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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

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COMMONWEALTH OF PENNSYLVANIA	:	PA DEPT OF BANKING
DEPARTMENT OF BANKING, BUREAU OF	:	DOCKET No. 090033(ENF-OSC)
COMPLIANCE, INVESTIGATION AND	:	
LICENSING,	:	
	:	
v.	:	
	:	
DEAN, INC. D/B/A DEAN HONDA.	:	

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 Dean, Inc. d/b/a Dean Honda ("Dean Honda"), and its officers, employees and directors. Based on the results of its review, the Bureau alleges that Dean Honda 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 licensing and sales activities of Dean Honda and alleges and sets forth the following:

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. Dean Honda is a Pennsylvania Business Corporation located at 2918 Lebanon Church Road, West Mifflin, PA 15122-2670.

4. Wayne J. Sherman is the President and 100% owner of Dean Honda.

Licenses

5. Dean Honda was originally licensed as an installment seller, license no. 1592, pursuant to the MVSFSA, on November 21, 1988.

6. Dean Honda failed to renew license no. 1592 by September 30, 2003, and thus license no. 1592 was cancelled, effective October 1, 2003.

7. Dean Honda submitted an application for licensure and was re-licensed as an installment seller, license no. 11497, pursuant to the MVSFSA effective November 17, 2003.

8. Dean Honda failed to renew license no. 11497 by September 30, 2006, thus license no. 11497 was cancelled, effective October 1, 2006.

9. Dean Honda submitted an application for licensure as an installment seller on October 19, 2006 (the "2006 Application").

10. Question number 8 of the 2006 Application asked "Has the applicant in question number one entered into any installment sale contracts prior to applying for an installment seller license?"

11. Dean Honda responded "No" to Question 8.

12. The 2006 Application was signed by President Wayne J. Sherman and Secretary Margaret V. Miller swearing in front of a notary that the statements in the Application were true and correct.

13. Dean Honda was re-licensed as an installment seller, license no. 17050, pursuant to the MVSFSA, effective November 14, 2006.

14. Dean Honda failed to renew license no. 17050 by September 30, 2007, thus license no. 17050 was cancelled, effective October 1, 2007.

15. Dean Honda submitted an application for licensure as an installment seller on September 26, 2008 (the "2008 Application").

16. Dean Honda was re-licensed as an installment seller, license no. 20049, under the MVSFSA on October 1, 2008.

Unlicensed Activity

17. On the 2008 Application, Dean Honda answered "Yes" to Question number 8 which stated "Has the applicant as shown in question number one entered into any installment sale contracts prior to applying for an installment seller license."

18. It was disclosed that, between October 1, 2007, and September 30, 2008, Dean Honda entered into five hundred seventy-four (574) motor vehicle installment sale contracts (the "Contracts").

19. By entering into the Contracts, Dean Honda was engaging in the business of an installment seller without being licensed as an installment seller.

20. During discussions regarding the Contracts, Dean Honda disclosed to the Department that it had in fact, entered into installment sale contracts from the time license no. 11497 was cancelled (October 1, 2006) until the time Dean Honda submitted the 2006 Application (October 19, 2006) (the "Additional Contracts").

21. Dean Honda entered into fifteen (15) installment sale contracts from October 1, 2006 through October 19, 2006.

22. By entering into the Additional Contracts, Dean Honda was engaging in the business of an installment seller without being licensed as an installment seller.

23. Dean Honda contends that the failure to renew the licenses was due to administrative oversight and was unintentional.

Material Misstatement

24. As stated in Paragraph 20 above, Dean Honda disclosed it had entered into installment sale contracts from the time license no. 11497 was cancelled (October 1, 2006) until the time of the submission of the 2006 Application (October 19, 2006).

25. Dean Honda responded "No" to question 8 regarding installment sale activities prior to becoming licensed.

26. By responding "No" to question number 8 on the 2006 Application the Bureau alleges that Dean Honda provided a material misstatement on an application for licensure with the Department.

27. Dean Honda contends that the alleged misstatement on the 2006 Application was unintentional and was not meant to mislead the Department.

28. Dean Honda did disclose the Contracts entered into between October 1, 2007 and September 30, 2008 prior to licensure on the 2008 Application.

Applicable Law

29. Section 4.1 of the MVSFA provides, in relevant part, 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.

30. Section 7.D of the MVSFA provides, in relevant part, that "[a]ll licenses under this act shall expire on October first, annually. . ." 69 P.S. § 607.D.

31. Section 10.A.1 of the MVSFA provides, in relevant part that the Department may revoke or suspend any license upon thirty (30) days' written notice to the licensee if the Department finds that "[t]he licensee has made any material misstatement in the application for license." 69 P.S. § 610.A.1.

32. Section 10.A.2 of the MVSFA provides, in relevant part that the Department may revoke or suspend any license upon thirty (30) days' written notice to the licensee forwarded if the Department finds that "[t]he licensee has violated any provision of this act." 69 P.S. § 610.A.2.

33. 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.

34. 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.

Administrative Action

35. This Order is being entered into in resolution of the Order To Show Cause, docket no. 090033 (ENF-OSC) issued by the Bureau on February 17, 2009 which was timely appealed by Dean Honda.

36. Dean Honda, without admitting or denying the Bureau's allegations and violations set forth herein, hereby consents to the entry of this Order in settlement of Order To Show Cause docket no. 090033.

VIOLATIONS

37. The Department alleges Dean Honda is in violation of Section 4.1 of the MVSFA by engaging in the business of an installment seller when Dean Honda was not licensed to do so.

38. The Department alleges Dean Honda made misstatements on an application to the Department when Dean Honda did not disclose that it had entered into installment sale contracts when Dean Honda's license lapsed.

RELIEF

39. Fine. Dean Honda shall pay to the Department a fine in the amount of fifty thousand dollars (\$50,000) payable in eleven (11) payments of \$4,166 and one (1) final payment of \$4,174. The first payment shall be due and payable within thirty (30) days of the Effective Date of this Order and additional payments shall be due every thirty (30) days thereafter until the fine is paid in full. Payments shall be remitted by business checks, certified checks or money orders made payable to the Department of Banking, and will be sent to the Attention of: Non-Depository Institutions, Bureau of Compliance, Investigation and Licensing, 17 North Second Street, Suite 1300, Harrisburg, PA 17101.

37. Corrective Measures. Upon the Effective Date of this Order, Dean Honda agrees to:

- a. provide accurate information on all future submissions to the Department;
and
- b. comply with all licensing and renewal requirements under the MVSFA.

38. Suspension in Abeyance. Dean Honda agrees that if the Department, after notice and opportunity to be heard, determines that Dean Honda has violated the provisions of this Order, the Bureau shall order a suspension of Dean Honda's license for a period of thirty (30) days. The Suspension in Abeyance clause shall remain in effect under the current ownership

structure of Dean Honda. If there is a majority change in the ownership of Dean Honda, Dean Honda may submit a written request to the Department to extinguish the Suspension in Abeyance clause in the Order and establish an expiration date after which the suspension can no longer be imposed. The Department shall not unreasonably withhold approval of a request to extinguish the suspension.

FURTHER PROVISIONS

39. Consent. Dean Honda hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Bureau's order authority under the MVSFSA, and agrees that it understands all of the terms and conditions contained herein. Dean Honda, 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.

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

41. Publication and Release. 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).

42. 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 Dean Honda.

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

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

45. Effectiveness. Dean Honda hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order (the "Effective Date").

46. 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 Dean Honda in the future regarding all matters not resolved by this Order.

(b) Dean Honda 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.

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

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

49. 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 Department and Dean Honda 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**

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

Date: July 17, 2009

FOR DEAN, INC. D/B/A DEAN HONDA

(Officer Signature)

(Printed Officer Name)

PRES.
(Title)

Date: 7-14-09