

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING, BUREAU
OF COMPLIANCE, INVESTIGATION
AND LICENSING

: DOCKET No. 10

0259 (ENF-CO) PA DEPT OF BANKING

v.

BARRY MILLER QUALITY CARS, LLC

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking ("Department"), Bureau of Compliance, Investigation and Licensing ("Bureau"), has reviewed the business practices of Barry Miller Quality Cars ("Barry Miller Cars"), and its officers, employees and directors. Based on the results of its review, the Bureau believes that Barry Miller Cars operated in violation of 69 P.S. § 601 et. seq., the Motor Vehicle Sales Finance Act. 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 is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the Motor Vehicle Sales Finance Act ("MVSFA").

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

3. The MVSFSA requires anyone engaging in the business of an installment seller of motor vehicles under installment sales contracts to be licensed by the Department. 69 P.S. § 604.

4. The Department licensed Barry Miller Cars as an Installment Seller, license no. 6423 through September 30, 2009.

5. The MVFSA requires installment sellers to submit a yearly renewal license application to the Department at least fifteen (15) days prior to October 1 of each year. 69 P.S. § 605.

6. Barry Miller Cars failed to timely submit a license renewal application for license no. 6423 and the Department cancelled License No. 6423 on October 1, 2009. 69 P.S. § 605.

7. On September 28, 2010, Barry Miller Cars submitted a new application for an Installment Seller license, which is still pending.

8. As part of its application, Barry Miller Cars submitted to the Department copies of eighty-five (85) contracts it entered into while unlicensed from October 1, 2009 to the present.

9. Because the Department cancelled license no. 6423, the MVSFSA prohibited Barry Miller Cars from engaging in the "business of an installment seller of motor vehicles under installment sales contracts" without first obtaining an installment seller license from the Department. 69 P.S. § 604(1).

10. Barry Miller Cars told the Department it failed to submit the renewal license application by the October 1, 2009 deadline due to an error made by a former personnel member.

Authority of the Department

11. 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. Section 637(D) of the MVSFPA 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

13. Barry Miller Cars is in violation of Section 604(1) of the MVSFPA by engaging in the business of an installment seller while unlicensed. 69 P.S. § 604(1).

RELIEF

14. Fine. Barry Miller Cars agrees to pay a fine of eight thousand five hundred dollars (\$8,500) which shall be due and payable to the Department payable in ten installments of \$850. The first payment of \$850 shall be due within thirty (30) days of the Effective Date of this Order. Each subsequent payment of \$850 is due thirty (30) days thereafter until the \$8,500 fine is paid in full. The fine payment shall be remitted by certified check or money order made payable to the "Department of Banking" and sent to the attention of: Pennsylvania Department of Banking, Licensing Division, Bureau of Compliance, Investigation and Licensing, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

15. Corrective Measures. Upon the effective date of the Order, Barry Miller Cars shall not engage in the business of installment sales until such time as its application for an installment seller license is approved.

FURTHER PROVISIONS

16. Consent. Barry Miller Cars hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Bureau's order authority under the

MVSEFA and agrees that it understands all of the terms and conditions contained herein. Barry Miller Cars, 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.

17. Publication and Release. Barry Miller Cars consents to the publication and release of this Order.

18. Consumer Rights. This Order shall not limit or impair a consumer's rights under the MVSEFA, 69 P.S. § 635.

19. 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 Barry Miller Cars.

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

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

22. Effectiveness. Barry Miller Cars hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order (the "Effective Date").

23. 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 Barry Miller Cars in the future regarding all matters not resolved by this Order.

b. Barry Miller Cars 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.

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

25. Counterparts. This Order may be executed in separate counterparts, by facsimile, and by PDF.

26. 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 and Barry Miller Quality Cars 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**

Robert Knaub, Administrator
Bureau of Compliance,
Investigation and Licensing
Department of Banking

Date: 10/25/10

FOR BARRY MILLER QUALITY CARS, LLC

(Officer Signature)

(Print Officer Name)

OWNER
(Title)

Date: 10-25-10