

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

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<p>COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF BANKING, BUREAU OF COMPLIANCE, INVESTIGATION AND LICENSING</p> <p style="text-align: center;">v.</p> <p>422 AUTO SALES, INC.</p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>DOCKET No. 11 <u>0092</u> PA DEPT OF BANKING (ENF-CO)</p>
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CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking (“Department”), Bureau of Compliance, Investigation and Licensing (“Bureau”), has investigated the business practices of 422 Auto Sales, Inc. (“422 Auto Sales”), and its officers, employees and directors. Based on the results of its investigation, the Bureau believes that 422 Auto Sales 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. 422 Auto Sales' principal place of business is located at 1000 East Main Street, Palmyra, Pennsylvania 17078.

4. On or around January 7, 2010, 422 Auto Sales applied to the Department to become licensed as an installment seller.

5. On or around January 11, 2011, 422 Auto Sales withdrew the January 7, 2010 application because of incorrect owner information on the application.

6. In the interim, on or around January 5, 2011, 422 Auto Sales submitted another application reflecting the correct owner information.

7. The January 5, 2011 installment seller application for 422 Auto Sales is still pending.

8. The Department conducted an investigation ("Investigation") of 422 Auto Sales on multiple dates.

9. As of the Effective Date of this Order, 422 Auto Sales has never held an installment seller license issued by the Department of Banking.

Unlicensed Installment Sales

10. During its Investigation, the Bureau determined that 422 Auto Sales entered into seventy-eight (78) motor vehicle installment sale contracts while unlicensed.

11. The MVSFA defines installment sale contracts to include "any contract for the retail sale of a motor vehicle, or which has a similar purpose or effect under which part or all of the price is payable in two or more scheduled payments subsequent to the making of such contract." 69 P.S. § 603(10).

12. The MVSFA defines an installment seller as “a person engaged in the business of selling, hiring or leasing motor vehicles under installment sales contracts or any legal successor in interest to such person.”

13. The MVSFA prohibited 422 Auto Sales 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.

14. 422 Auto Sales violated the MVSFA because it entered into seventy-eight (78) installment sale contracts prior to obtaining an installment seller license.

Overcharged Costs

15. Section 611(a) permits the Department to examine the files of a business not licensed as an installment seller where that business is engaged in or solicits business for which a license is required by the MVSFA. 69 P.S. § 611.A.

16. The Department is permitted to examine, for the purpose of discovering violations of the MVSFA, the files of a business not holding an installment seller license when that business is engaged in installment sales. 69 P.S. § 611.A.

17. During its Investigation, the Bureau requested a sample of twenty loan files for review from among 422 Auto Sales’ seventy-eight (78) installment sale contracts found by the Bureau.

18. Out of the twenty loan files requested, 422 Auto Sales was only able to provide twelve files.

19. 422 Auto Sales explained to the Bureau that the other files were unavailable because they were not on the premise as required by the MVSFA.

20. Chapter 19 of the Motor Vehicle Code sets certain maximum fees that a dealer is permitted to charge a buyer in relation to the costs of the sale of a motor vehicle, including registration, temporary licenses, and title fees (“Titling Costs”). 75 Pa. C.S. §1901, et seq.

21. The Board of Vehicles Act sets forth the maximum amount a dealer may charge a buyer for licensing costs (“Licensing Costs”). 63 Pa. C.S. § 818.27a.

22. The MVSFA permits installment sellers to include the Titling Costs and Licensing Costs incurred in the sale of a motor vehicle into an installment sales contract. 69 P.S. § 618.A. and B.

23. However, the MVSFA limits the financed amount of those Titling Costs and Licensing Costs to the amount the seller actually expends on those costs. 69 P.S. § 618.D.

24. Because the Motor Vehicle Code sets a statutory monetary limit for the Titling Costs and Licensing Costs, the MVSFA prohibits installment sellers from financing a charge greater than those statutory limits because the installment seller’s actual disbursement to the Commonwealth of Pennsylvania for the Titling Costs and Licensing Costs outlined in Section 618 is not greater than the statutory limit. 69 P.S. § 618.

25. The Bureau found instances of at least one overcharged cost in ten of the twelve installment loan files that it reviewed from 422 Auto Sales.

26. Where an installment seller finances the Titling Costs and Licensing Costs over the amount actually expended by the installment seller, the MVSFA requires the installment seller to immediately refund or credit the difference to the buyer.

27. 422 Auto Sales is in violation of 69 P.S. § 618 of the MVSFA because it overcharged customers for Titling Costs and Licensing Costs.

Authority of the Department

28. 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.

29. Section 637.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

30. 422 Auto Sales is in violation of Section 604.1 of the MVSFA by engaging in the business of an installment seller without an installment seller license. 69 P.S. § 604.1.

31. 422 Auto Sales is in violation of Section 618 of the MVSFA by including charges in consumers’ installment sale contracts that exceeded the statutory maximum amount actually expended by 422 Auto Sales for Titling and Licensing Costs paid to the Commonwealth of Pennsylvania. 69 P.S. § 618.

RELIEF

32. Fine. 422 Auto Sales agrees to pay a fine of seven thousand eight hundred dollars (\$7,800) which shall be due and payable to the Department in thirteen installment payments. The first payment shall be in the amount of \$3,000 and shall be due on or before June 1, 2011. The twelve subsequent payments shall each be in the amount of \$400 and are due on or before the first of each month, beginning with July 1, 2011. In accordance with the above installment payment schedule, the fine shall be paid in full on or before June 1, 2012. The fine payment shall be remitted by certified check or money order made payable to the Pennsylvania

Department of Banking and sent to the attention of: Pennsylvania Department of Banking, Bureau of Compliance, Investigation and Licensing, Licensing Division, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

33. License. Based upon the information currently known to the Bureau, the Department will issue an installment seller license to 422 Auto Sales within five (5) days or less of the Effective Date of this Order.

34. Corrective Measures. Upon the Effective Date of this Order,

i. 422 Auto Sales shall not engage in the business of installment sales until such time as its application for an installment seller license is approved; and

ii. 422 Auto Sales shall maintain all records in accordance with the provisions of the MVSFA, specifically 69 P.S. §612.

35. Consumer Refunds. Within ninety (90) days of the Effective Date of this Order, 422 Auto Sales shall complete the agreed upon self-audit of fees charged to its installment sale consumers. 422 Auto Sales shall report those findings to the Department within six (6) months of the Effective Date of this Order for the Bureau's review and approval.

a. Upon receiving approval of the report of findings, 422 Auto Sales shall refund to those consumers any amount in excess of the allowable charges under Section 618 of the MVSFA.

b. Upon receiving approval of the report of findings, 422 Auto Sales shall every forty-five (45) days thereafter, until all Consumer Refunds have been made or until the expiration of one hundred and eighty (180) days, whichever is later, provide the Licensing Division of the Bureau with a status report relating to the Consumer Refunds which shall

include: (i) the manner in which 422 Auto Sales is making or has made the refunds; (ii) the date on which the refund was sent to the consumer; (iii) evidence that the refund was paid to the consumer, i.e. copy of a cleared check; and (iv) a list of any consumer refunds that were returned or are not able to be delivered.

c. If after one hundred and eighty (180) days from the Bureau's approval of the report of findings, 422 Auto Sales is unable to locate or deliver to consumers the Consumer Refunds after having made diligent and reasonable efforts to do so, 422 Auto Sales will hold and dispose of the funds in accordance with Pennsylvania's Disposition of Abandoned and Unclaimed Property Law, 72 P.S. § 1301.1 et. seq.

FURTHER PROVISIONS

(a) Consent. 422 Auto Sales 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. 422 Auto Sales, 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.

(b) Publication and Release. 422 Auto Sales consents to the publication and release of this Order.

(c) Consumer Rights. This Order shall not limit or impair a consumer's rights under the MVSFA. 69 P.S. § 635.

(d) 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 422 Auto Sales.

(e) Binding Nature. The Department, 422 Auto Sales, and all officers, owners, directors, employees, heirs and assigns of 422 Auto Sales intend to be and are legally bound by the terms of this Order.

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

(g) Effectiveness. 422 Auto Sales hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order (the "Effective Date").

(h) 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 422 Auto Sales in the future regarding all matters not resolved by this Order.

b. 422 Auto Sales 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.

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

(j) Counterparts. This Order may be executed in separate counterparts, by facsimile, and by PDF.

(k) 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 422 Auto Sales, Inc. 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, Enforcement Administrator
Bureau of Compliance,
Investigation and Licensing
Department of Banking

Date: 5/11/11

FOR 422 AUTO SALES, INC.

Chris Neal
Owner, 422 Auto Sales, Inc.

Date: 5/11/11