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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND SECURITIES

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PA DEPARTMENT OF  
BANKING AND SECURITIES

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

v.

Docket No. 13 0047 (BNK-CAO)

UPSTATE RECOVERY, LLC

**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 Upstate Recovery, LLC ("Upstate Recovery"), and its officers, employees and directors. Based on the results of its review, the Bureau concludes that Upstate Recovery 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. Upstate Recovery's principal place of business is located at 3220 Lawndale Street, Endwell, NY 13760-3524.

### Unlicensed Period

4. The Department licensed Upstate Recovery as a collector-repossessor, license no. 15845, until September 30, 2012.

5. The MVSFA requires collector-repossessor companies to submit a yearly renewal license application to the Department at least fifteen (15) days prior to October 1 of each year. *See* 69 P.S. § 605.E.

6. Upstate Recovery failed to timely submit a license renewal application for license no. 15845 and the license expired on October 1, 2012. *See* 69 P.S. §§ 605, 607D.

7. Shortly after, the October 1 2012 renewal deadline, Upstate Recovery discovered that it no longer possessed a collector-repossessor license.

8. Immediately after this discovery, Upstate Recovery submitted a new application ("New Application") for a collector-repossessor license for which a new license, no. 38979, was issued effective October 16, 2012.

9. Based upon the contents of the New Application and subsequent discussions between Upstate Recovery and the Bureau, it was determined that Upstate Recovery was operating two offices in Pennsylvania which were unlicensed since January and April of 2010.

10. The offices in question are located at 5069 State Route 92 South, Tunkhannock, PA 18657 and 3364 Gun Club Road, Nazareth, PA 18064.

11. On December 6, 2012, Upstate Recovery applied for collector-repossessor licenses for the Tunkhannock and Nazareth locations.

12. The license applications for the Tunkhannock and Nazareth locations were still pending as of May 24, 2013.

13. Between January 2010 and the Effective Date of this Order, as defined below, Upstate Recovery engaged in business activity for which the MVSFA requires a license. *See* 69 P.S. § 604.

#### Authority of the Department

14. 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.

15. 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).

16. 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).

#### **VIOLATION**

17. Upstate Recovery violated Section 4 of the MVSFA by engaging in the business of a collector-repossessor at two unlicensed locations. *See* 69 P.S. § 604.

18. This Order encompasses all unlicensed activity engaged in by Upstate Recovery up to and including the Effective Date of this Order as defined in paragraph 27.

#### **RELIEF**

19. Fine. Upstate Recovery agrees to pay a fine of twelve thousand dollars (\$12,000). The fine shall be remitted in eight (8) monthly payments of one thousand five hundred dollars (\$1,500) per month. The first payment is due within thirty (30) days of the Effective Date as

defined below in paragraph 27 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.

20. Corrective Measures. Upon the Effective Date of the Order, Upstate Recovery shall not engage in any business covered under the MVSFA without a license.

#### FURTHER PROVISIONS

21. Consent. Upstate Recovery 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. Upstate Recovery, 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.

22. Publication and Release. The Department reserves the right to publish this Order pursuant to its authority in Section 302.A(5) of the Department of Banking and Securities Code. *See* 71 P.S. § 733-302.A(5).

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

24. 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 Upstate Recovery.

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

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

27. Effectiveness. Upstate Recovery hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order (the "Effective Date").

28. 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 Upstate Recovery in the future regarding all matters not resolved by this Order.

b. Upstate Recovery 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.

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

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

31. 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 Upstate Recovery, LLC 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**

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

Date: 7-16-2013

**FOR UPSTATE RECOVERY, LLC**

\_\_\_\_\_  
(Officer Signature)

William Stewart  
(Print Officer Name)

Owner  
(Title)

Date: 6-26-12