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COMMONWEALTH OF PENNSYLVANIA 2016 SEP -1 PM 12: 58
DEPARTMENT OF BANKING AND SECURITIES

PA DEPARTMENT OF
BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND
SECURITIES, COMPLIANCE OFFICE

v.

Docket No. 16 0049 (BNK-CAO)

FITZGERALD MOTORS, INC.

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking and Securities ("Department"), Compliance Office, has reviewed the business practices of Fitzgerald Motors, Inc. ("Fitzgerald Motors"), and its officers, employees and directors. Based on the results of its review, the Compliance Office concludes that Fitzgerald Motors operated in violation of the Consumer Credit Code as related to motor vehicle sales finance, 12 Pa.C.S. § 6101 *et seq.* ("CCC"). The parties to the above-captioned matter, in lieu of litigation 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 CCC.
2. The Compliance Office is primarily responsible for administering and enforcing the CCC for the Department.
3. Fitzgerald Motors' principal place of business is located at 1436 Lincoln Way E Chambersburg, PA 17202-3300.

Unlicensed Activity

4. Anyone engaging in the business of an installment seller of motor vehicles must obtain a license issued from the Department. 12 Pa. C.S. § 6211(a)(1).

5. Installment sellers must submit a yearly renewal license application to the Department at least 15 days prior to October 1 of each year. 12 Pa. C.S. § 6216(2).

6. The Department licensed Fitzgerald Motors as an installment seller, license no. 1244 through September 30, 2015.

7. Fitzgerald Motors failed to timely submit a license renewal application for license no. 1244 by the October 1, 2015 deadline.

8. The Department canceled license no. 1244 effective on October 1, 2015. 12 Pa. C.S. § 6211(b)(2).

9. Fitzgerald, upon realizing that its license had not been renewed and was cancelled, filed an application for licensure.

10. Misunderstanding question 8 of the Installment Seller License, Fitzgerald incorrectly answered "no" to the question, "Has the applicant as shown in question one entered into any installment sale contracts prior to applying for an Installment Seller License."

11. The Department approved Fitzgerald Motors new application and issued installment seller license no. 53190 effective October 22, 2015.

12. During an examination of Fitzgerald Motors, the Department discovered that Fitzgerald Motors entered into 67 installment sale contracts between October 1, 2015 and October 22, 2015.

13. Fitzgerald Motors was not licensed to enter into installment contracts when it entered into the 67 installment contracts after the cancellation of license no. 1244 and before the issuance of license no. 53190.

14. Fitzgerald Motors violated the CCC by entering into installment sales contracts while it was unlicensed.

Authority of the Department

15. The Department has the authority to issue orders as may be necessary for the enforcement of the CCC. 12 Pa. C.S. § 6203(a)(5).

16. The Department may revoke or suspend any license where the licensee violated a provision of this chapter. 12 Pa. C.S. § 6218(a)(2).

17. "A person required to be licensed under [the CCC] that violates this chapter, directs a violation of this chapter or engages in an activity for which a license could be suspended or revoked under section 6218 (relating to revocation or suspension of license) shall be subject to a civil penalty levied by the department of not more than \$2,000 for each offense." 12 Pa. C.S. § 6274.

RELIEF

18. Fine. Fitzgerald Motors agrees to pay a fine of \$7,700. The fine will be due within 30 days of the Effective Date of the Order as defined below. 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: Department of Banking and Securities, Compliance Office, 17 N. 2nd Street, Suite 1300, Harrisburg, PA 17101-2290.

19. Corrective Action. Upon the Effective Date of this Order, Fitzgerald Motors shall not engage in the business of an installment seller in Pennsylvania unless it is licensed.

FURTHER PROVISIONS

20. Consent. Fitzgerald Motors hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Bureau's order authority under the CCC and agrees that it understands all of the terms and conditions contained herein. Fitzgerald Motors, 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. Consumer's Rights. This Order shall not limit or impair a consumer's rights under CCC. 12 Pa. C.S. § 6236.

22. 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).

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 Fitzgerald Motors.

24. Binding Nature. The Department, Fitzgerald Motors, and all officers, owners, directors, employees, heirs and assigns of Fitzgerald Motors 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. Fitzgerald Motors hereby stipulates and agrees that the Order shall become effective on the date that the Compliance Office executes this Order ("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 Fitzgerald Motors in the future regarding all matters not resolved by this Order.

b. Fitzgerald Motors 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 and by facsimile or electronic mail in portable document format "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, Compliance Office and Fitzgerald Motors, 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 FITZGERALD MOTORS, INC.

Redacted _____

Redacted _____

John Talalai, Administrator
Compliance Office
Department of Banking and Securities

(Officer Signature)

JOHN J. FITZGERALD III
(Print Officer Name)

Date: 9/1/2016

President
(Title)

Date: AUGUST 30th 2016

