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2008 JAN 22 PM 2:23

PA DEPT OF BANKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING,
BUREAU OF SUPERVISION AND
ENFORCEMENT

Docket No. 08-0007 (CO)

v.

SPANKEY'S AUTO SALES, INC.

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking, (the "Department"), Bureau of Supervision and Enforcement, (the "Bureau") has reviewed the business practices of Spankey's Auto Sales, Inc. (Spankey's"), and its officers, employees and directors. Based on the results of its review, the Bureau alleges that Spankey's operated in violation of the Motor Vehicle Sales Finance Act (the "MVSFA"), 69 P.S. § 601 et seq. 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 (the "Order").

BACKGROUND

And now comes the Department, through the Bureau, having caused an investigation to be made into the business practices of Spankey's and alleges and sets forth the following:

1. The Commonwealth of Pennsylvania, Department of Banking, (the "Department") is the Pennsylvania state governmental administrative agency authorized and empowered to administer and enforce the MVSFA.

2. The Bureau is primarily responsible for administering and enforcing the MVSFSA for the Department.

3. Spankey's Auto Sales, Inc. is a Pennsylvania corporation holding Installment Seller licenses under the MVSFSA with the following locations and installment seller license numbers in Pennsylvania:

- a. 520 North Enola Road, Enola, license no. 0926;
- b. 701 E. Locust Street, Mechanicsburg, license no. 0928; and
- c. 532 West 4th Street, Lewistown, license no. 6714 (the "Lewistown Spankey's").

4. The President of Spankey's Auto Sales, Inc. is Donald Leggett.

5. Mr. Leggett also owns two other installment sellers:

- a. Leggett Motors Incorporated d/b/a Spankey's The Used Car Giant, 1702 Harrisburg Pike, Carlisle, PA 17013, license no. 10128; and
- b. Spankey's Auto Sales, Inc. d/b/a Spankey's Auto Sales East, 3315 Walnut Street, Harrisburg, license no. 17844.

6. All five locations will be collectively referred to as "Spankey's."

7. The Department had learned that between February 2007 and May 2007 the Lewistown Spankey's entered into four (4) installment sale contracts (the "Consumer Contracts") with four (4) consumers, respectively (the "Consumers").

8. The Lewistown Spankey's attempted to assign the Consumer Contracts to various sales finance companies (the "Purchasers") that all declined to purchase the Consumer Contracts.

9. The Lewistown Spankey's then attempted to invalidate the sale of the motor vehicles in the Consumer Contracts and instructed the consumers to either (a) exchange the

motor vehicle for a cheaper one for which the Consumers could qualify for the loan amount; (b) put more money down so the Consumers could qualify for the original loan amount; or (c) a combination of (a) and (b) (the "Acceleration and Repossession Methods").

10. Purchasers declined to purchase the Consumer Contracts because of false information placed on the financing applications by a former employee at the Lewistown Spankey's.

11. The acting sales manager of the Lewistown Spankey's admitted to a Department investigator that the former employee had altered the Consumers' information so that they would appear to qualify for financing from the Purchasers.

12. As the Consumer Contracts had been signed and finalized, the Consumer Contracts were valid and the motor vehicle sales were final.

13. An investigator of the Department requested from the acting sales manager of the Lewistown Spankey's information on all consumers whose installment sale contracts the Lewistown Spankey's had attempted to invalidate because the installment sale contract had not been purchased by a sales finance company.

14. The acting sales manager of the Lewistown Spankey's provided documentation for three of the four Consumer Contracts.

15. By not providing the investigator the name and documentary evidence of the fourth Consumer Contract, the acting sales manager of the Lewistown Spankey's did not give complete and accurate information to the Department investigator.

16. Once an installment sales contract has been executed consistent with Section 13 of the MVSA, 69 P.S. § 613, the installment sales contract is valid and cannot be accelerated or the subject motor vehicle be repossessed absent default or breach of the contract on the part of

the buyer pursuant to Sections 14.E, 15.B and 23 of the MVSFSA, 69 P.S. §§ 614.E, 615.B, and 623.

17. Section 14.E of the MVSFSA, 69 P.S. § 614.E, provides that “[e]very installment sale contract shall contain specific provisions as to the holder’s right to accelerate the maturity of the contract upon *default or other breach of contract...*” (emphasis added).

18. Section 15.B of the MVSFSA, 69 P.S. § 615.B, provides that “[n]o installment sale contract shall contain any acceleration clause under which any part or all of the time balance represented by payments, not yet matured, may be declared immediately payable because the seller or holder deems himself to be insecure. This provision shall not affect an acceleration clause authorizing the seller or holder to declare the entire time balance due and payable in case of default in the payment of one or more installment payments, or in event of buyer's failure to pay taxes levied against the vehicle, or in event of buyer's failure to furnish proof of payment of taxes levied against the vehicle, or use of the motor vehicle for illegal purposes.”

19. Section 23.A of the MVSFSA, 69 P.S. § 623.A, provides, in relevant part, that “[w]hen the buyer shall be in default in the payment of any amount due under a motor vehicle installment sale contract or when the buyer has committed any other breach of the contract, which is by the contract specifically made a ground for retaking the motor vehicle, the seller or any holder, who has lawfully acquired such contract, may retake possession thereof.”

20. The maturity of an installment sale contract may only be accelerated when the buyer is in default.

21. The Department is not aware that the Consumers were in default of their payments under the Consumer Contracts and/or violated any other provisions of the Consumer Contracts at the time of the attempted invalidation of the Consumer Contracts.

22. By using the Acceleration and Repossession Methods, the Lewistown Spankey's is attempting to unlawfully accelerate installment sale contracts or repossess motor vehicles.

23. Section 37.1 of the MVSFA, 69 P.S. § 637.1, grants the Department the authority to issue orders as necessary or appropriate for the enforcement of the MVSFA.

24. On or around July 24, 2007, the Bureau filed a Cease and Desist Order (the "July C&D") against Spankey's.

25. On or around August 2, 2007, Spankey's appealed the July C&D.

26. Spankey's provided information on all four Consumers named in the C&D as well as two additional consumers that may have been in similar situations.

27. The Bureau subsequently learned of six (6) additional consumers that potentially may have had their installment contracts accelerated or their motor vehicles repossessed.

28. Spankey's provided information relating to those contracts and the status of the installment contracts.

29. This Order is being entered in settlement of the July C&D.

VIOLATIONS

30. The Department alleges Spankey's is in violation of Section 15.B and Section 23.A of the MVSFA by attempting to unlawfully accelerate installment sale contracts or repossess motor vehicles when the Consumers were not in default of their payments or otherwise in breach of the Consumer Contracts. 69 P.S. § 615.B, 623.A.

RELIEF

31. Corrective Action.

a. Spankey's, without admitting or denying the Department's allegations and violations set forth, shall cease and desist from attempting to invalidate or accelerate any

installment sale contracts which Spankey's has entered into with any and all buyers unless the buyer is in default of the contract for one of the reasons listed in Section 15.B of the MVSFA.

b. Spankey's shall cease and desist from requiring or requesting that any buyer return a motor vehicle or repossess a motor vehicle which the buyer has purchased under an installment sale contract unless the buyer is in default of the contract for one of the reasons listed in Section 15.B or Section 23.A of the MVSFA. This provision shall not apply in the case of a vehicle recall or the consumer's dissatisfaction with a purchased motor vehicle where Spankey's is working to resolve the consumer's issues.

FURTHER PROVISIONS

32. Consent. Spankey's 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. Spankey's, 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.

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

34. Publication and Release. Spankey's consents to the publication and release of this Order.

35. 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 Spankey's.

36. Binding Nature. The Bureau, Spankey's, and all officers, owners, directors, employees, heirs and assigns of Spankey's intend to be and are legally bound by the terms of this Order.

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

38. Effectiveness. Spankey's hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order (the "Effective Date").

39. 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 Spankey's in the future regarding all matters not resolved by this Order.

(b) Spankey's 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.

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

41. Counterparts. This Order may be executed in separate counterparts.

42. 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 Bureau and Spankey's intending to be legally bound, do hereby execute this Consent Agreement and Order.

**FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING
BUREAU OF SUPERVISION
AND ENFORCEMENT**

Signature
Bureau of Supervision and
Enforcement
Department of Banking

Date: January 22, 2008

FOR SPANKEY'S AUTO SALES, INC.

President
(Title)

Date: 1/14/08