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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, COMPLIANCE OFFICE

v.

Docket No. 15 0051 (BNK-CAO)

JM AUTO GROUP, INC.

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking and Securities ("Department"), Compliance Office ("Office"), conducted an examination of the business practices of JM Auto Group, Inc. ("JMAG"), and its officers, employees and directors on April 15, 2015. Based on the results of the examination, the Office concludes that JMAG operated in violation of the Department's motor vehicle sales finance statutes. 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 was the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the former Motor Vehicle Sales Finance Act, 69 P.S. § 601 *et seq.* ("MVSFA").

2. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the Consumer Credit Code, 12 Pa. C.S. § 6101 *et seq.* ("CCC").

3. The CCC replaced the Motor Vehicle Sales Finance Act ("MVSFA", 69 P.S. § 601 *et seq.*) effective as of November 27, 2014.

4. The Office was primarily responsible for administering and enforcing the MVSFSA for the Department.

5. The Office is primarily responsible for administering and enforcing the CCC for the Department.

6. JMAG is a Pennsylvania business corporation located at 800 S. 25th Street, Easton, PA 18042-5306.

Late Charges

7. On April 15, 2015, the Bureau conducted a routine examination of JMAG at its principal location.

8. The Department reviewed contracts executed by JMAG prior to November 27, 2014, therefore the law applicable at the time was the MVSFSA.

9. The former MVSFSA and the current CCC require an installment sale contract to "contain all of agreements between the buyer and the seller relating to the installment sale of the motor vehicle." 69 P.S. § 613.A (12 Pa. C.S. § 6221(a)(2),(3)).

10. The former MVSFSA and the current CCC permit an installment seller to collect a late charge in addition to finance charges after the payment is more than ten (10) days late. 69 P.S. 621 (12 Pa.C.S. § 6245(b)(1)).

11. The late charge may not exceed the rate of two percent (2%) per month on the amount of the payment in arrears. 69 P.S. 621 (12 Pa.C.S. § 6245(b)(1)).

12. The examination revealed that JMAG's contracts include an impermissible calculation of the possible late fee because the language states "[i]f an installment is more than 10 days late, you will be charged \$100.00 or 5.00% of the late payment. Whichever is Greater."

13. The examination further revealed that this same language appeared on all contracts, regardless of the monthly payment.

14. Because the late charges terms are prohibited by the MVSFSA and CCC, JMAG's contracts containing those prohibited charges do not contain all of the agreements between the buyer and the installment seller and those charges are unenforceable by JMAG. 69 P.S. §§ 621 and 631 (6221(a)(2), (3) and 6245(b)(1)).

Authority of the Department

15. The MVSFSA grants the Department the authority to issue orders as may be necessary for the enforcement of the MVSFSA. 69 P.S. § 637.1, (12 Pa. C.S. § 6203(a)(5)).

16. Section 637(d) of the MVSFSA provides that "[a]ny person required to be licensed under this act that violates this act...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), (12 Pa. C.S. § 6274)).

VIOLATION

17. JMAG violated Sections 613.A., B. and 621 of the MVSFSA, now Sections 6221(a)(2), (3) and 6223 of the CCC when it included impermissible and unenforceable late charge language in its installment sale contracts. 69 P.S. § 613.A. and 621, (12 Pa. C.S. § 6224)

RELIEF

18. Fine. JMAG agrees to pay a fine of \$500. The fine will be due within thirty (30) days of the Effective Date of Order as defined in paragraph 25 below. All fine payments shall be remitted by certified check or money order payable to the "Department of Banking and Securities" and sent to the attention of Compliance Office, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

19. Corrective Measures. Upon the Effective Date of the Order, JMAG shall:

a. Separate the costs payable by buyer including, but not limited to sales tax, title fee, lien fee, registration fee or transfer fee on all installment contracts.

b. Provide buyers with a separate disclosure for the purchase of ancillary products including, but not limited to a service contract, warranty and/or GAP insurance.

- c. Ensure that the buyer dates the installment sales contract when the installment sales contract is being signed by the buyer.
- d. Ensure that the allowable late charges that may be collected under the CCC are reflected on all installment sales contracts.
- e. Ensure that a notice of repossession is delivered in person or sent by registered or certified mail to the last known address of the buyer after repossession of the car by the company.
- f. Ensure that the original sales contract is returned to the consumer marked "paid in full" once the installment sale loan is paid-off.
- g. Discontinue use of the company's "Repossession Waiver" and adhere to provisions outlined in the CCC to address repossession and reinstatement of contract after repossession.
- h. Develop and maintain a written anti-identity theft protection program in accordance with the Federal Trade Commission's Fair and Accurate Credit Transaction's Act to detect, prevent and mitigate identity theft in connection with opening new and existing accounts.
- i. Develop and maintain a written information security plan that describes how the company protects consumer information records in accordance with the Gramm-Leach-Bliley Act.
- j. Document and complete Office of Foreign Assets Control's ("OFAC") screening on buyers to ensure that no transactions are being conducted for designated persons and entities identified on OFAC's Specially Designated Nationals list.

FURTHER PROVISIONS

20. Consent. JMAG hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Compliance Office's order authority under the MVSFA, now CCC, and agrees that it understands all of the terms and conditions contained herein. JMAG, 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.

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

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

23. 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 Compliance Office and JMAG.

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

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

26. Effectiveness. JMAG hereby stipulates and agrees that the Order shall become effective on the date the Compliance Office executes the Order (the "Effective Date").

27. 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 JMAG in the future regarding all matters not resolved by this Order.

b. JMAG 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.

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

29. Counterparts. This Order may be executed in separate counterparts, by facsimile, or by PDF.

30. 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 JM Auto Group, Inc. intending to be legally bound do hereby execute this Consent Agreement and Order.

**FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
BANKING AND SECURITIES,
COMPLIANCE OFFICE**

FOR JM AUTO GROUP, INC.

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Redacted

Ryan Walsh, Director
Compliance Office
Department of Banking and Securities

(Officer Signature)

Joseph Melhem
(Print Officer Name)

Date: December 16, 2015

Secretary
(Title)

Date: 12/10/15