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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

PA DEPT OF BANKING

COMMONWEALTH OF PENNSYLVANIA	:	DOCKET No. 11 <u>0141</u> (ENF-CO)
DEPARTMENT OF BANKING, BUREAU	:	
OF COMPLIANCE, INVESTIGATION	:	
AND LICENSING	:	
	:	
v.	:	
	:	
E&S FUNDING, LLC	:	

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking ("Department"), Bureau of Compliance, Investigation and Licensing ("Bureau"), conducted an examination into the business practices of E&S Funding, LLC ("E&S Funding"), and its officers, employees and directors. Based on the results of the examination, the Bureau believes that E&S Funding operated in violation of the Motor Vehicle Sales Finance Act ("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 ("Order").

BACKGROUND

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

3. E&S Funding's principal place of business is located at 6601 Convoy Court, San Diego, California 92111.

4. The Department issued a sales finance company license to E&S Funding on April 16, 2010.

5. The Bureau conducted an off-site examination ("Examination") of E&S Funding from January 19, 2011 through February 9, 2011.

Unlicensed Purchase of Installment Sales

6. The Examination revealed that E&S Funding purchased twenty-one (21) installment sale contracts from licensed installment sellers prior to obtaining its sales finance company license on April 16, 2010.

7. The MVSFA defines installment sale contracts to include "any contract for the retail sale of a motor vehicle, or which has a similar purpose or effect under which part or all of the price is payable in two or more scheduled payments subsequent to the making of such contract." 69 P.S. § 603.10.

8. The MVSFA in part defines a sales finance company as "a person engaged as principal, agent or broker in the business of financing or soliciting the financing of installment sale contracts made between other parties..." 69 P.S. § 603.6.

9. The MVSFA prohibited E&S Funding from engaging in the "business of a sales finance company" in the Commonwealth of Pennsylvania without first obtaining a sales finance company license from the Department. 69 P.S. § 604.2.

10. E&S Funding engaged in the business of a sales finance company in the Commonwealth of Pennsylvania when it purchased twenty-one (21) installment sales contracts from licensed Pennsylvania installment sellers ("Pennsylvania installment contracts").

11. E&S Funding violated the MVSFA because it purchased those Pennsylvania installment contracts without first obtaining a sales finance company license from the Department.

Authority of the Department

12. The MVSFA grants the Department the authority to issue orders as may be necessary for the enforcement of the MVSFA. 69 P.S. § 637.1.

13. Section 610.2 of the MVSFA provides that a license may be revoked or suspended when the licensee violates any provision of the MVSFA. 69 P.S. § 610.2.

14. Section 637.D of the MVSFA provides that “[a]ny person required to be licensed under this act that violates this act or directs a violation or who engages in any activity for which a license could be suspended or revoked under section 10 shall be subject to a civil penalty levied by the department of not more than two thousand dollars (\$2,000) for each offense.” 69 P.S. § 637.D.

VIOLATION

15. E&S Funding is in violation of Section 604.2 of the MVSFA by engaging in the business of a sales finance company without a sales finance company license. 69 P.S. § 604.2.

RELIEF

16. Fine. E&S Funding agrees to pay a fine of two thousand one hundred dollars (\$2,100) which shall be due and payable to the Department within thirty (30) days of the Effective Date of this Order. The fine payment shall be remitted by certified check or money order made payable to the Pennsylvania Department of Banking and sent to the attention of Bureau of Compliance, Investigation and Licensing, Licensing Division, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

FURTHER PROVISIONS

17. Consent. E&S Funding hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Bureau's order authority under the MVSFA and agrees that it understands all of the terms and conditions contained herein. E&S Funding, 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.

18. Publication and Release. E&S Funding consents to the publication and release of this Order.

19. Consumer Rights. This Order shall not limit or impair a consumer's rights under the MVSFA, 69 P.S. § 635.

20. 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 E&S Funding.

21. Binding Nature. The Department, E&S Funding, and all officers, owners, directors, employees, heirs and assigns of E&S Funding intend to be and are legally bound by the terms of this Order.

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

23. Effectiveness. E&S Funding hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order (the "Effective Date").

24. 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 E&S Funding in the future regarding all matters not resolved by this Order.

b. E&S Funding 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.

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

26. Counterparts. This Order may be executed in separate counterparts, by facsimile, and by PDF.

27. Titles. The titles used to identify the paragraphs of this document are for the 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 E&S Funding, LLC 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**

Lucy Cortez
Lucy Cortez, Enforcement Administrator
Bureau of Compliance,
Investigation and Licensing
Department of Banking

Date: 8/15/11

FOR E&S FUNDING, LLC

(Officer Signature)

(Print Officer Name)

(Title)

Date: 8/11/2011