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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

PA DEPARTMENT OF
BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND
SECURITIES, COMPLIANCE OFFICE

v.

MCNAMARA AUTO SALES

Docket No. 150007 (BNK-CAO)

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking and Securities ("Department"), Bureau of Non-Depository Examinations ("Bureau"), conducted an examination of the business practices of McNamara Auto Sales, ("McNamara Auto"), and its officers, employees and directors on December 23, 2014. Based on the results of the examination, the Compliance Office concludes that McNamara Auto operated in violation of the Motor Vehicle Sales Finance Act ("MVSFA"), 69 P.S. § 601 *et seq.*¹ 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 MVSFA.

¹ Repealed and replaced by the Consumer Credit Code, 12 Pa.C.S. § 6201 *et seq.*, effective November 27, 2014.

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

3. McNamara Auto is a Sole Proprietorship located at 1775 Rodney Rd., York, PA 17404.

4. On December 23, 2014 the Bureau conducted a routine examination of McNamara Auto at its principal location.

5. The examination revealed that McNamara Auto failed to submit a license renewal application for License No. 13964 by September 30, 2014 and thus the license was cancelled effective October 1, 2014.

6. Once McNamara Auto realized that the license had been cancelled, the company immediately applied for a new license with the Department.

7. A new license for McNamara Auto was issued by the Department on October 24, 2014, License No. 48470.

8. McNamara Auto entered into eleven (11) installment sales contracts between October 1, 2014 and October 24, 2014.

VIOLATION

9. The MVSFA prohibits a person from engaging “[i]n the business of an installment seller of motor vehicles under installment sales contracts” without an installment seller license from the Department. 69 P.S. § 604(1).

10. The MVSFA requires installment seller licensees to submit a yearly renewal license application to the Department at least fifteen (15) days prior to October 1 of each year. *See* 69 P.S. § 605.

11. McNamara Auto violated of Section 604(1) of the MVSFA by entering into eleven (11) installment contracts between October 1, 2014 and October 24, 2014 when it was not licensed.

Authority of the Department

12. 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.

13. Section 637(D) of the MVSFA provides that “[a]ny person required to be licensed under this act that violates this act . . . 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

14. Fine. McNamara Auto agrees to pay a fine of \$1,100. The fine will be due in three (3) installments. The first installment of \$367.00 will be due within thirty (30) days of the Effective Date of the Order as defined in paragraph 22 below. The second installment of \$366.50 will be due within sixty (60) days of the Effective Date of the Order as defined in paragraph 22 below. The third installment of \$366.50 will be due within ninety (90) days of the Effective Date of the Order as defined in paragraph 22 below. All fine payments shall be remitted by certified check or money order made payable to the “Department of Banking and Securities” and sent to the attention of: Compliance Office, 17 N. 2nd Street, Suite 1300, Harrisburg, PA 17101.

15. Corrective Measures. Upon the Effective Date of the Order, McNamara Auto shall not engage in the business of installment sales while unlicensed.

FURTHER PROVISIONS

16. Consent. McNamara Auto hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Compliance Office’s order authority under the MVSFA and agrees that it understands all of the terms and conditions contained herein.

McNamara Auto, 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. 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).

18. Consumer Rights. This Order shall not limit or impair a consumer's rights under the MVSFA. *See* 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 Compliance Office and McNamara Auto.

20. Binding Nature. The Department, McNamara Auto, and all officers, owners, directors, employees, heirs and assigns of McNamara Auto 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. McNamara Auto hereby stipulates and agrees that the Order shall become effective on the date that the Compliance Office 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 McNamara Auto in the future regarding all matters not resolved by this Order.

b. McNamara Auto 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, or 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 of Banking and Securities and McNamara 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,
COMPLIANCE OFFICE**

FOR MCNAMARA AUTO SALES

Redacted

Redacted

Ryan Walsh, Director
Compliance Office
Department of Banking and Securities

Date: March 18, 2015

(Officer Signature)

John McNamara
(Print Officer Name)

Owner
(Title)

Date: 3-18-15