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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

PA DEPT OF BANKING

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

DOCKET No. 11 0143 (ENF-CO)

v.

DJA AUTOMOTIVE, LLC
D/B/A KIA OF WEST CHESTER

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking's ("Department") Bureau of Examinations has conducted an examination ("Examination") of DJA Automotive, LLC d/b/a Kia of West Chester ("Kia of West Chester"), and its officers, employees and directors. Based on the results of the Examination, the Bureau of Compliance, Investigation and Licensing ("Bureau") believes that Kia of West Chester 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 without admission of wrongdoing by Kia of West Chester, 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 MVSF A for the Department.

3. Kia of West Chester is a motor vehicle installment seller licensed pursuant to the MVSF A, license number 14092.

4. Kia of West Chester's principal place of business is located at 326 Westtown Road, West Chester, Pennsylvania 19382-4946.

5. On July 26, 2010, the Bureau of Examinations commenced the Examination of Kia of West Chester at an approved alternative site: 2535 E. Lincoln Highway, Coatesville, Pennsylvania 19320.

Examination Findings

a. credit application discrepancies

6. The Examination review of Kia of West Chester loan files revealed eight alleged instances of reporting discrepancies on credit applications.

7. A credit application stating an applicant's income would be completed by a customer and turned into Kia of West Chester. The application would then be submitted to a sales finance company for approval with a higher income stated for the consumer.

8. Changing material information on a credit application without additional supporting documentation would be considered an unfair, deceptive, fraudulent, or illegal practice and thus violates Section 10.A.14 of the MVSF A. 69 P.S. § 610.A.14.

9. As a result of the Examination, Kia of West Chester agreed to institute an internal control plan to prevent such discrepancies from passing through the dealership without full documentation for any changes.

b. excessive mark-ups

10. On at least two occasions, Kia of West Chester allegedly marked-up a service contract in excess of 100% of the dealer cost.

11. This mark-up is excessive under Section 10.A.14 of the MVSFSA. 69 P.S. § 610.A.14.

12. Kia of West Chester agreed to refund the overcharges and cease marking-up service contracts in excess of the 100% allowed under Section 10.A.14 of the MVSFSA. 69 P.S. § 610.A.14.

c. assignment to an unlicensed company

13. Kia of West Chester allegedly assigned three installment sale contracts to an unlicensed sales finance company.

14. Under Section 16.A of the MVSFSA, "the seller of a motor vehicle, under an installment sale contract, executed in the Commonwealth of Pennsylvania, shall not sell, transfer or assign the obligation represented by such contract to any person in Pennsylvania, or elsewhere, who is not licensed as a sales finance company pursuant to the provisions of this act." 69 P.S. § 616.A.

15. As a result of the Examination, Kia of West Chester agreed to cease assigning installment sale contracts to unlicensed sales finance companies.

Authority of the Department

16. Section 10.A.14 of the MVSFSA provides, in relevant part, that the Department may suspend, revoke, or refuse to renew a license if the licensee has "engaged in unfair, deceptive, fraudulent or illegal practices or conduct in connection with any business regulated under this act. . . . The licensee has engaged in unfair, deceptive, fraudulent or illegal practices or

conduct in connection with any business regulated under this act, including making excessive mark-ups to charges for items...mark-ups for service contracts...in excess of 100% of the cost to the dealer shall be deemed excessive.” 69 P.S. § 610.A.14.

17. 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.

18. Section 37.D of the MVSFA provides, in relevant part, 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.

VIOLATIONS

19. It is alleged that Kia of West Chester violated Section 10.A.14 of the MVSFA by submitting credit applications to lenders which included different information from the initial application without additional supporting documentation. 69 P.S. § 610.A.14.

20. It is alleged that Kia of West Chester violated Section 10.A.14 of the MVSFA by charging fees in excess of the 100% mark-up. 69 P.S. § 610.A.14.

21. It is alleged that Kia of West Chester violated Section 16.A of the MVSFA when it assigned installment sale contracts to an unlicensed sales finance company. 69 P.S. § 616.A.

RELIEF

22. Fine. Kia of West Chester agrees to pay to the Department a fine in the amount of \$4,000 in two installments of \$2,000 with the first installment due within 30 days of the Effective Date of this Order and the second installment due within 60 days of the Effective Date of this Order. The fine payments shall be made by company checks, certified checks or money

orders made payable to the Department of Banking and remitted to the attention of the Bureau of Compliance, Investigation and Licensing, Pennsylvania Department of Banking, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

23. Internal Control Plan. Kia of West Chester shall submit an acceptable internal control plan (the "Plan") to the Bureau which discloses how policies and procedures will be implemented to actively detect warning indicators of fraud and/or misrepresentation. The Plan shall be submitted for review no later than (30) days after the Effective Date of this Order as defined in paragraph 31 below. The Plan shall be sent to Ryan Walsh, Administrator, Compliance Division, at rywalsh@state.pa.us.

The Bureau shall review the Plan and approve or refuse to approve the Plan within fifteen (15) days of the submission of the Plan. Approval of the Plan shall not be unreasonably withheld. If the Bureau does not approve the Plan, the Bureau shall provide comments as to why the Plan is unacceptable and allow Kia of West Chester the opportunity to resubmit the Plan with the appropriate changes. The submission process shall continue until such time as the Bureau approves the Plan.

24. Corrective Action. Upon the Effective Date of this Order, Kia of West Chester shall:

- a. ensure that application information is correct prior submitting to a lender and support any changes contained therein; and
- b. cease marking-up products in excess of the amount allowed under the MVSFA; and
- c. cease assigning installment sale contracts to any company not licensed as a sales finance company.

FURTHER PROVISIONS

25. Consent. Kia of West Chester 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. Kia of West Chester, 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.

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

27. Publication. 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).

28. 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 Kia of West Chester.

29. Binding Nature. The Department, Kia of West Chester, and all officers, owners, directors, employees, heirs and assigns of Kia of West Chester intend to be and are legally bound by the terms of this Order.

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

31. Effectiveness. Kia of West Chester hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes this Order (the "Effective Date").

32. 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 Kia of West Chester in the future regarding all matters not resolved by this Order.

b. Kia of West Chester 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.

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

34. Counterparts. This Order may be executed in separate counterparts, by facsimile or by PDF.

35. 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 Kia of West Chester 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 Walsh, Administrator
Bureau of Compliance,
Investigation and Licensing
Department of Banking

Date: August 18, 2011

FOR DJA AUTOMOTIVE, LLC D/B/A KIA OF WEST CHESTER

(Officer Signature)

(Print Officer Name)

(Title)

Date: 8/17/2011