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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND SECURITIES

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PA DEPARTMENT OF  
BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND  
SECURITIES, COMPLIANCE OFFICE

v.

Docket No. 16 0036 (BNK-CAO)

XXX KAR MART

**CONSENT AGREEMENT AND ORDER**

The Commonwealth of Pennsylvania, acting through the Department of Banking and Securities ("Department"), Compliance Office ("Office"), has reviewed the business practices of XXX Kar Mart, and its officers, employees and directors. Based on the results of its review, the Office concludes that XXX Kar Mart operated in violation of the Consumer Credit Code as related to motor vehicle sales finance ("CCC"), 12 Pa. C.S. § 6101 *et seq.* 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 was the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the former Motor Vehicle Sales Finance Act, 69 P.S. § 601 *et seq.* ("MVSFA").
2. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the CCC.
3. The CCC replaced the Motor Vehicle Sales Finance Act ("MVSFA", 69 P.S. § 601 *et seq.*) effective as of November 27, 2014.

4. The Office is primarily responsible for administering and enforcing the CCC for the Department.

5. XXX Kar Mart's principal place of business is located at 67 Parkway Boulevard, York, PA 17404-2721.

6. The Department conducted an examination of XXX Kar Mart in September 2015.

7. The examination included review of business documents dated from 2013 through 2015.

#### Information and Disclosures

8. The examination revealed that XXX Kar Mart's contract did not contain information and disclosures in its contracts required under the CCC, including, but not limited to, all the agreements between the buyer and licensee, notice to the buyer not to sign the contract in blank, information that full payment could be required by buyer's default in the payment of one or more installment payments, the number of payments and separately itemized costs and charges.

9. Because its contracts failed to include required information and disclosures, XXX Kar Mart is in violation of sections 6221, 6222, 6223, 6224 and 6228 of the CCC. 12 Pa. C.S. §§ 6221, 6222, 6223, 6224 and 6228.

#### Prohibited Charges

10. The examination revealed that XXX Kar Mart overcharged 157 consumers for notarization costs, messenger fees, GPS fees and inflated cost of licensing fees.

11. Section 6233 of the CCC addresses the charges permitted and prohibited to be charged by licensees in connection with an installment sale contract. 12 Pa. C.S. § 6233.

12. Section (a) of the addresses permitted charges and section (b) addresses prohibited charges. 12 Pa. C.S. § 6233(a) and (b).

13. Subsequent to the examination, XXX Kar Mart agreed to credit the accounts of eighty-three (83) buy-here-pay-here consumers.

14. As of the Effective Date of this Order, as defined in paragraph 38, XXX Kar Mart completed those credits for a total amount credited of \$24,342.15.

15. Additionally, XXX Kar Mart agreed to issue refunds to seventy-four (74) consumers whose contract XXX Kar Mart assigned to a third party.

16. As of the Effective Date of this Order, XXX Kar Mart completed those refunds for a total amount refunded of \$19,662.50.

17. Because XXX Kar Mart overcharged and incorrectly charged consumers in relation to installment sale contracts, it is in violation of section 6223 of the CCC. 12 Pa. C.S. § 6233.

#### Repossessions

18. The examination revealed the XXX Kar Mart did not immediately send the “notice of repossession” to consumers, the notice incorrectly stated that XXX Kar Mart could resell the repossessed vehicle within ten (10) days, the notice did not itemize the total amount require to redeem and the notice did not include the required disclosure regarding personal property found in the vehicle.

19. Section 6254(a) of the CCC requires a licensee to “immediately furnish the buyer with a written notice of repossession.” 12 Pa. C.S. § 6254(a).

20. Section 6254(c)(2) of the CCC requires the notice of repossession to include “an itemized statement of the total amount required to redeem the motor vehicle by reinstatement or payment of the contract in full.” 12 Pa. C.S. § 6254(c)(2).

21. Section 6254(c)(3) of the CCC requires the notice of repossession to include “notice to the buyer of the holder’s intent to resell the motor vehicle at the expiration of 15 days from the date of mailing the notice.” 12 Pa. C.S. § 6254(c)(3).

22. Section 6254(c)(6) of the CCC requires the notice of repossession to include language notifying consumer that “any personal property left in the repossessed vehicle will be held for 30 days from the date of the mailing of the notice.” 12 Pa. C.S. § 6254(c)(6).

23. Because XXX Kar Mart's notice of repossession failed to meet multiple requirements, XXX Kar Mart is in violation of section 6254 of the CCC. 12 Pa. C.S. § 6254.

#### Authority of the Department

24. The CCC grants the Department the authority to issue orders as may be necessary for the enforcement of the CCC. 12 Pa. C.S. § 6203(a)(5).

25. Section 6218 of the CCC states that the Department may revoke or suspend any license where the licensee violated a provision of this chapter. 12 Pa. C.S. § 6218(a)(2).

26. Section 6274 of the CCC provides that "[a] person required to be licensed under this chapter that violates this chapter, directs a violation of this chapter or engages in an activity for which a license could be suspended or revoked under section 6218 (relating to revocation or suspension of license) shall be subject to a civil penalty levied by the department of not more than \$2,000 for each offense." 12 Pa. C.S. § 6274.

#### **VIOLATIONS**

27. XXX Kar Mart violated sections 6221, 6222, 6223, 6224 and 6228 of the CCC when it used installment sale contracts which failed to include required information and disclosures. 12 Pa. C.S. §§ 6221, 6222, 6223, 6224 and 6228.

28. XXX Kar Mart violated section 6223 of the CCC when it overcharged and incorrectly charged consumers in relation to installment sale contracts. 12 Pa. C.S. § 6223.

29. XXX Kar Mart violated section 6254 of the CCC when it used a notice of repossession which failed to meet multiple requirements. 12 Pa. C.S. § 6254.

#### **RELIEF**

30. Credits and Refunds. As set forth in the facts, the Department required XXX Kar Mart to credit or refund specific consumers in relation to XXX Kar Mart's overcharges or incorrect charges

related to installment sale contracts. As of the Effective Date of this Order, XXX Kar Mart met this relief requirement.

31. Corrective Action. Upon the Effective Date of this Order, XXX Kar Mart shall ensure that its:

- a. contracts contain the required provisions of the CCC,
- b. charges are permitted by the CCC, and
- c. repossession notices and procedures comply with the requirement of the CCC.

#### FURTHER PROVISIONS

32. Consent. XXX Kar Mart hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Bureau's order authority under the CCC and agrees that it understands all of the terms and conditions contained herein. XXX Kar Mart, 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.

33. Consumer's Rights. This Order shall not limit or impair a consumer's rights under CCC. 12 Pa. C.S. § 6236. (69 P.S. § 635).

34. 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).

35. 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 XXX Kar Mart.

36. Binding Nature. The Department, XXX Kar Mart, and all officers, owners, directors, employees, heirs and assigns of XXX Kar Mart intend to be and are legally bound by the terms of this Order.

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

38. Effectiveness. XXX Kar Mart hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes this Order ("Effective Date").

39. 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 XXX Kar Mart in the future regarding all matters not resolved by this Order.

b. XXX Kar Mart 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.

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

41. Counterparts. This Order may be executed in separate counterparts and by facsimile or electronic mail in portable document format "PDF."

42. 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, Compliance Office and XXX Kar Mart 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 XXX KAR MART

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John Talalai, Administrator  
Compliance Office  
Department of Banking and Securities

(Officer Signature)

*Valerie S. Aliapa*  
\_\_\_\_\_  
(Print Officer Name)

Date: 1/27/2016

*Owner*  
\_\_\_\_\_  
(Title)

Date: 1/25/16