

STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

IN THE MATTER OF:

Ohio Valley Auto Sales

and

Don Rice, Individually

) DOCKET NO. 490703

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RECEIVED

ATTORNEY GENERAL OF OHIO

MAY 27 2015

**CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE**

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance ("Assurance") is entered into this 28th day of JANUARY, 2015, ~~2014~~ between Ohio Valley Auto Sales ("OVAS"), an Ohio used automotive dealership, Don Rice ("Rice"), individually, and the Attorney General of the State of Ohio ("Attorney General").

WHEREAS, the Attorney General, having reasonable cause to believe that OVAS and Rice have engaged in acts and practices which violate Chapter 1345 of the Revised Code ("Consumer Sales Practices Act") and Chapter 4505 of the Revised Code ("Certificate of Motor Vehicle Title Act") has conducted an investigation pursuant to the authority granted him by R.C. 1345.06 of the Revised Code; and

WHEREAS, the Attorney General may, pursuant to R.C. 1345.06(F), enter into and accept an Assurance of Voluntary Compliance; and

WHEREAS, this Assurance of Voluntary Compliance is an assurance in writing by OVAS and Rice of their intent to conduct their business in a manner designed to comply with the provisions of the Consumers Sales Practices Act, the Substantive Rules and the Certificate of Motor Vehicle Title Act; and

WHEREAS, OVAS and Rice desire to comply with all aspects of the Consumer Sales Practices Act, the Substantive Rules, and the Certificate of Motor Vehicle Title Act, OVAS and Rice hereby voluntarily enter into this Assurance with the Attorney General.

NOW THEREFORE, in consideration of the mutual promises and conditions set forth herein, the parties hereto **AGREE** as follows:

- 1 The “Effective Date” shall mean the date indicated on the first page of this Assurance.
- 2 By accepting this written Assurance, the Attorney General agrees to terminate the current investigation of OVAS and Rice’s business practices and actions occurring on or before the Effective Date of this Assurance.
- 3 By giving this written Assurance, OVAS and Rice agree to comply with all the terms of this Assurance and to conduct their business in compliance with all applicable Ohio laws, including without limitation, the Consumer Sales Practices Act, R.C. 1345.01 et seq. and the Certificate of Motor Vehicle Title Act, R.C. 4505.01 et seq.

BACKGROUND AND STATEMENT OF FACTS

- 4 OVAS was a domestic limited liability company conducting business in Lawrence County and in the State of Ohio with its principal place of business located at 619 3rd Ave., Chesapeake, Ohio 45619.
- 5 Rice exercised the authority to establish, implement or alter the policies of OVAS and committed, allowed, directed, ratified or otherwise caused the following unlawful acts and practices to occur.
- 6 OVAS and Rice operated a used motor vehicle dealership that engaged in the business of effecting consumer transactions by advertising and selling used motor vehicles in the State of Ohio, including Lawrence County.

- 7 OVAS held license #UD0020241 issued by the State of Ohio under R.C. 4517.01 et seq. allowing it to engage in the business of displaying or selling at retail or wholesale used motor vehicles.
- 8 OVAS displayed for sale and sold used motor vehicles without obtaining certificates of title for the vehicles in its name, and without possessing bills of sale for the motor vehicles displayed, offered for sale, or sold, and without a properly executed power of attorney or other related documents from the prior owners of the motor vehicles giving OVAS the authority to have certificates of title to the vehicles issued in its name.
- 9 OVAS, in the ordinary course of business, sold or transferred used motor vehicles to Ohio retail purchasers and failed to apply for certificates of title in the name of the retail purchasers on or before the thirtieth day following the dates of the sales.
- 10 OVAS, in the ordinary course of business, sold or transferred motor vehicles to Ohio retail purchasers and failed to obtain the certificates of title in the name of the retail purchasers on or before the fortieth day following the dates of the sales.
- 11 OVAS received payment from the retail purchasers, and/or third parties on behalf of the retail purchasers, in full satisfaction for the purchase of the motor vehicles.
- 12 As a result of OVAS's conduct, retail purchasers were unable to obtain certificates of title to their used motor vehicles, and filed claims pursuant to Ohio's Title Defect Recision (TDR) statute, R. C. 4505.181.
- 13 The Ohio Attorney General, as administrator of the TDR Fund, paid the retail purchasers' claims in the amounts listed below:

Barbara Adkins	\$1,018.50
Amanda Sparks	\$15.00 (title transfer fee)

Carolyn Meyers	\$600.00
Carolyn Osterkamp	\$1,643.50
Chester Waugh	\$3,000.00
Donna Adkins	\$2,105.00
Rebecca Lesler	\$1,455.00
Sabrina Pickett	\$1,755.50
Sandra Sutphin	\$418.50
Darryl Stapleton	\$15.00 (title transfer fee)
James Harbor	\$15.00 (title transfer fee)

The total of all claims paid is: \$12,041.00.

14 OVAS and Rice are “suppliers” as that term is defined in R.C. 1345.01(C), because they engaged in the business of effecting or soliciting consumer transactions, by offering for sale or selling or financing the purchase or transfer of used motor vehicles to individuals for purposes that are primarily personal, family or household within the meaning specified in R.C. 1345.01(A).

15 OVAS and Rice committed an unfair and deceptive act or practice in violation of the Consumer Sales Practices Act, R.C. 1345.02, by selling or transferring used motor vehicles to Ohio retail purchasers and failing to apply for certificates of title in the name of the retail purchasers on or before the thirtieth day following the date of the sale as required by R.C. 4505.06(A)(5)(b).

16 OVAS and Rice committed an unfair and deceptive act or practice in violation of the Consumer Sales Practices Act, R.C. 1345.02, by failing, on or before the fortieth day following the date of the sale, to obtain titles to the vehicles in the name of the retail

purchasers in violation of R.C. 4505.181(B)(1).

COMPLIANCE PROVISIONS

17 In connection with the display for sale, or sale of used motor vehicles, OVAS and Rice shall refrain from displaying for sale and selling a used motor vehicle without obtaining a certificate of title for the vehicle in its name, or without possessing a bill of sale for the motor vehicle displayed, or offering for sale, or selling, without a properly executed power of attorney or other related document from the prior owner of the motor vehicle giving OVAS the authority to have a certificate of title to the vehicle issued in its name, in violation of the TDR Act, R.C. 4505.01 et seq. and the Consumer Sales Practices Act, R.C. 1345.02(A).

18 In connection with the display for sale, or sale of used motor vehicles, OVAS and Rice shall refrain from selling or transferring a motor vehicle to an Ohio retail purchaser when they fail to apply for a certificate of title in the name of the retail purchaser on or before the thirtieth day following the date of the sale, in violation of the TDR Act, R.C. 4505.01 et seq. and the Consumer Sales Practices Act, R.C. 1345.02(A).

19 In connection with the display for sale, or sale of used motor vehicles, OVAS and Rice shall refrain, in the ordinary course of business, from failing, on or before the fortieth day following the date of the sale, to obtain title to the vehicle in the name of the retail purchaser in violation of TDR Act, R.C. 4505.01 et seq. and the Consumer Sales Practices Act, R.C. 1345.02(A).

GENERAL PROVISIONS

20 OVAS and Rice understand and agree this Assurance applies to their principals, officers, directors, agents, servants, representatives, salespersons, employees, instructors,

independent contractors, successors in interest and assigns, jointly and severally.

21 This Assurance shall be governed by the laws of the State of Ohio.

22 This Assurance is entered into by OVAS and Rice of their own free and voluntary act and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed by this Assurance.

23 This Assurance does not constitute an approval by the Attorney General of any of OVAS and Rice's business practices and neither shall represent directly or indirectly, or in any way whatsoever, that the Attorney General has sanctioned, condoned or approved any part or aspect of their business practices.

24 This Assurance sets forth the entire agreement between the Attorney General, OVAS and Rice, and supersedes all prior agreements or understandings, whether written or oral, between the Parties and/or their respective counsel with respect to the subject matter hereof. This Assurance may be amended by written agreement between the Parties, subject to any further requirements under state law.

25 The Parties acknowledge that no other promises, representations or agreements of any nature have been made or entered into by the Parties. The Parties further acknowledge that this Assurance constitutes a single and entire agreement that is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable, the remaining provisions shall continue in full force and effect.

26 OVAS and Rice shall negotiate in good faith, through the office of the Attorney General, any consumer complaints filed with this office concerning OVAS or Rice's conduct occurring prior to the Effective Date of this Assurance, which are brought by consumers that are discovered after entering into this Assurance. The Attorney General shall direct all

complaints to the attention of Rice.

27 This Assurance is a public record and shall be maintained in the Public Inspection File.

REIMBURSEMENT TO THE TDR FUND

(28) As part of the consideration for the termination of the Attorney General's investigation of OVAS and Rice under the Consumer Sales Practices Act, R.C. 1345.01 et seq., OVAS and Rice jointly and severally shall reimburse the TDR Fund Twelve Thousand Forty-One Dollars and no Cents (\$12,041.00). This amount represents payments made by the Attorney General to the following consumers in the amounts listed:

Barbara Adkins	\$1,018.50
Amanda Sparks	\$15.00 (title transfer fee)
Carolyn Meyers	\$600.00
Carolyn Osterkamp	\$1,643.50
Chester Waugh	\$3,000.00
Donna Adkins	\$2,105.00
Rebecca Lesler	\$1,455.00
Sabrina Pickett	\$1,755.50
Sandra Sutphin	\$418.50
Darryl Stapleton	\$15.00 (title transfer fee)
James Harbor	\$15.00 (title transfer fee)

(29) Payment of this amount shall be made in monthly installments of Five Hundred Dollars and no Cents (\$500.00) with the first payment due on or before January 20, 2015 and thereafter on the 20th of each month until paid in full. Payment shall be made by delivering a certified check or money order, payable to the "Ohio Attorney General's

Office,” to: **Compliance Officer, Consumer Protection Section, 30 E. Broad St., 14th Fl., Columbus, Ohio 43215.** Payments made pursuant to this paragraph shall be placed into the TDR Fund. If Rice fails to comply with the Assurance, the remainder of the amount due shall be immediately due and payable upon demand.

PAYMENT TO THE STATE

- (30) *As part of the consideration for the termination of the Attorney General’s investigation of OVAS and Rice under the Consumer Sales Practices Act, R.C. 1345.01 et seq., they shall pay jointly and severally Two Thousand Five Hundred Dollars (\$2,500.00) to the Office of the Ohio Attorney General for attorneys’ fees and investigative costs. Payment shall be made monthly in an amount no less than Five Hundred Dollars and no Cents (\$500.00) beginning the month following the completion of payments made pursuant to paragraph 29 of the Assurance. Payment received shall be placed into the Consumer Protection Enforcement Fund. Payment shall be made by delivering a certified check or money order, payable to the “Ohio Attorney General’s Office,” to: **Compliance Officer, Consumer Protection Section, 30 E. Broad St., 14th Fl., Columbus, Ohio 43215.** If Rice fails to comply with the Assurance, the remainder of the amount due shall be immediately due and payable upon demand.*

PENALTIES FOR FAILURE TO COMPLY

- (31) The Attorney General may assert any claim that OVAS or Rice have violated this Assurance in a lawsuit seeking injunctive and declaratory relief or a separate civil action to enforce this Assurance, or to seek any other relief afforded by law, including attorney fees, investigative costs, and a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation the Attorney General asserts

OVAS and Rice have committed. In any such action or proceeding, relevant evidence of conduct that occurred before the Effective Date shall be admissible on any material issue, including alleged willfulness, intent, knowledge, contempt or breach, to the extent permitted by law.

- (32) Pursuant to R.C. 1345.06(F), this Assurance is not, and shall not be construed as, evidence of any violation of the Consumer Sales Practices Act or the Substantive Rules adopted thereunder, by OVAS and Rice. Evidence of a violation of an Assurance of Voluntary Compliance, though, is prima-facie evidence of an act or practice in violation of the Consumer Sales Practices Act, R.C. 1345.01 et seq., if presented after the violation in an action brought under the Consumer Sales Practices Act, R.C. 1345.01 et seq.
- (33) This Assurance shall in no way exempt OVAS and Rice from any other obligations imposed by law, and nothing contained herein shall relieve them of any legal responsibility for any acts or practices engaged in by OVAS and Rice other than those acts specifically resolved by this Assurance.
- (34) Nothing in this Assurance shall in any way preclude any investigative or enforcement action against OVAS and Rice under any legal authority granted to the Attorney General:
 - (a) With respect to the transactions or occurrences which are the subject of this enforcement action, if the terms of this Assurance are not fully obeyed; or
 - (b) With respect to transactions or occurrences which are not the subject of this action.

REPRESENTATIONS AND WARRANTIES

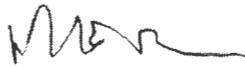
- (35) OVAS warrants and represents that the individual signing this Assurance on behalf of OVAS is doing so in his official capacity and is fully authorized by OVAS to enter into

this Assurance and to legally bind OVAS to all of the terms and conditions of the Assurance.

- (36) OVAS and Rice represent by executing this Assurance that they have carefully read this Assurance and that if they so choose have had the opportunity to discuss the terms and conditions of this Assurance with an attorney, and that they agree to the terms and conditions as set forth in this Assurance by signing the same.

WHEREFORE, the parties hereto affix their signatures in recognition and acceptance of the terms contained herein on this 28th day of JANUARY, ~~2014~~ ²⁰¹⁵.

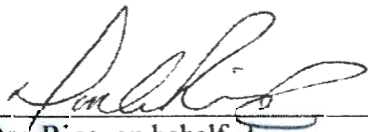
ACCEPTED BY:



Rosemary E. Rupert (0042389)
Assistant Attorney General
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215
(614) 466-3381
Counsel for the Ohio Attorney General

2-13-15

Date



Don Rice, on behalf of
Ohio Valley Auto Sales ("OVAS"), and in his
individual capacity, and as guarantor to the amounts
due pursuant to the Assurance
1805 Cty. Rd. 65
Proctorville, Ohio 45669
(304)-942-1752
DARICEVP@YAHOO.COM

Jan 28th, 2015

Date