

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING

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COMMONWEALTH OF PENNSYLVANIA	:	DOCKET No. 08 <u>0250</u> PA DEPT OF BANKING
DEPARTMENT OF BANKING, BUREAU OF	:	(ENF-CO)
COMPLIANCE, INVESTIGATION AND	:	
LICENSING	:	
	:	
	:	
v.	:	
	:	
M. SWISHER & SONS INC. d/b/a	:	
M. SWISHER & SONS AUTO SALES	:	

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**CONSENT AGREEMENT AND ORDER**

The Commonwealth of Pennsylvania, acting through the Department of Banking, (the "Department"), Bureau of Compliance, Investigation and Licensing, (the "Bureau") has reviewed the business practices of M. Swisher & Sons Inc. d/b/a M. Swisher & Sons Auto Sales ("Swisher Auto"), and its officers, employees and directors. Based on the results of its review, the Bureau believes that Swisher Auto 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, 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 (the "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. Swisher Auto was licensed as an Installment Seller, License No. 8297 (the "License"), under the MVSFA.

4. The License expired on October 1, 2006.

5. Swisher Auto was re-licensed as an Installment Seller, License No. 19905, under the MVSFA on July 24, 2008.

6. Between October 1, 2006, and July 24, 2008, Swisher Auto entered into nine (9) motor vehicle sales finance contracts ("Contracts").

7. By entering into the Contracts, Swisher Auto was engaging in the business of an installment seller without being licensed as an installment seller.

8. Section 4.1 of the MVSFA provides that "no person shall engage or continue to engage in this Commonwealth either as principal, employe, agent or broker; [i]n the business of an installment seller of motor vehicles under installment sale contracts, except as authorized in this act, under license issued by the department. . ." 69 P.S. § 604.1.

9. Section 37.1 of the MVSFA grants the Department the authority to issue orders as may be necessary for the enforcement of the MVSFA. 69 P.S. § 637.1.

10. 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**

11. Swisher Auto is in violation of Section 4.1 of the MVSFA by engaging in the business of an installment seller when it was not licensed. 69 P.S. § 604.1.

## RELIEF

12. Fine. Within thirty (30) days of the Effective Date of this Order, Swisher Auto shall pay to the Department a fine in the amount of \$900. The fine shall be remitted by a certified check or money order made payable to the Department of Banking and sent to the following address; Compliance Division, 17 North Second Street, Suite 1300, Harrisburg, PA 17101.

## FURTHER PROVISIONS

13. Consent. Swisher Auto 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. Swisher 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.

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

15. Publication and Release. Swisher Auto consents to the publication and release of this Order.

16. 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 Swisher Auto.

17. Binding Nature. The Bureau, Swisher Auto, and all officers, owners, directors, employees, heirs and assigns of Swisher Auto intend to be and are legally bound by the terms of this Order.

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

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

20. 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 Swisher Auto in the future regarding all matters not resolved by this Order.

(b) Swisher 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.

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

22. Counterparts. This Order may be executed in separate counterparts and by facsimile.

23. 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 Swisher Auto intending to be legally bound, do hereby execute this Consent Agreement and Order.

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

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Ryan M. Walsh, Administrator  
Bureau of Compliance, Investigation  
And Licensing  
Department of Banking

Date: September 19, 2008

**FOR M. SWISHER & SONS INC d/b/a M. SWISHER & SONS AUTO SALES**

✓ (Officer Signature)

(Printed Officer Name)

Pres.  
\_\_\_\_\_  
(Title)

Date: 9-4-08