around August 1, 2008 an investigator from the Department initiated an investigation of C's Auto at the Lebanon Location (the "Investigation").

7. The Investigation revealed that the "Cash" sales price and the "Financed" sales price were listed on the windows of the vehicles at the Lebanon Location.

8. The Investigation revealed that at least ten (10) motor vehicle installment sale contracts (the "Contracts") for the "Financed" sales price listed:

- a. an annual percentage rate of 0%;
- b. no amount for finance charges; and
- c. the Financed price as indicated on the advertisement listed in Paragraph 5

and the windows of the vehicles on the line in the contract designated "Cash Price."

9. The Investigation also revealed that cash down payments were subtracted from the Financed price and not the actual cash price as listed in the advertisement listed in Paragraph 5 or on the window of the vehicles.

10. Section 3.11 of the MVSFA defines "cash price" as "the price measured in dollars at which the seller would in good faith sell to the buyer or to any other buyer under like circumstances, and the buyer would in good faith buy from the seller, the motor vehicle which is

the subject matter of the installment sale contract, *if such sale were a sale for cash instead of an installment sale.*” 69 P.S. § 603.11 (emphasis added).

11. Based on the above language, the cash price of the motor vehicle should be the same regardless of whether a customer is paying cash in one lump sum or is financing through installments.

12. Section 3.14 of the MVSA defines “finance charge” as “the amount of the *consideration in excess of the cash price* which the buyer is required to pay to the seller for the privilege of purchasing a motor vehicle under an installment sale contract, or for the credit extended by the seller to the buyer in conjunction with the sale of a motor vehicle under an installment sale contract, or it shall mean the differential between the cash sale price of the motor vehicle and the installment sale price, exclusive of charges for insurance and other charges necessary or incidental to an installment sale and any default charges, which are specifically authorized by this act to be included in an installment sale contract.” 69 P.S. § 603.14 (emphasis added).

13. Section 226.2(a)(9) of Federal Reserve Regulation Z (“Reg Z”) defines “cash price” as the price at which a creditor, in the ordinary course of business, offers to sell for cash the property or service that is the subject of the transaction. At the creditor’s option, the term may include the price of accessories, services related to the sale, service contracts and taxes and fees for license, title and registration. The term does not include any finance charge. 12 CFR 226.2(a)(9).

14. Section 226.4 of Reg Z defines “finance charge” as the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of

credit. It does not include any charge of a type payable in a comparable cash transaction. 12 CFR 226.4.

15. Section 226.14 of Reg Z defines "Annual Percentage Rate" as a measure of the cost of credit, expressed as a yearly rate. An annual percentage rate shall be considered accurate if it is not more than 1/8 of 1 percentage point above or below the annual percentage rate determined in accordance with this section. 12 CFR 226.14.

16. Section 14.B.1 of the MVSFA provides, in relevant part, that every installment sale contract shall clearly and conspicuously in writing set forth the cash price of the motor vehicle. 69 P.S. § 614.B.1.

17. Section 14.B.7 of the MVSFA provides, in relevant part, that every installment sale contract shall clearly and conspicuously in writing set forth the "[f]inance charge which is the consideration in excess of the cash price (Item 1), excluding charges for insurance (Item 4), and other charges (Item 5), which the buyer agrees to pay to the seller for the privilege of purchasing the motor vehicle under the installment sale contract." 69 P.S. § 614.B.7.

18. Section 226.18(b) of Reg Z requires a creditor to disclose the "amount financed." 12 CFR 226.18(b).

19. Section 226.18(d) of Reg Z requires a creditor to disclose the "finance charge." 12 CFR 226.18(d).

20. Section 226.18(e) of Reg Z requires a creditor to disclose the "annual percentage rate." 12 CFR 226.18(e).

21. By showing the Finance price as the Cash Price, C's Auto has overstated the Cash Price.

22. By showing the Finance Price as the Amount Financed, C's Auto has overstated the Amount Financed.

23. By showing "zero" as the finance charge, C's Auto has understated the Finance Charge.

24. By showing "zero" as the Annual Percentage Rate, C's Auto has understated the Annual Percentage Rate.

25. By overstating the "Cash Price," C's Auto is in violation of Section 14.B.1 of the MVSFA.

26. By understating the Finance Charge, C's Auto is in violation of Section 14.B.7 of the MVSFA.

27. By overstating the Amount Financed, C's Auto may be in violation of Section 226.14 of Reg Z.

28. By understating the Finance Charge, C's Auto may be in violation of Section 226.18(d) of Reg Z.

29. By understating the Annual Percentage Rate, C's Auto may be in violation of Section 226.18(e) of Reg Z.

30. Section 31.A of the MVSFA provides, in relevant part, that "[a] licensee under this act shall not charge, contract for, collect, or receive from the buyer, directly or indirectly, any further or other amount for costs, charges, examination, appraisal, service, brokerage, commission, expense, interest, discount, fees, fines, penalties or other thing of value in connection with the retail sale of a motor vehicle under an installment sale contract in excess of charges for insurance, other charges necessary or incidental to the sale of the motor vehicle, the finance charges, refinance charges, default charges, recording and satisfaction fees, court costs, attorney's fees and expenses of retaking, repairing and storing a repossessed motor vehicle which are disclosed as required by subsection B of section 14. 69 P.S. § 631.A.

31. Section 31.C of the MVSFA provides, in relevant part, that “[a]n installment sale contract, wherein the seller or any subsequent holder has charged, contracted for, collected, or received from the buyer any prohibited charges whatsoever shall be unenforceable as to such prohibited charges. 69 P.S. § 631.C.

32. Because C’s Auto charged impermissible finance charges, the Contracts are unenforceable as to the prohibited charges that were made.

33. By offering a Financed Sales Price that was different from the Cash Sales Price the Bureau believes that C’s Auto has engaged in unfair, deceptive fraudulent and/or illegal practices pursuant to Section 10.A.14 of the MVSFA. 69 P.S. § 610.A.14.

34. C’s Auto fully cooperated with the Department during the Investigation.

35. Upon meeting with the Department’s investigator, C’s Auto voluntarily performed a self audit from April 1, 2007- October 3, 2008 of all “Financed” sales price installment sale contracts and refunded approximately \$23,000 in fees charged to consumers in excess of the cash price offered (the “Consumer Refunds”).

36. In addition, C’s Auto provided the Department a status report of the Consumer Refunds which included: (i) the manner in which C’s Auto is making or has made the refunds; (ii) the date on which the refund was sent to the consumer; and (iii) evidence that the refund was paid to the consumer i.e. journal entry; copy of an issued check.

Authority of the Department

37. Section 37.1 of the MVSFA provides the Department with the authority to issue orders as may be necessary for the enforcement of the MVSFA. 69 P.S. § 637.1.

38. Section 10.A.14 of the MVSFA provides the Department with the authority to suspend or revoke a license upon thirty (30) days’ written notice to the licensee if the licensee

“has engaged in unfair, deceptive, fraudulent or illegal practices or conduct in connection with any business regulated under [the MVSFSA] . . .” 69 P.S. § 610.A.14.

RELIEF

39. Corrective Action. Upon the Effective Date of this Order, C’s Auto shall cease and desist from:

- a. offering a “financed” sales price that is different from the “cash” sales price on all motor vehicle sales;
- b. misrepresenting the amount financed on motor vehicle installment sale contracts;
- c. misrepresenting the finance charge on motor vehicle installment sale contracts; and
- d. misrepresenting the annual percentage rate on motor vehicle installment sale contracts.

40. Consumer Refunds. If after one hundred and eighty (180) days from the Effective Date of this Order C’s Auto is unable to locate or deliver to consumers the required Consumer Refunds referenced in Paragraphs 35 and 36 after having made diligent and reasonable efforts to do so, C’s Auto will hold and dispose of the funds in accordance with Pennsylvania’s Disposition of Abandoned and Unclaimed Property Law, 72 P.S. §.1301.1 et seq.

FURTHER PROVISIONS

41. Consent. C’s Auto hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Bureau’s order authority under the MVSFSA, and agrees that it understands all of the terms and conditions contained herein. C’s Auto, by voluntarily entering into this Order, waives any right to a hearing or appeal concerning the terms, conditions and/or penalties set forth in this Order.

42. Consumer's Rights. This Order shall not limit or impair a consumer's rights under Section 35 of the MVSFA. 69 P.S. § 635.

43. Publication. The Department will publish this Order pursuant to its authority in Section 302.A.(5) of the Department of Banking Code. 71 P.S. § 733-302.A.(5).

44. Entire Agreement. This Order contains the whole agreement between the parties. There are no other terms, obligations, covenants, representations, statements, conditions, or otherwise, of any kind whatsoever concerning this Order. This Order may be amended in writing by mutual agreement by the Bureau and C's Auto.

45. Binding Nature. The Department, C's Auto, and all officers, owners, directors, employees, heirs and assigns of C's Auto intend to be and are legally bound by the terms of this Order.

46. Counsel. This Order is entered into by the parties upon full opportunity for legal advice from legal counsel.

47. Effectiveness. C's Auto hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order (the "Effective Date").

48. Other Enforcement Action.

(a) The Department reserves all of its rights, duties, and authority to enforce all statutes, rules and regulations under its jurisdiction against C's Auto in the future regarding all matters not resolved by this Order.

(b) C's Auto acknowledges and agrees that this Order is only binding upon the Department and not any other local, state or federal agency, department or office regarding matters within this Order.

49. Authorization. The parties below are authorized to execute this Order and legally bind their respective parties.

50. Counterparts. This Order may be executed in separate counterparts and by facsimile.

51. Titles. The titles used to identify the paragraphs of this document are for convenience of reference only and do not control the interpretation of this document.

WHEREFORE, in consideration of the foregoing, including the recital paragraphs, the Department and C's Auto intending to be legally bound, do hereby execute this Consent Agreement and Order

**FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING, BUREAU OF
COMPLIANCE INVESTIGATION AND LICENSING**

Joseph J. Alai, Administrator
Bureau of Compliance,
Investigation and Licensing
Department of Banking

Date: 11-14-08

FOR C'S AUTO SALES

(Officer Signature)

(Print Officer Name)

Agent
(Title)

Date: 11-14-08

FOR C'S AUTO SALES 2

(Officer Signature)

(Print Officer Name)

Agent
(Title)

Date: 11-14-08

Exhibit A

