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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

PA DEPT OF BANKING

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

DOCKET No. 11 0034 (ENF-CO)

v.

FACTORY FINANCE COMPANY, INC.

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking, (the "Department"), Bureau of Examinations, has conducted an examination (the "Examination") of Factory Finance Company, Inc. ("Factory Finance"). Based on the results of the Examination, the Bureau of Compliance, Investigation and Licensing (the "Bureau") believes that Factory Finance operated in violation of the Motor Vehicle Sales Finance Act (the "MVSFA"), 69 P.S. § 601 *et seq.*, and the Consumer Discount Company Act ("CDCA") 7 P.S. § 6201 *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 and the CDCA.
2. The Bureau is primarily responsible for administering and enforcing the MVSFA and CDCA for the Department.

3. Factory Finance is an automobile dealership located at 6980 Wertzville Road, Enola, Pennsylvania 17025.

4. Factory Finance was licensed as a Sales Finance Company under the MVSFA which would allow Factory Finance to purchase installment sales contracts from other parties.

5. Factory Finance held Sales Finance Company license number 22161 until October 1, 2010, at which time the license was cancelled for failure to renew.

6. Factory Finance was licensed by the Department of State to sell automobiles on or about January 5, 2010.

7. Factory Finance did not have a license as an installment seller, as required by the MVSFA, to enter into installment sales contracts on its own with consumers during all relevant and materials times, nor did it have a license under the CDCA.

8. On October 4, 2010, the Department's Bureau of Examinations conducted an examination of Factory Finance.

ALLEGED VIOLATIONS

9. Based on the examination, the Bureau alleges that Factory Finance entered into six (6) motor vehicle installment sales contracts after January 5, 2010 without being licensed as an installment seller in violation of the MVSFA.

10. Section 4.1 of the MVSFA provides, in relevant part, that no person shall engage or continue to engage in this Commonwealth either as principal, employe, agent or broker "[i]n the business of an installment seller of motor vehicles under installment sale contracts, except as authorized in this act, under license issued by the department. . ." 69 P.S. § 604.1.

11. Based on the examination, the Bureau further alleges that Factory Finance provided at least two consumers with small loans of \$1803.41 and \$2,208.20, to partially finance vehicles

that had been primarily financed by outside sources, without the benefit of a license under and in violation of the Consumer Discount Company Act.

12. Factory Finance charged interest on these small loans in excess of the legal limit of 6% simple interest per annum allowed without being licensed under and in violation of the CDCA.

13. Section 3.A. of the CDCA states "any person that engages in the business of negotiating or making non-mortgage loans or cash advances of \$25,000 or less and charges fees which aggregate in excess of 6% simple interest per annum in Pennsylvania must be licensed by the Department as a consumer discount company" 7 P.S. § 6203.A

14. Based on the examination, the Bureau alleges that Factory Finance charged consumers documentary fees in excess of the fee amount actually incurred in violation of the MVSFSA.

15. Section 18.A. of the MVSFSA states ". . . the seller of a motor vehicle under an installment sale contract may require the buyer to pay certain other costs incurred in the sale of a motor vehicle under such contract as follows: 1. Fees, payable to the Commonwealth of Pennsylvania, for filing a lien or encumbrance on the certificate of title to a motor vehicle sold under an installment sale contract or collateral security thereto. 2. Fees, payable to a public official, for filing or recording and satisfying or releasing the installment sale contract or instruments securing the buyer's obligation." 69 P.S. § 618.A

16. Section 18.D. of the MVSFSA provides, in relevant part, "the costs described in subsections A and B which are paid or payable by the buyer shall not exceed the amount which the seller expends or intends to expend therefor. Any such costs which the seller has collected from the buyer, or which have been included in the buyer's obligation under the

installment sale contract which are not disbursed by the seller, as contemplated, shall be immediately refunded or credited to the buyer." 69 P.S. § 618.D

AUTHORITY OF THE DEPARTMENT

17. Section 37.1 of 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.

18. Section 37.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.

RELIEF

19. Fine. Within thirty (30) days of the effective date of this Order as defined in paragraph 32 below, Factory Finance shall pay to the Department a fine in the amount of \$2000. Payment shall be remitted by certified check or money order to be made payable to the "Department of Banking" and shall be sent to the attention of the Bureau of Compliance, Investigation and Licensing located at Market Square Plaza, 17th North Second Street, Suite 1300, Harrisburg, PA 17101.

20. Loans. Upon the effective date of the Order, Factory Finance agrees to reduce the interest on the Loans to 0%. Proof of interest reduction on the Loans should be sent to Ryan Walsh, Administrator, Bureau of Compliance, Investigation and Licensing at rywalsh@state.pa.us.

21. Excess Documentary Fees. Upon the effective date of the Order, Factory Finance agrees to refund consumers any excess documentary fees for which Factory Finance was

prohibited from collecting. Proof refunds should be sent to Ryan Walsh, Administrator, Bureau of Compliance, Investigation and Licensing at rywalsh@state.pa.us.

22. Factory Finance shall immediately cease and desist from engaging in the business of an installment seller until properly licensed.

23. Factory Finance shall cease and desist from offering Loans to consumers unless properly licensed as a Consumer Discount Company.

24. Factory Finance shall immediately cease and desist from collecting prohibited fees and agrees to comply with the provisions of the MVSFA.

25. Suspension in Abeyance. Factory Finance agrees that if the Department, after notice and opportunity to be heard, determines that Factory Finance has violated the provisions of this Order, the Bureau shall order a suspension of Factory Finance's license for a period of thirty (30) days.

FURTHER PROVISIONS

26. Consent. Factory Finance 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. Factory Finance, 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.

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

28. 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).

29. 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 Factory Finance.

30. Binding Nature. The Department, Factory Finance, and all officers, owners, directors, employees, heirs and assigns of Factory Finance intend to be and are legally bound by the terms of this Order.

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

32. Effectiveness. Factory Finance hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order.

33. 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 Factory Finance in the future regarding all matters not resolved by this Order.

(b) Factory Finance 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.

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

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

36. 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 Factory Finance 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**

Ryan M. Walsh, Administrator
Bureau of Compliance, Investigation
And Licensing
Department of Banking

Date: February 17, 2011

FOR FACTORY FINANCE COMPANY, INC.

(Officer Signature)

(Printed Officer Name)

President
(Title)

Date: 2/17/11