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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND SECURITIES 2014 AUG -5 PM 1:58

PA DEPARTMENT OF  
BANKING AND SECURITIES

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

v. :

CARZ II, INC., HARA WAGMAN, individually :  
and ALAN WAGMAN, individually :

Docket No. 140030 (BNK-CAO)

**CONSENT AGREEMENT AND ORDER**

The Commonwealth of Pennsylvania, acting through the Department of Banking and Securities ("Department"), Bureau of Examinations, has conducted an examination of Carz II, Inc. pursuant to the Motor Vehicle Sales Finance Act, 69 P.S. § 601 *et seq.* The Bureau of Compliance and Licensing ("Bureau"), in order to resolve the findings of the examination, enters into this Consent Agreement and Order ("Order"), with Carz II, Inc., Hara Wagman and Alan Wagman (collectively "Respondents"). The Respondents deny the findings of the examination.

The Parties to the above-captioned matter, in lieu of litigation, and without admitting wrongdoing, but intending to be legally bound, hereby agree to the terms of this Consent Agreement and Order ("Order"). This Order does not constitute evidence or admission regarding any issue of law or fact alleged by the Department. Nothing contained in this Order shall be construed as an admission or denial by Respondents of any liability, wrongdoing or legal or factual issue, and this Order may not be used as evidence of liability or for any other purpose in any action against Respondents.

## **PARTIES**

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. Carz II, Inc. is licensed by the Department under the MVSFA as a Collector-Repossessor, license no. 33600.

4. Carz II, Inc. is a corporation organized pursuant to the laws of Pennsylvania, and is located at 2229 W. Hunting Park Avenue, Philadelphia, Pennsylvania 19140-3816.

5. Albert Lowe controlled Carz II, Inc. until the time of his death on June 5, 2012.

6. Hara Wagman is Albert Lowe's daughter.

7. Alan Wagman is Hara Wagman's husband and Albert Lowe's son-in-law.

## **FACTUAL ALLEGATIONS**

8. On March 19, 2014, the Department's Bureau of Examinations began an examination of Carz II, Inc. at the licensed location.

9. The Department alleges that Carz II, Inc. sold vehicles on credit to consumer buyers without an installment seller license from the Department.

10. The Department alleges that, after Albert Lowe's death, Alan Wagman began managing the operations of Carz II, Inc.

11. The Department alleges that Carz II, Inc. did not inform the Department of a change in control after Albert Lowe's death in connection with the annual renewal of Carz II, Inc.'s Collector-Repossessor license.

12. The Respondents allege that Hara Wagman learned that she is the sole shareholder of Carz II, Inc. during the course of the Bureau's investigation following the examination of Carz II, Inc.

13. The Department alleges that Alan Wagman initially denied examiners access to necessary records.

14. At a later time, Carz II, Inc. provided the Bureau the necessary records requested by the Department.

15. The Department alleges that these records show that Carz II, Inc. had entered into 351 installment sales contracts during the period of January 1, 2010 through April, 2014.

## **ALLEGED VIOLATIONS**

### Unlicensed Installment Sales

16. 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.

17. The MVSFSA prohibited persons 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. 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.... 69 P.S. § 603.10.

19. The Department alleges that Carz II, Inc. violated the MVSFSA when it entered into 351 installment sales contracts without an installment sales license. 69 P.S. § 604.1.

### Unauthorized Fees

20. The MVSFA provides:

A. In addition to charges for insurance authorized in the preceding section of this act, the seller of a motor vehicle under an installment sales contract may require the buyer to pay certain other costs incurred in the sale of a motor vehicle under such contract as follows:

1. Fees, payable to the Commonwealth of Pennsylvania, for filing a lien or encumbrance on the certificate of title to a motor vehicle sold under an installment sale contract or collateral security thereto.
2. Fees, payable to a public official, for filing or recording and satisfying or releasing the installment sale contract or instruments securing the buyer's obligations.
3. Fees, for notarization required in connection with the filing and recording or satisfying and releasing a mortgage, judgment lien or encumbrance.

B. The seller of a motor vehicle under an installment sale contract may also contract with the buyer to pay on behalf of the buyer, such other costs incidental to the sale of a motor vehicle and contracted for voluntarily by the buyer as follows:

1. Fees, payable to the Commonwealth of Pennsylvania, for registration of the motor vehicle and issuance or transfer of registration plates.
  2. Fees, payable to the Commonwealth of Pennsylvania, for driver's license for the buyer.
  3. Costs of messenger service and other costs associated with the submission of documents to the Commonwealth of Pennsylvania or other governmental entity which are contracted for voluntarily by the buyer.
- 69 P.S. § 618.

21. The Department alleges that Carz II, Inc.'s installment sales contracts included numerous fees not authorized by the MVSFA, including, but not limited to, finance fees, late fees and fire and theft fees.

22. The Department alleges that Carz II, Inc. violated the MVSFA and engaged in "unfair, deceptive, fraudulent, or illegal practices" by including fees not authorized. 69 P.S. § 618; 69 P.S. § 610A.14.

### Denial of Access

23. The MVSFA provides that "[t]he department is empowered to investigate, at any time, the business and affairs and examine the books, accounts, papers, records, documents and

files of every licensee and of every person who shall be engaged in business contemplated by the act.... For this purpose the department shall have free access to the offices and places of business, books, accounts, papers, records, documents and files of all such persons.” 69 P.S. § 611.A.

24. The Department alleges that Carz II, Inc. violated the MVSFA by failing to provide immediate access to its books, accounts, papers, records, documents and files for examination at the time requested by the Department. 69 P.S. § 611.A.

Material Misstatements on License Renewal Applications

25. All licenses under the MVSFA expire on October 1 annually. 69 P.S. § 607 D.

26. License applications, therefore, must be filed annually and must include the name and residence address of the owner, officers and directors. 69 P.S. § 605.B.

27. The MVSFA provides for the revocation or suspension of a license if a licensee has made any material misstatement in the application for license. 69 P.S. § 610.A.1.

28. The Department alleges that Carz II, Inc. filed license renewal applications in 2012 and 2013 and did not disclose the name of any new owners, officers and/or directors following the death of Albert Lowe.

29. The Department alleges that by failing to provide the name of any new owners, officers and/or directors subsequent to the death of Albert Lowe, Carz II, Inc. violated the MVSFA. 69 P.S. § 610.A.1.

**AUTHORITY**

30. 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.

31. The Department may revoke or suspend any license if it has “made any material misstatement in the application for license” 69 P.S. § 610.A.1.

32. 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.

33. The Department may revoke or suspend any license where the licensee “has violated any rule or regulation issued by the department” or “has failed to comply with any demand, rule or regulation lawfully made by the department...” 69 P.S. §§ 610.A.3 and 610.A.4.

34. The Department may revoke or suspend any license where “[t]he licensee refuses or has refused to permit the department to make examinations authorized by this act...” 69 P.S. § 610.A.5.

35. The Department may revoke or suspend any license if it has engaged in unfair, deceptive, fraudulent or illegal practices or conduct in connection with any business regulated under this act. 69 P.S. § 610.A.14.

36. 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.

#### **RELIEF**

37. Corrective Action. Upon the Effective Date of this Order as defined in paragraph 50 below, Respondents, jointly and severally, agree to surrender Carz II, Inc.’s collector-repossessor license number 33600.

38. Fine. Within 30 days of the Effective Date of the Order, Respondents, jointly and severally, shall pay a fine of thirty five thousand one hundred dollars (\$35,100). 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.

39. Restitution. Respondents, jointly and severally, shall provide restitution in the amount of \$28,606 to consumers who have entered into installment sale contracts subsequent to June 5, 2012 and have paid the accounts in full. The restitution checks will be mailed out to the last known address of the thirty (30) affected consumers. If the checks are returned to Carz II, Inc. as undeliverable they will be forwarded to the Treasury Department of the Commonwealth of Pennsylvania, Bureau of Unclaimed Property. Respondents agree to provide copies of all restitution checks to the Department.

40. Reduction of balance on open accounts. For the remaining eighty-nine (89) contracts originated subsequent to June 5, 2012, Respondents, jointly and severally, will credit the overcharged fees to the current outstanding balance thereby reducing the total amount owed. Respondents, jointly and severally, shall provide the Department with an accounting of the outstanding loans showing the credits to the balances.

41. This agreement shall not prohibit Respondents from collecting the remaining, reduced balance on all outstanding loans described in paragraph 40.

42. Respondents, jointly and severally, shall provide updated servicing records to include, but not be limited to, current balance information, consumer payment history and lien release information for the open accounts described in paragraph 40, upon request by the Bureau.

43. Corrective Measures. Upon the Effective Date of the Order, Carz II, Inc. shall:

- i. refrain from engaging in the business of installment sales;
- ii. cease and desist from attempting to collect on any outstanding loans where Carz is not the lienholder;

- iii. maintain records in accordance with the MVSFA; and
- iv. cooperate fully with examination protocols as required by the MVSFA.

#### **FURTHER PROVISIONS**

44. Consent. Respondents, jointly and severally, hereby knowingly, willingly, voluntarily and irrevocably consent to the entry of this Order pursuant to the Department's order authority under the MVSFA and agree that they understand all of the terms and conditions contained herein. Respondents, by voluntarily entering into this Order, waive any right to a hearing or appeal concerning the terms, conditions and/or penalties set forth in this Order.

45. Publication and Release. Respondents, jointly and severally, consent to the publication and release of this Order.

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

47. 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 Respondents.

48. Binding Nature. The Department, Respondents and all officers, owners, directors, employees, heirs and assigns of Carz II, Inc. intend to be and are legally bound by the terms of this Order.

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

50. Effectiveness. Respondents, jointly and severally, hereby stipulate and agree that the Order shall become effective on the date that the Bureau executes the Order (the "Effective Date").



51. 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 Carz II, Inc. in the future regarding all matters not resolved by this Order.

b. Respondents acknowledge and agree 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.

c. The Department will not bring an enforcement action of any kind against Respondents; their present or future owners, members, directors, principals, officers, managers, agents, employees, successors, or assigns; agents in active concert or participation with any of the foregoing who are involved in the conduct of business that is the subject of the conduct at issue in the above docketed proceeding; and any corporation, company, business entity, or other entity or device through which the Respondents may now or hereafter act or conduct the business that is the subject of the above docketed proceeding for any conduct arising out of or related to any matters at issue in the above-docketed proceeding, including but not limited to the servicing or collecting of motor vehicle installment sales contracts with Pennsylvania residents existing as of the execution date of this Order, provided that any such servicing or collection of any motor vehicle installment sales contracts shall be performed in compliance with the terms of this Order. As provided in Paragraph 51(a), the Department retains the right to bring enforcement actions for any other matter or against any other party, including for any action in violation of Respondents' obligations under this Order.

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

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

54. 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 Carz II, Inc. 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**

Redacted

\_\_\_\_\_  
Ryan Walsh, Chief, Compliance Division  
Bureau of Compliance and Licensing  
Department of Banking and Securities

Date: August 5, 2014

**FOR CARZ II, Inc.**

Redacted

\_\_\_\_\_  
(Signature)

Redacted

\_\_\_\_\_  
(Print Name)

SHAREHOLDER

\_\_\_\_\_  
(Title)

Date: 8-5-14

**BY: HARA WAGMAN**

Redacted

Date: 8-5-14

**BY: ALAN WAGMAN**

Date: Redacted