

DEC 3 2013

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

Bureau of Non-Depository
Compliance and Licensing

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BANKING AND SECURITIES

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

v.

BIG DADDY AUTO SALES

Docket No. 13 0072 (BNK-CAO)

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking and Securities ("Department"), Bureau of Compliance and Licensing ("Bureau"), has reviewed the business practices of Big Daddy Auto Sales ("Big Daddy Auto"), and its officers, employees and directors. Based on the results of its review, the Bureau concludes that Big Daddy Auto operated in violation of the Motor Vehicle Sales Finance Act, 69 P.S. § 601 *et seq.* ("MVSFA"). 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 MVSFA.
2. The Bureau is primarily responsible for administering and enforcing the MVSFA for the Department.
3. Big Daddy Auto is a Pennsylvania Business Corporation located at 1268 Pittsburgh Road, Uniontown, PA 15401.

4. In July of 2013, a Department examiner observed a “buy here/pay here” financing sign at Big Daddy Auto’s Uniontown location.

5. Big Daddy Auto is not licensed by the Department.

6. On August 5, 2013, the Department conducted an examination of Big Daddy Auto based on the advertising.

7. During the course of the examination, the Bureau determined that Big Daddy Auto had entered into 60 installment sale contracts without a license.

VIOLATION

8. An installment seller is “a person engaged in the business of selling, hiring or leasing motor vehicles under installment sale contracts. . . .” 69 P.S. § 603(4).

9. An installment sale contract is

any contract for the retail sale of a motor vehicle . . . under which part or all of the price is payable in two or more scheduled payments subsequent to the making of such contract, or as to which the obligor undertakes to make two or more scheduled payments or deposits that can be used to pay part or all of the purchase price, whether or not the seller has retained a security interest in such motor vehicle or has taken collateral security for the buyer's obligation . . . Provided, however, That the terms shall not include any sale or contract for sale upon an open book account, wherein the seller has not retained or taken any security interest in the motor vehicle sold or any collateral security for the buyer's obligation, and wherein the buyer is not required to pay any sum other than the cash price of the motor vehicle sold in connection with such sale or extension of credit, and wherein the buyer is obligated to pay for the motor vehicle in full within ninety (90) days from the time the sale or contract for sale was made

69 P.S. § 603(10).

10. The MVSFA requires anyone engaging in the business of an installment seller of motor vehicles under installment sale contracts to be licensed by the Department. *See* 69 P.S. § 604.

11. Big Daddy Auto violated the MVSFA because it entered into installment sale contracts without a license.

12. Big Daddy Auto stated that going forward it would obtain an installment seller license before engaging in any financing.

Authority of the Department

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

14. Section 10(A)(2) of the MVSFA states that the Department may revoke or suspend any license where “[t]he licensee has violated any provision of this act.” 69 P.S. § 610(A)(2).

15. 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).

RFV IEF

16. Fine. Big Daddy Auto agrees to pay a fine of six thousand dollars (\$6,000). The fine shall be remitted in six (6) monthly payments of one thousand dollars (\$1,000) per month. The first payment is due within thirty (30) days of the Effective Date of this Order, with the remaining monthly payments due accordingly. The fine payment shall be remitted by certified

check or money order made payable to the "Department of Banking and Securities" and sent to the attention of: Bureau of Compliance and Licensing, 17 N. 2nd Street, Suite 1300, Harrisburg, PA 17101.

17. Corrective Measures. Upon the Effective Date of the Order, Big Daddy Auto shall not engage in the business of installment sales unless it obtains an installment seller license.

FURTHER PROVISIONS

18. Consent. Big Daddy 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. Big Daddy 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.

19. Publication and Release. Big Daddy Auto consents to the publication and release of this Order.

20. Consumer Rights. This Order shall not limit or impair a consumer's rights under the MVSFSA. *See* 69 P.S. § 635.

21. 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 Big Daddy Auto.

22. Binding Nature. The Department³⁰, Big Daddy Auto, and all officers, owners, directors, employees, heirs and assigns of Big Daddy Auto intend to be and are legally bound by the terms of this Order.

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

24. Effectiveness. Big Daddy Auto hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order (the "Effective Date").

25. 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 Big Daddy Auto in the future regarding all matters not resolved by this Order.

b. Big Daddy 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.

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

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

28. 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 of Banking and Securities and Big Daddy Auto Sales intending to be legally bound do hereby execute this Consent Agreement and Order.

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

John Talalai, Administrator
Bureau of Compliance and Licensing
Department of Banking and Securities

Date: 12-3-2013

FOR BIG DADDY AUTO SALES

(Officer Signature)



(Print Officer Name)

(Title)

Date: 10/31/13