

FILED

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND SECURITIES

2021 MAY 24 AM 8:38

PA DEPARTMENT OF  
BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA :  
DEPARTMENT OF BANKING AND :  
SECURITIES, COMPLIANCE OFFICE :

v. :

Docket No. 200043 (BNK-C&D)

A IMPULS AUTO, INC. :

**NOTICE OF RIGHT TO APPEAL**

You have the right to appeal the attached Final Order issued by the Commonwealth of Pennsylvania, Banking and Securities Commission. ("Commission")

If you wish to appeal this Final Order, you may file a petition for review with the Commonwealth Court of Pennsylvania that complies with the format and timing requirements of Chapter 15 of the Pennsylvania Rules of Appellate Procedure, Pa.R.A.P. 1511-1561. Failure to file a petition for review within 30 days of the mailing date of this Order will result in this Final Order becoming final and unappealable. The telephone number for the Commonwealth Court is 717-255-1650.

All Commonwealth Court filings must be made in the Court's filing office in Harrisburg. Filing must be made in person, by mail as provided by general rules, or electronically via the PACFile appellate court electronic filing system. The address of the Court is as follows:

Pennsylvania Judicial Center  
601 Commonwealth Ave.  
Suite 2100  
P.O. Box 69185  
Harrisburg, PA 17106

A party may submit a request to the Commission for rehearing or reconsideration no later than fifteen (15) days after the decision mailing date in accordance with section 35.241 of the General Rules of Administrative Practice and Procedure, 1 Pa. Code § 35.241. However, submitting a reconsideration request does not extend the time limit for filing a petition for review with the Commonwealth Court.

You may wish to consult an attorney regarding your legal rights.

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DEPARTMENT OF BANKING AND SECURITIES

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DEPARTMENT OF BANKING AND :	:
SECURITIES, COMPLIANCE OFFICE :	:
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	:
A IMPULS AUTO, INC. :	:
	:

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**FINAL ORDER**

AND NOW, the Pennsylvania Banking and Securities Commission ("Commission") issues this Final Order in the matter of *Department of Banking and Securities, Compliance Office v. A Impuls Auto, Inc*, Docket No. 200043 (BNK-C&D).

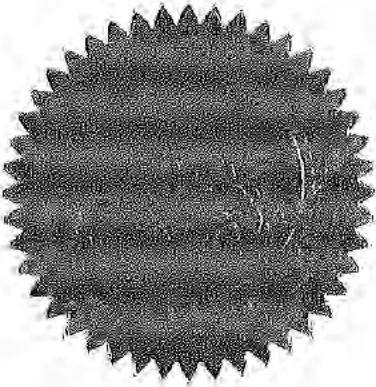
The Department of Banking and Securities, Compliance Office ("Compliance Office") made certain allegations in a Suspension and Cease & Desist Order (the "C&D Order") issued on August 10, 2020, and served on A Impuls Auto, Inc. ("Respondent"). When the Respondent failed to respond to the C&D Order, the Compliance Office filed and served on the Respondent a Motion to Deem Facts Admitted and Entry of Default Judgment, which the hearing officer granted on December 30, 2020.

The proposed report and proposed order of Hearing Officer David M. Green, which are attached, were served upon the parties by letter dated March 9, 2021, pursuant to I Pa. Code § 35.207. Neither party filed exceptions to the proposed report and proposed order.

Based on the facts deemed admitted by the Respondent's failure to respond, as set forth in the attached proposed report, the Commission concludes that the Compliance Office has proven

that the Respondent committed multiple violations of 12 Pa.C.S. Ch. 12, relating to consumer credit and motor vehicle sales finance.

Pursuant to the final adjudication authority granted the Commission under Section 1122-A of the Department of Banking and Securities Code, 71 P.S. § 733-1122-A, the Commission **ORDERS** the proposed report and proposed order to be adopted as written.



**BY ORDER OF THE COMMISSION:**

Redacted

**Richard Vague**  
**Vice Chair**  
**Pennsylvania Banking and Securities Commission**

So **ORDERED** this 21 day of May, 2021

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND SECURITIES

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Commonwealth of Pennsylvania  
Department of Banking and Securities,  
Compliance Office

PA DEPARTMENT OF  
BANKING AND SECURITIES

v.

Docket No. 200043 (BNK-C&D)

A Impuls Auto, Inc.,  
Respondent

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PROPOSED REPORT

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David M. Green  
Hearing Officer

COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL  
DEPARTMENT OF STATE  
OFFICE OF HEARING EXAMINERS  
P.O. Box 2649  
Harrisburg, PA 17105-2649

## HISTORY

On August 10, 2020, the Commonwealth of Pennsylvania, Department of Banking and Securities (“Department”), through its Compliance Office, issued and served upon A Impuls Auto, Inc. (“AIA” or “Respondent”) a *Notice to Answer and Request a Hearing* (“Notice”) and a *Suspension and Cease and Desist Order* (“C&D Order”) alleging that AIA committed certain violations of the Consumer Credit Code, 12 P.S. §6201 *et seq.* (“CCC”).<sup>1</sup>

The *C&D Order* specifically alleged that AIA, a licensed installment seller of motor vehicles, failed to preserve records and make them available for examination by the Department, as required by the CCC at Section 6204(d). The *C&D Order* further alleged that AIA failed to appear for an examination conducted by the Department and failed to provide access to records, thereby preventing an examination authorized by Sections 6203(a)(1), 6203(a)(2) and 6204(a)(d) of the CCC, from taking place on three occasions.

The *C&D Order* alleged certain specific installment sale contract violations by AIA. Specifically, it alleged that: (a) 18 of AIA’s installment sales contracts did not provide for equal payment amounts for each payment due, as required by Section 6221(d) of the CCC; (b) eight of AIA’s installment sale contracts did not provide the provide the oral and written disclosures prior to the buyer’s execution of the contracts, as required by Section 6221(e) of the CCC; (c) 34 of AIA’s installment sale contracts did not provide itemized charges, taxes, trade-in information and a summary of legal rights to the buyer as required by Section 6222(5) of the CCC; (d) 34 of AIA’s installment sale contracts did not provide the required disclosure regarding the Unfair Trade Practices and Consumer Protection Law as required by Section 6222(9) of the CCC; (e) 34 of AIA’s installment sale contracts did not contain the “Notice to Buyer” statement required by Section 6223(a) of the CCC; (f) 34 of AIA’s installment sale contracts did not separately itemize fees thereon as required by Section 6224 of the CCC; (g) 10 of its installment sale

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<sup>1</sup> Act of November 27, 2013, P.L. 1081, No. 98, 12 Pa.C.S. §§6201-6355

contracts contained a processing fee of \$299, a fee that was not provided for in Section 6233(a),(b) of the CCC.

The *C&D Order* also alleged that AIA failed to pay invoices representing costs incurred by the Department incident to the first and second attempted examinations, as provided by section 6203(d) of the CCC.

On its Installment Seller Application, AIA indicates a principal place of business at 4700 Torresdale Avenue, Philadelphia, PA 19124-2801 ("AIA's address"). The Department mailed the *Notice* and *C&D Order* to AIA's address via certified mail and first-class mail on August 11, 2020. The certified mailing was received on August 29, 2020. The first-class mailing was not returned to the Department as undeliverable within 15 days after mailing. Service of the *Notice* and *C&D Order* upon AIA in the foregoing manner was in accordance with the requirements of § 33.31 of the General Rules of Administrative Practice and Procedure ("GRAPP"), 1 Pa. Code § 33.31. The *Notice* advised AIA of the right to challenge the *C&D Order* by filing an Answer within 30 days, and notified it that:

Your Answer must be in writing, specifically admit or deny the allegations in the Order, set forth the facts you rely upon and state concisely the law you rely upon. General denials of the allegations set forth in the Order are not sufficient; you must support your denials with specific facts. Failure to support your denials with specific facts may cause the Commission to deem the facts in the Order as admitted and to enter a final order against you, without a hearing.

On October 6, 2020, Acting Secretary of Banking and Securities Richard Vague designated the undersigned to serve as the hearing officer for the Department in this matter.

AIA did not file an Answer to the *C&D Order* with the Department, nor did it request an extension of time to do so. As more than 30 days had passed since the date of service of the *Notice* and *C&D Order* with no Answer filed by AIA, the Department filed a *Motion to Deem Facts Admitted and Entry of Default Judgment* ("MDFJ") on October 14, 2020. No Answer to the *MDFJ* has been filed by Respondent, as

provided in the General Rules of Administrative Practice and Procedure at 1 Pa. Code §35.179.<sup>2</sup>

On December 18, 2020, the hearing officer issued an *Order Granting Motion to Deem Facts Admitted and Entry of Default Judgment*. (“*Default Judgment Order*”). The *Default Judgment Order* entered judgment by default against AIA and deemed the factual allegations of Paragraphs 1 through 12 of the *Order* admitted. An *Amended Default Judgment Order* referencing the correct admitted paragraph numbers to in the *C&D Order 1 through 66* was issued on December 30, 2020.

This proposed report is issued in accordance with the Acting Secretary’s letter of October 6, 2020.

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<sup>2</sup> § 35.179. Objections to motions.

Any participant shall have 10 days within which to answer or object to any motion unless the period of time is otherwise fixed by the agency head or the presiding officer.

## FINDINGS OF FACT

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the Consumer Credit Code, 12 Pa.C.S. §6201 *et seq.* ("CCC"), (*C&D Order*, Paragraph 1).

2. The Department's Compliance Office is primarily responsible for administering and enforcing the CCC for the Department. (*Id.*, Paragraph 2).

3. Respondent, A Impuls Auto, Inc. ("AIA") is currently licensed as an installment seller,<sup>3</sup> license no. 48723, under the CCC. (*Id.*, Paragraph 3).

4. AIA, a Pennsylvania Business Corporation, maintains its principal place of business at 4700 Torresdale, Ave., Philadelphia, PA 19124-2801. (*Id.*, Paragraph 4).

5. On January 24, 2019, the Department contacted Yudik Aysenshteyn, owner of AIA, by telephone and confirmed that an examination would take place at AIA's principal place of business on February 6, 2019. (*Id.*, Paragraph 6).

6. On February 6, 2019, an examiner from the Department arrived at AIA's principal place of business to conduct the examination. (*Id.*, Paragraph 7).

7. When the examiner arrived to conduct the examination, no one was present at the location to provide access to AIA's records. (*Id.*, Paragraph 8).

8. Several attempts were made by the examiner to contact Mr. Aysenshteyn by telephone; however, these attempts were unsuccessful. (*Id.*, Paragraph 9).

9. An examination could not be performed at AIA's principal place of business on February 6, 2019. (*Id.*, Paragraph 10).

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<sup>3</sup> "Installment seller." A person engaged in the business of selling, hiring or leasing a motor vehicle under an installment sale contract or a legal successor in interest to the person.

12 Pa.C.S. §6202.



10. On March 29, 2019, the Department contacted a person identified as Stephen Belo, a representative of AIA, and scheduled an examination for April 29, 2019, to be conducted at AIA's principal place of business. (*Id.*, at Paragraph 11).

11. On April 29, 2019, an examiner from the Department arrived at AIA's principal place of business to conduct the examination. (*Id.*, Paragraph 12).

12. When the examiner arrived to conduct the examination, no one was present at the location to provide access to AIA's records. (*Id.*, Paragraph 13).

13. After several attempts, the examiner was able to contact Mr. Belo by telephone; and Mr. Belo stated that he would come to the location. (*Id.*, Paragraph 14).

14. Upon Mr. Belo's arrival, the examiner conducted an interview with him. (*Id.*, Paragraph 15).

15. It was determined that Mr. Belo did not have any working knowledge of AIA's operations, and could not provide access to AIA's records, (*Id.*, Paragraph 16).

16. The examiner asked to be put in contact with Mr. Aysenshteyn. (*Id.*, Paragraph 17).

17. The examiner spoke with Mr. Aysenshteyn on the telephone and requested his presence at the location for the examination; however, Mr. Aysenshteyn stated that he could not be there. (*Id.*, Paragraph 18).

18. An examination could not be conducted at AIA's principal place of business on April 29, 2019. (*Id.*, Paragraph 19).

19. On October 7, 2019, the Department spoke to Mr. Belo on the telephone and requested that copies of loan files be provided to the Department by October 17, 2019, so that an examination could be conducted off-site. (*Id.*, Paragraph 20).

20. The request for copies of loan files was also sent to Mr. Belo via email. (*Id.*).

21. AIA did not provide copies of loan files to the Department by October 17, 2019. (*Id.*, Paragraph 21).

22. An examination of AIA's loan files could not be conducted by the Department off-site on October 17, 2019. (*Id.*, Paragraphs 20-21).

23. On November 5, 2019, Mr. Belo provided the Department with copies, by email, of "buy-here pay-here" contracts. (*Id.*, Paragraph 22).

24. Sections 6203(a)(1) and 6203(a)(2) of the CCC provide the Department with the authority to investigate the business activities of a licensee and person engaged in a business contemplated by Chapter 62 and to do so by: (1) examining the records of the licensee and person, (2) accessing the offices and places of business of the licensee and person and the records of the licensee and person, and (3) examining the records, safes and vaults of a person under this section. 12 Pa.C.S. §6203(a)(1), (2). (*Id.*, Paragraph 23).

25. Section 6204(d) of the CCC states, "records of a licensee shall be preserved and available for examination by the department for at least two years after making the final entry therein." 12 Pa.C.S. §6204(d). (*Id.*, Paragraph 24).

26. AIA's installment sale contracts contain "balloon payments," i.e., final payments that are substantially more than earlier payments and, in some cases, the contracts include first payments that are substantially more than later payments. (*Id.*, Paragraph 28).

27. Section 6221(d) of the CCC states, "An installment sale contract shall provide for payment of the time balance in substantially equal periods and amounts." 12 Pa.C.S. §6221(d). (*Id.*, Paragraph 29).

28. Eighteen (18) of AIA's installment sale contracts did not provide for equal payment amounts for each payment due. (*Id.*, Paragraph 30).

29. Section 6221(e) of the CCC provides that, prior to a buyer's execution of an installment sale contract, an installment seller shall provide the buyer with an oral and written disclosure in plain language regarding the purchase of specific items in conjunction with a motor vehicle installment sale. 12 Pa.C.S. §6221(e). (*Id.*, Paragraph 31).

30. Eight (8) of AIA's installment sale contracts did not provide the required disclosures to the buyers. (*Id.*, Paragraph 32).

31. Section 6222(5) of the CCC states that an installment sale contract provided to the buyer shall include the purchase price of the vehicle and other information including, but not limited to, itemized charges, taxes, trade-in information and a summary of legal rights. (*Id.*, Paragraph 33).

32. Thirty-four (34) of AIA's installment sale contracts did not provide itemized charges, taxes, trade-in information and a summary of legal rights to the buyer. (*Id.*, Paragraph 34).

33. Section 6222(9) of the CCC states that every installment contract shall contain the following statement: "*If you encounter a problem, you may have additional rights under the Unfair Trade Practices and Consumer Protection Law, which is enforced by the Attorney General, Bureau of Consumer Protection.*" 12 Pa.C.S. §6222(9). (*Id.*, Paragraph 35).

34. Thirty-four (34) of AIA's installment sale contracts did not provide the required statement relating to the Unfair Trade Practices and Consumer Protection Law. (*Id.*, Paragraph 36).

35. Section 6223 of the CCC states that every installment sale contract shall include a "Notice to Buyer" stating, "*Do not sign this contract in blank. You are entitled to an exact copy of the contract that you sign. Keep it to protect your legal rights. Any holder of this consumer credit contract is subject to all claims and defenses which the buyer could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof. Recovery hereunder by the buyer shall not exceed amounts paid by the buyer hereunder.*" 12 Pa.C.S. §6223(a). (*Id.*, Paragraph 37).

36. Thirty-four (34) of AIA's installment sale contracts did not provide the required "Notice to Buyer." (*Id.*, Paragraph 38).

37. Section 6224 of the CCC states that costs and charges relating to the amount financed shall be separately itemized in an installment sale contract as to their nature and amounts. 12 Pa.C.S. §6224. (*Id.*, Paragraph 39).

38. Thirty-four (34) of AIA's installment sale contracts did not separately itemize fees, as required. (*Id.*, Paragraph 40).

39. Section 6233(a) of the CCC states that a licensee may directly or indirectly charge, contract for, collect or receive from the buyer, in connection with the retail sale of a motor vehicle under an installment sale contract, insurance charges, other charges necessary or incidental to the sale of the motor vehicle, finance charges, refinance charges, late charges, recording and satisfaction fees, court costs, attorney fees and costs of retaking, repairing and storing a repossessed vehicle, which are disclosed as required. (*Id.*, Paragraph 42).

40. Section 6223(b) of the CCC states that a licensee may not directly or indirectly charge, contract for, collect or receive from the buyer, in connection with the retail sale of a motor vehicle under an installment sale contract, any further or other amount for costs, charges, examination, appraisal, service, brokerage, commission, expense, interest, discount, fees, fines, penalties or other thing of value in excess of the amounts permitted under subsection (a). 12 Pa.C.S. §6233. (*Id.*, Paragraph 43).

41. AIA charged consumers a \$299 processing fee, which was in excess of the allowable documentation fee that a car dealer could charge at that time. (*Id.*, Paragraph 41).

42. In 10 of its installment sale contracts, AIA violated section 6233(a),(b) of the CCC by charging a \$299 processing fee. (*Id.*, Paragraph 44).

43. On March 20, 2019, the Department issued invoice number 1802317083 to AIA in the amount of \$338.68 for costs incurred during the attempted examination on February 6, 2019 ("Exam Invoice #1"). (*Id.*, Paragraph 45).

44. Exam Invoice #1 was due within 60 days and was issued pursuant to Section 204 of the Banking and Securities Code ("Code").<sup>4</sup> (*Id.*, Paragraph 46).

45. AIA did not pay Exam Invoice #1 within 60 days from the date it was issued. (*Id.*, Paragraph 47).

46. Section 204.B of the Code authorizes the Department to assess a \$150 penalty fee when a payment is 60 days delinquent and again for each 30-day period of delinquency. 71 P.S. §733-204B. (*Id.*, Paragraph 48).

47. On June 18, 2019, the Department sent AIA a first dunning notice via U.S. Mail, notifying it that Exam Invoice #1 was past due. The first dunning notice also included penalty fee invoice, No. 1802355688 ("First Delinquency Notice") in the amount of \$150.00. (*Id.*, Paragraph 49).

48. On July 18, 2019, the Department sent AIA a second dunning notice via U.S. Mail, notifying it that Exam Invoice #1 and the First Delinquency Invoice were past due. The second dunning

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<sup>4</sup> **Section 204. Assessment of Expenses of Department upon Institutions.**

A. All the expenses of the department, including those enumerated in this act or otherwise authorized by law, shall be charged to and paid by all institutions, including licensees, in such equitable amounts, at such times, and in such manner as the department shall, by general rule or regulation, prescribe. The expenses incurred by the department in connection with any examination or investigation, whether regular or special, including a proportionate part of the salary of any examiner or other employe of the department or third-party expenses, including attorneys retained by the department, may be assessed by the department upon the particular institution examined or investigated.

B. The department shall give written notice to each institution, including licensees, of the amount lawfully charged against it under the provisions of this act. The institution shall pay the amount of such assessment to the department within sixty days after the invoice date on the notice. If payment is not made by any institution or licensee within the sixty-day period, the department may impose in addition to the money assessed a maximum penalty fee of one hundred fifty dollars (\$150.00) for that sixty-day period and each successive thirty-day period of delinquency. In addition, the department, through the Office of Attorney General or its authorized designee, may institute an appropriate action at law for the amount lawfully assessed against such institution, together with any additional costs incurred by the Department of Banking or the Office of Attorney General or its authorized designee by virtue of such failure to pay.

C. This section also applies to licensees.

notice also included a second penalty fee invoice, No. 1802367904 ("Second Delinquency Invoice"), in the amount of \$150.00. (*Id.*, Paragraph 50).

49. On August 18, 2019, the Department sent AIA a third dunning notice via U.S. Mail, notifying it that Exam Invoice #1 and the First and Second Delinquency Notices were past due. The third dunning notice also included a third penalty fee invoice, No. 1802381832 ("Third Delinquency Invoice"), in the amount of \$150.00. (Exam Invoice #1 and its three Delinquency Invoices are collectively referred to as "the 2/6/19 Attempted Exam Invoices"). (*Id.*, Paragraph 51).

50. The 2/6/19 Attempted Exam Invoices were not returned to the Department as undeliverable. (*Id.*, Paragraph 52).

51. On May 30, 2019, the Department issued invoice number 1802348824 in the amount of \$406.40 for costs incurred during the attempted examination on April 29, 2019 ("Exam Invoice #2"). (*Id.*, Paragraph 53).

52. Exam Invoice #2 was due within 60 days and was issued pursuant to Section 204 of the Code. (*Id.*, Paragraph 54).

53. AIA did not pay Exam Invoice #2 within 60 days of the day it was issued. (*Id.*, Paragraph 55).

54. On August 18, 2019, the Department sent AIA its first dunning notice, notifying it that Exam Invoice #2 was past due. The first dunning notice also included a penalty fee, invoice No. 1802381840 ("First Delinquency Invoice") in the amount of \$150.00. (*Id.*, Paragraph 56).

55. On September 18, 2019, the Department sent AIA a second dunning notice via U.S. Mail, notifying it that the Exam Invoice #2 and the First Delinquency Invoice were past due. The second dunning notice also included a second penalty fee invoice, No. 1802397142 ("Second Delinquency Invoice #2") in the amount of \$150.00. (*Id.*, Paragraph 57).

56. On October 18, 2019, the Department sent AIA a third dunning notice via U.S. Mail, notifying it that the Exam Invoice #2, the First Delinquency Invoice and Second Delinquency Invoice were past due. This dunning notice also included a third penalty fee invoice, 1802409451 (“Third Delinquency Notice”) in the amount of \$150.00. (Exam Invoice #2 and its three Delinquency Invoices are collectively referred to as “the 4/29/19 Attempted Exam Invoices”). (*Id.*, Paragraph 58).

57. The 4/29/19 Attempted Exam Invoices were not returned to the Department as undeliverable. (*Id.*, Paragraph 59).

58. AIA paid neither the 2/6/19 Attempted Exam Invoices nor the 4/29/19 Attempted Exam Invoices. (*Id.*, Paragraphs 45-62).

59. Section 6203(d) of the CCC provides that the Department may assess the costs of examinations upon the particular person examined or investigated. 12 Pa.C.S. §6203(d). (*Id.*, Paragraph 61).

60. On August 11, 2020, the Department issued a *Suspension and Cease and Desist Order* (“*C&D Order*”) to AIA pursuant to 1 Pa. Code §35.14. (*MDFA*, Paragraph 1).

61. The *Notice* attached to the Department’s *C&D Order* provided that AIA had thirty (30) days from the date of the *C&D Order* to file its Answer. (*Id.*, Paragraph 2).

62. AIA’s Answer to the *C&D Order* was due on September 10, 2020. 1 Pa. Code §35.37. (*Id.*).

63. Pursuant to the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§31.1-35.251, orders “shall be served by the office of the agency by mail...by mailing a copy thereof to the person to be served, addressed to the person designated in the initial pleading or submittal at his principal office or place of business.” 1 Pa. Code §33.31. (*Id.*, Paragraph 3).

64. The Pennsylvania Rules of Civil Procedure provide that “[i]f a rule of civil procedure authorizes original process to be served by mail, a copy of the process shall be mailed to the defendant

by any form of mail requiring a receipt signed by the defendant or his authorized agent. Service is complete upon delivery of the mail.” Pa.R.C.P. 403. (*Id.*, Paragraph 4).

65. The Pennsylvania Rules of Civil Procedure provide that “[i]f the mail is returned with notation by the postal authorities that the defendant refused to accept the mail, the plaintiff shall have the right of service by mailing a copy to the defendant at the same address by ordinary mail with the return address of the sender appearing thereon. Service by ordinary mail is complete if the mail is not returned to the sender within fifteen days after mailing.” Pa.R.C.P. 403(1). (*Id.*).

66. On its Installment Seller License Application, AIA indicates a principal place of business at 4700 Torresdale Avenue, Philadelphia, PA 19124-2801 (“AIA’s address”). (*Id.*, Paragraph 5).

67. On August 11, 2020, the Department mailed the *C&D Order* via certified mail to AIA at AIA’s address. (*Id.*, Paragraph 6 and Exhibit A thereto).

68. The United States Postal Service (“USPS”) tracking information for the certified mailings indicates that the *C&D Order* was delivered on August 29, 2020. (*Id.*, Paragraph 7 and Exhibit B thereto).

69. On August 11, 2020, the Department mailed the *C&D Order* via ordinary, first-class mail to AIA at AIA’s Address. (*Id.*, Paragraph 8 and Exhibit C thereto).

70. The ordinary, first-class mailing sent to AIA at AIA’s address was not returned to the Department as undeliverable within fifteen days after mailing. (*Id.*, Paragraph 9).

71. AIA did not request an extension of time to file an answer to the *C&D Order*. (*Id.*, Paragraph 10).

72. AIA did not file an Answer to the *C&D Order* with the Department. (*Id.*, Paragraph 11).

73. On October 14, 2020, the Department filed a *Motion to Deem Facts Admitted and Entry*



*of Default Judgment* (“*MDFA*”). (Official Notice – Department Records<sup>5</sup>).

74. AIA did not file an Answer to the *MDFA* within 10 days as required by the General Rules of Administrative Practice and Procedure at 1 Pa. Code §35.179. (Department records).

75. On December 30, 2020, the Hearing Officer issued an *Amended Order Granting Motion to Deem Facts Admitted and Entry of Default Judgment*, in which the factual allegations set forth in Paragraphs 1 through 66 of the *C&D Order* were deemed admitted. (Department records).

76. Respondent has been served with the *C&D Order*, *MDFA* and all subsequent orders, notices, documents and pleadings filed in this matter. (Department records)

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<sup>5</sup> Official notice is taken in accordance with the rule that a licensing board may take official notice of its own records. General Rules of Administrative Practice and Procedure, 1 Pa. Code § 31.1 *et seq.*, at § 35.173; see also, *Falasco v. Commonwealth of Pennsylvania Board of Probation and Parole*, 521 A.2d 991 (Pa. Cmwlth. 1987) (The doctrine of official notice allows an agency to take official notice of facts which are obvious and notorious to an expert in the agency's field and those facts contained in reports and records in the agency's files); *Gleeson v. State Bd. of Medicine*, 900 A.2d 430, 440 (Pa. Cmwlth. 2006), *appeal denied*, 917 A.2d 316 (Pa. 2007) (licensing board may take official notice of its own records). All subsequent such references will be cited as “Department records.”

## CONCLUSIONS OF LAW

1. The Department has jurisdiction in this matter under the CCC. 12 Pa.C.S. §§6102, 6203, 6218, 6274. (Findings of Fact Nos. 1-4).

2. Section 6218(a)(4) of the CCC authorizes the Department "upon notice under subsection (b), ...to revoke or suspend a license if it finds that the licensee has...failed to comply with a demand, order or regulation of the department lawfully made by the department under and within the authority of [the CCC]." 12 Pa.C.S. §6218(a)(4).

3. Section 6218(b) of the CCC provides that the Department "shall provide 30 days' written notice to the licensee for a revocation of a license...by registered mail to the place of business of the licensee."

4. The Department has the authority to issue enforcement orders, including the authority to suspend any license issued pursuant to the CCC, if a licensee has failed to comply with or violated any provision of the CCC. 12 Pa.C.S. §§6203, 6218.

5. Section 6274 of the CCC states that a person who is in violation of the CCC, or who engages in an activity for which a license could be suspended or revoked shall be subject to a civil penalty of not more than \$2,000 per offense. 12 Pa.C.S. §6274.

6. By failing to appear for the examination of February 6, 2019 and not providing access to records, thereby preventing the examination from occurring, AIA violated Sections 6203(a)(1), 6203(a)(2) and 6204(d) of the CCC. (Findings of Fact Nos. 5-9, 24-25).

7. By failing to appear for the examination of April 29, 2019 and not providing access to records, thereby preventing the examination from occurring, AIA violated Sections 6203(a)(1), 6203(a)(2) and 6204(d) of the CCC. (Findings of Fact Nos. 10-18, 24-25).

8. By failing to appear for the examination of October 17, 2019 access to records, thereby preventing the examination from occurring, AIA violated Sections 6203(a)(1), 6203(a)(2) and 6204(d)

of the CCC. (Findings of Fact Nos. 19-25).

9. AIA violated section 6221(d) of the CCC in that 18 of its installment sale contracts did not provide for equal payment amounts for each payment due. (Findings of Fact Nos. 26-28).

10. AIA violated Section 6221(e) of the CCC in that eight (8) of its installment sale contracts did not provide buyers with the required disclosures in plain language regarding the purchase of specific items in conjunction with a motor vehicle installment sale. (Findings of Fact Nos. 29-30).

11. AIA violated Section 6222(5) of the CCC in that 34 of its installment sale contracts did not provide itemized charges, taxes, trade-in information and a summary of legal rights to the buyer. (Findings of Fact Nos. 31-32).

12. AIA violated Section 6222(9) of the CCC in that 34 of AIA's installment sale contracts did not contain the required disclosure relating to the Unfair Trade Practices and Consumer Protection Law. (Findings of Fact Nos. 33-34).

13. AIA violated Section 6223(a) of the CCC in that 34 of AIA's installment sale contracts did not contain a "Notice to Buyer" statement. (Findings of Fact Nos. 35-36).

14. AIA violated Section 6224 of the CCC in that 34 of AIA's installment sale contracts did not separately itemize fees. (Findings of Fact No. 37-38).

15. AIA violated section 6233(b) of the CCC in that AIA charged a \$299 processing fee, which is not provided for in Section 6233(a) of the CCC, on 10 of its installment sales contracts. (Findings of Fact Nos. 39-42).

16. By failing to pay the 2/6/19 Exam Invoices and the 4/29/19 Exam Invoices, AIA is in violation of Section 6203(d) of the CCC in failing to comply with a demand by the Department lawfully made under the CCC. (Findings of Fact Nos. 43-59).

17. AIA received adequate notice of this proceeding and was afforded, but declined, an opportunity to be heard, in accordance with section 4 of the Administrative Agency Law, 2 Pa. C.S. § 504. (Findings of Fact Nos. 1-4, 60-76).

## DISCUSSION

### Service/Default

The *Notice* attached to the *C&D Order* directed AIA to file an Answer to the allegations therein within 30 days, and advised it that failure to file a timely Answer could result in a final order against it without a hearing. Nonetheless, AIA failed to file an Answer or otherwise respond to the allegations in the *C&D Order* within the specified 30-day period. The first-class mailing sent to AIA at its address was not returned to the Bureau as undeliverable within 15 days of mailing. This establishes the presumption of service of the *C&D Order* upon Respondent. (*Id.*). See, *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment, Appeal and Review*, 645 A.2d 944, 946 (Pa. Cmwlth. 1994); *John Kenneth, Ltd. v. Com., U.C.B.R.*, 444 A.2d 824, 826 (Pa. Cmwlth. 1982) (“[w]here notice, mailed to a party’s last known address, is not returned by the postal authorities as undeliverable, the party is presumed to have received notice”). “Notice of administrative action which is mailed to the interested party’s last known address has been found to be reasonable notice.” *Kobylski v. Milk Marketing Board*, 516 A.2d 75, 77 (Pa. Cmwlth. 1984) (citing *Yarbrough v. Department of Public Welfare*, 478 A.2d 956 (Pa. Cmwlth. 1984)). Accordingly, AIA was properly served with the *Notice* and the *C&D Order* and all other subsequent filings sent to it at AIA’s address. (Findings of Fact Nos. 1-4, 60-76).

Accordingly, on October 14, 2020, the Department filed its *MDFA*, copies of which were served upon AIA at AIA’s address, which was the same address at which the *C&D Order* had been served. In the *MDFA*, the Bureau asked that AIA be deemed in default under the GRAPP at 1 Pa. Code § 35.37<sup>6</sup>

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<sup>6</sup> Section 35.37 of the GRAPP provides as follows:

**§ 35.37. Answers to orders to show cause.**

A person upon whom an order to show cause has been served under § 35.14 (relating to orders to show cause) shall, if directed so to do, respond to the same by filing within the time specified in the order an answer in writing. The answer shall be drawn so as specifically to admit or deny the allegations

for its failure to answer the allegations set forth in the *C&D Order*, and that those allegations be deemed admitted. Therefore, AIA was on notice that failure to respond to the *C&D Order* would result in the waiver of its right to a hearing and that the Commission may enter a final order against it. Yet, AIA never answered or otherwise responded to the *C&D Order* or the *MDFA*. Therefore, it followed that, under the December 30, 2020 Order, AIA was found to be in default, and the facts alleged in *C&D Order* were deemed admitted. 1 Pa. Code §§ 35.35, 35.37.

The procedural history set forth above satisfactorily demonstrates that AIA has been afforded adequate notice of the charges, as well as an opportunity to be heard on them. It is, therefore, now proper to enter a final order in this disciplinary proceeding without a hearing. See, *Celane v. Insurance Commissioner*, 415 A.2d 130 (Pa. Cmwlth. 1980).

### Violations

In its *C&D Order* the Department alleges that AIA committed multiple violations of numerous sections of the CCC. These alleged violations may be divided into three categories: (1) AIA's multiple failures and/or refusals to permit the Department to conduct authorized examinations of its records under Sections 6203 and 6204 of the CCC; (2) AIA's multiple violations of numerous statutory requirements in the contents of its installment sale contracts under Sections 6221, 6222, 6223, 6224 and 6233 of the CCC; and (3) AIA's failure or refusal to pay invoices, fees and penalties for two of the Department's attempted examinations, pursuant to Section 6203(d) of the CCC.

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or charges which may be made in the order, set forth the facts upon which respondent relies and state concisely the matters of law relied upon. Mere general denials of the allegations of an order to show cause which general denials are unsupported by specific facts upon which respondent relies, will not be considered as complying with this section and may be deemed a basis for entry of a final order without hearing, unless otherwise required by statute, on the ground that the response has raised no issues requiring a hearing or further proceedings. A respondent failing to file answer within the time allowed shall be deemed in default, and relevant facts stated in the order to show cause may be deemed admitted.

1 Pa. Code § 35.37 (emphasis added).

## Inspections

The Department possesses the authority under Section 6203(a), (b)(1) of the CCC to investigate the licensee,<sup>7</sup> AIA's business activities by examining AIA's records, accessing AIA's offices and its owner Mr. Yudik Aysenshtyen's place of business, as follows:

### **§ 6203. Authority of department**

**(a) Powers.**--The department has the authority to do any of the following:

(1) Investigate the business activities of a licensee and person engaged in a business contemplated by this chapter by the following means:

(i) Examining the records of the licensee and person.

(ii) Accessing the offices and places of business of the licensee and person and the records of the licensee and person.

(2) Examine the records, safes and vaults of a person described under subsection (b)(2) for the purpose of discovering violations of this chapter.

(3) Require the attendance and testimony of witnesses and the production of records relating to a business that the department has the authority to investigate. For the purposes of this subsection, a duly authorized representative of the department may sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence.

(4) Prescribe the minimum information to be shown in the records of a licensee so as to enable the department to determine compliance with the provisions of this chapter.

(5) Promulgate regulations and issue orders, statements of policy and written interpretations as necessary or appropriate for the interpretation or enforcement of this chapter.

(6) Reduce the amount of or prohibit entirely a cost regarding the retaking, storing or repairing of a motor vehicle under section 6256 (relating to buyer's liability for costs) if the cost:

(i) appears to be fictitious, unnecessary, unreasonable or exorbitant; or

(ii) would not have been incurred by a prudent person under similar circumstances.

**(b) Applicability.**--

(1) This section applies whether the person acts or claims to act as principal, agent or broker, either under or without the authority of this chapter.

(2) A person who is not licensed under this chapter is presumed to be engaged in a business contemplated by this chapter if the person, as principal, agent or broker, advertises or solicits business for which a license is required by the provisions of this chapter.

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12 Pa.C.S. §6203(a),(b)

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<sup>7</sup> "Licensee." A person who has been issued a license as an installment seller, a sales finance company or a collector-repossessor under this chapter, which license has not expired and has not been surrendered or revoked.

Section 6204 of the Act specifies the type of records a licensee is to maintain at its place of business in order that the Department may determine its compliance with the CCC, including during the Department's examination:

**§ 6204. Records**

**(a) General rule.**--A licensee shall maintain, at the place of business designated in the license certificate, records of the business conducted under the license issued for the place of business so as to enable the department to determine whether the licensee's business contemplated by this chapter is being operated in accordance with the provisions of this chapter.

**(b) Multiple places of business.**--A licensee operating two or more licensed places of business in this Commonwealth may maintain the general control records of all the offices at any one of the offices, or at any other office maintained by the licensee, upon the following:

- (1) The filing of a written request with the department designating the office at which the control records are maintained.
- (2) Approval of the request by the department.

**(c) English language.**--Records of a licensee shall be maintained in the English language.

**(d) Preservation.**--Records of a licensee shall be preserved and available for examination by the department for at least two years after making the final entry therein.

12 Pa.C.S. §6204

The Department may revoke or suspend a license under Section 6218<sup>b</sup> of the CCC if it finds that a licensee, such as AIA, violated a provision of the CCC, including refusing to permit the Department to make examinations. 12 Pa.C.S. §6218(a)(5).

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<sup>b</sup> § 6218. Revocation or suspension of license

**(a) Grounds.**--Upon notice under subsection (b), the department may revoke or suspend a license if it discovers a fact or condition that, had it existed or been discovered at the time of filing of any license application, would have warranted disapproval of the application or if it finds that the licensee has engaged in any of the following:

- (1) Made a material misstatement in the license application.
- (2) Violated a provision of this chapter.
- (3) Violated an order or regulation issued by the department under and within the authority of this chapter.
- (4) Failed to comply with a demand, order or regulation of the department lawfully made by the department under and within the authority of this chapter.
- (5) Refused or refuses to permit the department to make examinations authorized by this chapter.



## Installment sales contracts<sup>9</sup>

Section 6221 of the CCC sets forth the requirements for an installment sale.<sup>10</sup> Section 6222 of

- 
- (6) Failed to maintain in effect the bond required under section 6213 (relating to bond), in the case of a sales finance company and collector-repossessor.
  - (7) Failed to maintain satisfactory records required by this chapter or prescribed by the department.
  - (8) Falsified records required by this chapter to be maintained of the business contemplated by this chapter.
  - (9) Failed to file a report with the department within the time stipulated in this chapter.
  - (10) Failed to pay the fine required by this chapter for failure to file reports to the department within the time stipulated.

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- (13) Engaged in unfair, deceptive, fraudulent or illegal practices or conduct in connection with a business regulated by this chapter.

### (b) Notice.

- (1) The department shall provide 30 days' written notice to the licensee for a revocation or suspension of a license.
- (2) The notice under this subsection shall be forwarded by registered mail to the place of business of the licensee, as shown in the license application or as amended on the license certificate in case of change of address subsequent to issuance of the license certificate.

12 Pa.C.S. §6218

## <sup>9</sup> § 6202. Definitions

### "Installment sale contract."

- (1) A contract for the retail sale of a motor vehicle, or a contract that has a similar purpose or effect, whether or not the installment seller has retained a security interest in the motor vehicle or has taken collateral security for a buyer's obligation, if:
  - (i) all or part of the purchase price is payable in two or more scheduled payments subsequent to the making of the contract; or
  - (ii) a buyer undertakes to make two or more scheduled payments or deposits that may be used to pay all or part of the purchase price.
- (2) The term includes any form of contract, however nominated, for the bailment or leasing of a motor vehicle, which contains both of the following, or any other arrangement having a similar purpose or effect:
  - (i) The buyer contracts to pay as compensation a sum substantially equivalent to or in excess of the value of the motor vehicle.
  - (ii) Ownership of the motor vehicle may be transferred to the buyer.
- (3) The term includes and applies to an extension, deferment, renewal or other revision of the installment sale contract.
- (4) The term excludes the following:
  - (i) A sale or contract for sale upon an open book account, if both of the following conditions are met:
    - (A) The installment seller has not retained or taken a security interest in the motor vehicle sold or a collateral security for the buyer's obligation.
    - (B) The buyer:
      - (I) is not required to pay a sum other than the purchase price of the motor vehicle sold in connection with the sale or extension of credit; and
      - (II) is obligated to pay for the motor vehicle in full within 90 days from the time the sale or contract for sale was made.
    - (ii) A right to acquire possession of goods under a lease, unless the lease:
      - (A) constitutes a security interest as defined in 13 Pa.C.S. § 1201 (relating to general definitions); and
      - (B) is subject to 13 Pa.C.S. Div. 9 (relating to secured transactions).

<sup>10</sup> Section 6221 states, in pertinent part:

the CCC sets forth the required contents of an installment sale agreement.<sup>11</sup> Among the notices that

#### § 6221. Requirements

(a) General rule.--An installment sale contract shall:

\*\*\*

(3) be signed by the buyer and seller; and

(4) be complete as to all essential provisions before the buyer signs the contract.

\*\*\*

(d) Equal periods and amounts.--An installment sale contract shall provide for payment of the time balance in substantially equal periods and amounts except in the following instances:

(1) The buyer expects the buyer's income to vary because of seasonal employment, seasonal sales, use of accelerated depreciation for tax purposes or other known causes, in which case the contract may provide for payment of the time balance in amounts that vary with the expected varying income.

(2) The sale of a heavy commercial motor vehicle.

(3) The sale of a motor vehicle to a salesperson licensed under the act of December 22, 1983 (P.L. 306, No. 84), [footnote omitted] known as the Board of Vehicles Act.

(4) When the contract provides for fixed residual value financing.

(e) Disclosures.--

(1) Prior to a buyer's execution of an installment sale contract, an installment seller shall provide to the buyer an oral and a written disclosure in plain language.

(2) The written disclosure shall:

(i) be separate from the contract to be signed by the buyer;

(ii) be complete without any blank spaces; and

(iii) advise that the purchase of specific items related to acquiring the motor vehicle is voluntary and not required as a condition of the buyer's receiving the installment sale contract loan. The items to which this subparagraph applies:

(A) include a service contract, warranty, debt cancellation agreement, debt suspension agreement and insurance products not required by section 6241 (relating to insurance); and

(B) exclude an option or accessory physically attached to the motor vehicle.

(3) The completed written disclosure shall be copied exactly and furnished by the seller to the buyer at no cost when the buyer receives a copy of the contract.

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12 Pa.C.S. §6221(a),(d),(e)

<sup>11</sup> The pertinent provisions of Section 6222 set forth full list of information to be provided at which provide as follows:

#### § 6222. Contents

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(5) The following items in writing and in a clear and conspicuous manner, with each component of each subparagraph listed separately:

(i) The purchase price of the motor vehicle, which shall include the following:

(A) Taxes.

(B) Charges for delivery.

(C) Charges for servicing, repairing or improving the motor vehicle.

(D) Charges for a service contract, which:

(I) shall appear as separate items after the following or substantially similar words, which shall be boldface, underlined, adjacent to the purchase price and in type print size not smaller than that used for all item categories: "including optional service contracts and/or extended warranties in the amount of"; or

(II) may be separately included as "other charges" under subparagraph (v).

(E) Charges for accessories and installation.

(F) Other charges normally included in the delivered purchase price of a motor vehicle.

AIA's installment sale contracts did not provide is one specifically set forth in Section 6223(a) of the CCC:

**§ 6223. Notice**

(a) **Requirement.**--An installment sale contract shall contain the notice under subsection (b), which shall be printed directly above the space provided for the signature of the buyer.

(b) **Form.**--

(1) Except as provided in paragraph (2), the notice shall be in the following form:

**NOTICE TO BUYER:** Do not sign this contract in blank. You are entitled to an exact copy of the contract you sign. Keep it to protect your legal rights. Any holder of this

(ii) The down payment made by the buyer at the time of or prior to execution of the contract, which shall separately indicate the extent to which it is made in cash or represented by either or both of the following:

- (A) The agreed-upon value of a trade-in motor vehicle, along with a description of the trade-in sufficient for accurate identification.
- (B) Other goods.

(iii) The unpaid purchase price balance, which is the difference between the following:

- (A) The purchase price under subparagraph (i).
- (B) The down payment under subparagraph (ii).

(iv) Insurance charges, the payment for which the seller agrees to extend credit to the buyer, which shall set forth the term of insurance, a concise description of the coverage and the amount of the premium.

(v) Other charges necessary or incidental to the sale or financing of a motor vehicle:

- (A) which the seller contracts to retain, receive or pay on behalf of the buyer; or
- (B) for which the seller agrees to extend credit to the buyer as authorized by this chapter, including charges for a debt cancellation agreement and debt suspension agreement.

(vi) The principal amount financed, which is the sum of the following:

- (A) The unpaid purchase price balance under subparagraph (iii).
- (B) The insurance charges under subparagraph (iv).
- (C) The other charges under subparagraph (v).

(D) Amounts representing payment of a prior credit or lease balance to discharge a security interest, lien or lease interest on a motor vehicle or other property traded or returned.

(vii) The finance charge, which is the consideration in excess of the purchase price under subparagraph (i), excluding insurance charges under subparagraph (iv) and other charges under subparagraph (v), and which the buyer agrees to pay to the seller for the privilege of purchasing the motor vehicle under the installment sale contract.

(viii) The time balance, which represents the total obligation of the buyer and which is the sum of the following:

- (A) The principal amount financed under subparagraph (vi).
- (B) The finance charge under subparagraph (vii).

(ix) The payment schedule, which shall state the number, amount and timing of the payments required to liquidate the time balance.

\*\*\*

(9) The following statement:

If you encounter a problem, you may have additional rights under the Unfair Trade Practices and Consumer Protection Law, which is enforced by the Pennsylvania Office of Attorney General, Bureau of Consumer Protection.

consumer credit contract is subject to all claims and defenses which the buyer could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof. Recovery hereunder by the buyer shall not exceed amounts paid by the buyer hereunder.

(2) In the notice, the words "lessee" or "mortgagor" may be substituted for the word "buyer," and the words "lease" or "mortgage" may be substituted for the word "contract."

12 Pa.C.S. §6223

(Findings of Fact Nos. 35-36).

Another violation the Department discovered during its review of AIA's contracts was its charging of a \$299.00 processing fee in 10 transactions. (Findings of Fact Nos. 39-42). No such fee is permissible in an installment sale transaction under the Section 6233 of the CCC, which states, in pertinent part:

**§ 6233. Prohibited charges**

**(a) General rule.**--Except as provided in subsections (b) and (c), a licensee may directly or indirectly charge, contract for, collect or receive from the buyer, in connection with the retail sale of a motor vehicle under an installment sale contract, insurance charges, other charges necessary or incidental to the sale of the motor vehicle, finance charges, refinance charges, late charges, recording and satisfaction fees, court costs, attorney fees and costs of retaking, repairing and storing a repossessed motor vehicle, which are disclosed as required by section 6222(5) (relating to contents).

**(b) Exception.**--A licensee may not directly or indirectly charge, contract for, collect or receive from the buyer, in connection with the retail sale of a motor vehicle under an installment sale contract, any further or other amount for costs, charges, examination, appraisal, service, brokerage, commission, expense, interest, discount, fees, fines, penalties or other thing of value in excess of the amounts permitted under subsection (a) or (c).

\*\*\*

12 Pa.C.S. 6233(a), (b)

AIA's refusal to permit the Department to conduct its statutory examination on two occasions resulted in the Department's incurring expenses relating to those inspections. The invoiced amounts for those expenses which total \$734.08 (Findings of Fact Nos. 43-59) are properly assessed to AIA under

Section 6203(d) of the CCC, which states:

**§ 6203. Authority of department**

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(d) **Expenses.**--The expenses incurred by the department in connection with an examination or investigation, including a proportionate part of the salary of an examiner or other employee of the department and counsel assigned by the department, may be assessed by the department upon the particular person examined or investigated.

12 Pa.C.S. §6203(d)

As AIA continued to ignore the Department's invoices, the Department dunned it for penalties attributable to the delinquent invoiced amounts. (Findings of Fact Nos. 43-59). The Banking and Securities Code authorizes the Department to assess a \$150 penalty fee when a payment is 60 days delinquent and again for each successive 30-day period of delinquency. 71 P.S. 733.204B. Given the extent of the AIA's delinquency regarding the invoices for the Department's expenses for the thwarted investigations, AIA is properly assessed an additional total of \$900 of penalties. (Findings of Fact Nos. 43-59).

Typically, in a case such as this, the Department bears the burden of proving the allegations in the *C&D Order* by a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence is generally understood to mean that the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the Commonwealth's case must weigh slightly more than the opposing evidence. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1949). The Department, therefore, has the burden of proving the charges against Respondent with evidence that is substantial and legally credible, not by mere "suspicion" or by only a "scintilla" of evidence. *Lansberry*, 578 A.2d at 602. "Preponderance of the evidence is tantamount to a 'more likely than not standard'...Proof by a preponderance of the evidence is 'often alluded to as a weighing of the evidence and a determination based upon which way the mythical scales are tipped'." *Agostino v.*

*Township of Collier*, 968 A. 2d 258, 269 (Pa. Cmwlth. 2009) (citing *Commonwealth v. McJett*, 811 A. 2d 104, 110 (Pa. Cmwlth. 2002)), (citations omitted).

The factual allegations of the *C&D Order* have been deemed admitted, by default; hence, any objection by AIA to the accuracy of the factual averments is waived. The deemed admitted facts establish that the Department has met its burden of proof as to the violations alleged in the *C&D Order*.

### Sanctions

AIA's numerous violations of the CCC authorize the Department under Section 6218(a)(2),(5) to suspend or revoke AIA's license. Given the extent of its offenses relating to its contracts, and its violations regarding the Department's three attempted examinations, a revocation of AIA's license is justified. The CCC provides, at Section 6274,<sup>12</sup> that the Department may levy a civil penalty against AIA for each offense. In addition to those three offenses, AIA was found to have 172 violations relating to its Installment Sale Contracts. (Findings of Fact Nos. 26-42). Along with the revocation of AIA's license, and based upon a total 175 violations, the Department is authorized to assess a civil penalty against AIA in the amount of \$350,000. Accordingly, the following Order should issue.

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<sup>12</sup> § 6274. Civil penalty by department

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



fifty thousand dollars (\$350,000). The fine payment shall be made by ACH or wire transfer, or if ACH or wire transfer is unavailable, by certified check, cashier's check, teller's check or money order made payable to the "Pennsylvania Department of Banking and Securities" and shall be mailed, or delivered in person to the attention of: Department of Banking and Securities, Compliance Office, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101-2290.

When AIA's license is no longer suspended, AIA shall:

- a. Ensure that its installment sale contracts provide for payments in substantially equal amounts and time periods except as provided for in Section 6221(d)(1) through (4) of the CCC;
- b. Ensure that its installment sale contracts contain all notices and disclosures required by the CCC;
- c. Refrain from charging any fees not authorized by the CCC;
- d. Going forward, make records and knowledgeable personnel available for examination upon request of the Department;
- e. Going forward, promptly pay to the Department any expenses assessed by the Department in connection with an examination or investigation;
- f. Provide the Department with an installment sale contract form to evidence that future installment sale contracts will contain all notices and disclosures required by the CCC.

Nothing in this Order shall prevent the Compliance Office from taking any further administrative action as deemed necessary.



The effective date of this Order shall be 30 days after the date this Order is signed below.

**BY ORDER:**

Redacted

~~David M. Green~~  
**Hearing Officer**

***For the Bureau:*** Christopher G. Giovanis, Esquire  
Assistant Counsel  
Office of Chief Counsel  
Commonwealth of Pennsylvania  
Department of Banking and Securities  
Market Square Plaza  
17 N. 2<sup>nd</sup> Street  
Suite 1300  
Harrisburg, PA 17101

***For Respondent:*** A Impulse Auto, Inc.  
4700 Torresdale Avenue  
Philadelphia, PA 19124-2801

***Docket Clerk:*** Linnea Freeberg  
Commonwealth of Pennsylvania  
Department of Banking and Securities  
Market Square Plaza  
17 N. Second Street  
Suite 1300  
Harrisburg, PA 17101

***Date of Mailing:***

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND SECURITIES

FILED

2021 MAR -9 AM 8:55

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

PA DEPARTMENT OF  
BANKING AND SECURITIES

PETITIONER,

v.

Docket No. : 200043 (BNK-C&D)

A IMPULS AUTO INC.

RESPONDENT.

CERTIFICATE OF SERVICE

I hereby certify that on March 9<sup>th</sup>, 2021, I served a true and correct copy of the attached Letter and Proposed Report in accordance with the requirements of 1 Pa. Code § 33.31 (relating to service by agency), in the manner indicated below:

**By Hand Delivery Mail:**

Christopher G. Giovanis  
Assistant Counsel  
PA Department of Banking and Securities  
17 North Second Street, Suite 1300  
Harrisburg, PA 17101

**By United States First Class Mail:**

A Impuls Auto Inc.  
4700 Torresdale Ave.  
Philadelphia, PA 19124-2801

By:

Redacted

Linnea Freeberg, Docket Clerk  
PA Department of Banking and Securities  
17 North Second Street, Suite 1300  
Harrisburg, Pennsylvania 17101

FILED

2021 MAY 24 AM 8:39

PA DEPARTMENT OF  
BANKING AND SECURITIES

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND SECURITIES**

**COMMONWEALTH OF PENNSYLVANIA :  
DEPARTMENT OF BANKING AND :  
SECURITIES, COMPLIANCE OFFICE :**

v.

**Docket No. : 200043 (BNK-C&D)**

**A IMPULS AUTO, INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused to be served a copy of the foregoing *Final Order and accompanying report of the hearing officer* upon counsel for the parties in this proceeding, in accordance with the requirements of 1 Pa. Code§ 33.32:

**BY CERTIFIED AND FIRST CLASS MAIL**

**BY CERTIFIED AND FIRST-  
CLASS MAIL:**

A Impuls Auto Inc.  
4700 Torresdale Ave.  
Philadelphia, PA 19124-2801

**VIA HAND-DELIVERY:**

Christopher Giovanis, Assistant Counsel  
Commonwealth of Pennsylvania  
Department of Banking and Securities  
17 North Second Street, Suite 1300  
Harrisburg, PA 17101  
*Counsel for Compliance Office*

Redacted

Dated this 25<sup>th</sup> day of May , 2021

\_\_\_\_\_  
Eileen Smith  
Legal Office Administrator  
Commonwealth of Pennsylvania  
Department of Banking & Securities  
17 North Second St., Suite 1300  
Harrisburg, PA 17101