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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

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DEPARTMENT OF BANKING AND SECURITIES

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

v.

MITCHELL'S AUTO SALES

Docket No. 13 0079 (BNK-CAO)

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking and Securities ("Department"), Bureau of Compliance and Licensing ("Bureau"), conducted an examination of the business practices of Mitchell's Auto Sales, and its officers, employees and directors. Based on the results of its review, the Bureau concludes that Mitchell's 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. Mitchell's Auto Sales is a Pennsylvania business with two locations; 701 Duquesne Boulevard, Duquesne, Pennsylvania 15110 ("Duquesne Location") and 530 East Pittsburgh-McKeesport Boulevard, North Versailles, Pennsylvania 15137 ("North Versailles Location").

4. The MVSA 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.

5. The Department licensed Mitchell's Auto Sales' Duquesne Location as an installment seller, License No. 7729 through September 30, 2008.

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

7. Mitchell's Auto failed to timely submit a license renewal application for License No. 7729.

8. The Department cancelled License No. 7729 on October 1, 2008.

9. In October of 2012, Mitchell's Auto Sales submitted to the Department two new applications ("New Application") for installment seller licenses; one each for the Duquesne Location and the North Versailles Location.

10. Upon receiving and reviewing Mitchell's Auto Sales' New Application, the Department granted Mitchell's Auto Sales two installment seller licenses, License No. 39079 for the Duquesne Location and License No. 39080 for the North Versailles Location, on October 26, 2012.

11. Mitchell's Auto Sales is currently licensed by the Department as an installment seller under License No. 39079 and License No. 39080.

Unlicensed Installment Sales

12. On September 23, 2013, the Bureau conducted an examination of Mitchell's Auto Sales at its Duquesne Location.

13. During the course of the examination, the Bureau determined that Mitchell's Auto Sales engaged in unlicensed installment sales activity while unlicensed from October 1, 2008 through October 26, 2012.

14. The MVSFSA 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." 69 P.S. § 603.

15. The MVSFSA defines an installment sales contract in part as "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, or as to which the obligor undertakes to make two or more scheduled payments or deposits that can be used to pay part or all of the purchase price, whether or not the seller has retained a security interest in such motor vehicle or has taken collateral security for the buyer's obligation...".

16. The Department determined that Mitchell's Auto Sales entered into two hundred and eight (208) installment contracts during the unlicensed period.

17. The MVSFSA prohibited Mitchell's Auto Sales from engaging "[i]n 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).

18. Mitchell's Auto Sales violated the MVSFSA because it entered into 208 installment contracts during the unlicensed period.

Authority of the Department

19. 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.

20. Section 610(A)(2) of the MVSFA states that the Department may revoke or suspend any license where “[t]he licensee has violated any provision of this act.” 69 P.S. § 610(A)(2).

21. 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

22. Mitchell’s Auto Sales is in violation of Section 604(1) of the MVSFA by engaging in the business of an installment seller while unlicensed. 69 P.S. § 604(1).

RELIEF

23. Fine. Mitchell’s Auto Sales agrees to pay a fine of twenty thousand eight hundred dollars (\$20,800) which shall be due and payable to the Department in eighteen (18) monthly payments. The first payment shall be in the amount of two thousand one hundred dollars (\$2,100) and shall be due within thirty (30) days of the Effective Date of this Order as defined below in paragraph 31. The remaining seventeen (17) monthly payments shall be in the amount of one thousand one hundred dollars (\$1,100). The fine payment shall be remitted by certified check or money order made payable to the “Department of Banking and Securities” and sent to

the attention of Bureau of Compliance and Licensing, 17 N. 2nd Street, Suite 1300, Harrisburg, PA 17101.

24. Corrective Measures. Upon the Effective Date of the Order, Mitchell's Auto Sales shall:

- i. refrain from engaging in the business of installment sales while unlicensed;
- ii. maintain records in accordance with the MVSEFA; and
- iii. cooperate fully with examination protocols as required by the MVSEFA.

FURTHER PROVISIONS

25. Consent. Mitchell's Auto Sales 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. Mitchell's 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.

26. Publication and Release. Mitchell's Auto Sales consents to the publication and release of this Order.

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

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 Mitchell's Auto Sales.

29. Binding Nature. The Department, Mitchell's Auto Sales, and all officers, owners, directors, employees, heirs and assigns of Mitchell's Auto Sales 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. Mitchell's Auto Sales hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the 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 Mitchell's Auto Sales in the future regarding all matters not resolved by this Order.

b. Mitchell's 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.

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, and 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 Mitchell's Auto Sales intending to be legally bound do hereby execute this Consent Agreement and Order.

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

John Talalai, Administrator
Bureau of Compliance and Licensing
Department of Banking and Securities

Date: 12-19-2013

FOR MITCHELL'S AUTO SALES

(Signature)

Kenneth Mitchell

(Print Name)

Partner

Partner - Duquesne Location
(Title)

Date: 12-9-13

(Signature)

Kenneth Mitchell

(Print Name)

Sole-Proprietor

Sole-Proprietor - North Versailles Location
(Title)

Date: 12-9-13