

2015 JUN -3 PM 2:38

Direction to Clerk:
Serve upon all parties not in default for failure to appear, notice of this judgment and date of entry upon the journal.

:
:
:
: **Case No. CV 2015 05 1108**

:
:
:
: **Judge Oster**

:
:
: **AGREED CONSENT JUDGMENT**
: **ENTRY AND ORDER**

:
:
:
:

Final Appealable Order

• • • •

FINDING OF FACTS

JUN 05 2015

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

1. Mustapha Aitmouha (“Aitmouha”) is a natural person residing in Butler County, Ohio.
2. Dixie Imports, Inc. is an Ohio corporation.
3. Defendants own and operate Dixie Imports, a used car dealership with locations at 4597 Dixie Highway, Fairfield, Ohio 45014 and 5210 Dixie Highway, Fairfield, Ohio 45014.
4. Aitmouha at all times pertinent hereto, was the sole owner and directed and controlled all business activities of Dixie Imports, Inc., including the solicitation for sale and sale of used motor vehicles.
5. Aitmouha controlled and directed the business activities and sales conduct of Dixie Imports, Inc., causing, personally participating in, or ratifying the acts and practices of both Dixie Imports, Inc. and the dealership Dixie Imports.
6. Burns, at all times pertinent hereto, was the dealership manager and directed and controlled all business activities of Dixie Imports, Inc., including the solicitation for sale and sale of used motor vehicles.
7. Burns controlled and directed the business activities and sales conduct of Dixie Imports, Inc., causing, personally participating in, or ratifying the acts and practices of both Dixie Imports, Inc. and the dealership Dixie Imports.
8. Defendants are suppliers as that term is defined in R.C. 1345.01(C) as they are engaged in the business of effecting or soliciting consumer transactions for purposes that are primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).
9. Defendants hold licenses UD018651, LD006791, and UD020829 and issued by the State of Ohio under R.C. 4517.01 et seq., allowing them to engage in the business of displaying or selling at retail or wholesale used motor vehicles.

10. At all times relevant to this investigation, Defendants offered to consumers used vehicle sales and financing from its business location in Butler County.
11. Defendants used a document captioned "Retail Installment Sale Contract" for some of the consumer transactions in which the cash price of the used vehicle would be paid for by the consumers in installments over time.
12. When repossessing vehicles, Defendants failed to send a notice setting forth specifically circumstances constituting a default within five (5) days after repossessing a consumer's motor vehicle, in violation of R.C. 1317.12.
13. After a vehicle had been repossessed, Defendants failed to permit consumers to inspect the vehicle, in violation of R.C. 1317.12.
14. Defendants failed to dispose of consumers vehicles after repossession in a commercially reasonable manner, and failed to provide notice to the consumers at least ten (10) days prior to disposition of the collateral stating the time and place the collateral would be sold and the minimum price for which such collateral would be sold, together with a statement that the debtor could be held liable for any deficiency resulting from such sale.
15. Defendants failed to provide a proper accounting and/or refund to consumers after reselling the consumers' repossessed automobiles.
16. Defendants failed to provide consumers at the time of the initial deposits with dated written receipts stating clearly and conspicuously whether the deposits were refundable and under what conditions.
17. Defendants failed to file applications for certificates of title within thirty (30) days after the assignment of delivery of the motor vehicles.

18. Defendants sold motor vehicles to consumers, in the ordinary course of business, and then failed to obtain certificates of title in the name of the purchaser on or before the 40th day of sale of the motor vehicles.
19. Due to the failure of Defendants to deliver a title to a consumer, \$3,100 was paid out by the Title Defect Recision Fund.
20. Some deals were contingent upon the Defendants being able to arrange financing for the consumer.
21. Defendants accepted down payments from consumers in these situations and did not return their down payments after financing was not arranged.
22. Defendants used a Spot Delivery Agreement that allowed the Defendants to require the consumer to return the vehicle if financing was unable to be arranged. Defendants left blank the space for the number of days they had to arrange financing in the Spot Delivery Agreement.
23. Other times Defendants had deals that were contingent upon the Defendants being able to arrange financing for the consumer and the Defendants failed to use a Spot Delivery Agreement or notify the consumer that the deal was contingent upon financing approval.
24. At least one consumer has obtained a judgment, which is unpaid, against Defendants arising from a consumer transaction.
25. Title Defect Recision consumer claims totaling \$3,100 were paid from the Title Defect Recision Fund, administered by the Ohio Attorney General's Office, after the Defendants failed to obtain certificates of title on or before the Fortieth (40th) day after the sale of the motor vehicles.
26. R.C. 4505.181 requires that a dealer shall post a bond in an amount not less than \$25,000

after the attorney general has paid a retail purchaser of the dealer from the Title Defect Recision Fund.

27. After the payout was made from the Title Defect Recision Fund, the Defendants continued to operate without posting a bond.
28. Defendants advertise "Guaranteed Financing" on a banner displayed on their lot.
29. Defendants are unable to guarantee financing and many consumers have complained that they were unable to obtain financing from or through the Defendants.
30. Defendants did not clearly and conspicuously state in close proximity to the "Guaranteed Financing" offer any material exclusions, reservations, limitations, modifications, or conditions.
31. All facts above have occurred in the two years prior to this lawsuit.

CONCLUSIONS OF LAW

1. The Attorney General is the proper party to commence these proceedings under the authority of the CSPA, R.C. 1345.07, and by virtue of his statutory and common law authority to protect the interests of the citizens of the State of Ohio.
2. The Defendants are "suppliers" as that term is defined in R.C. 1345.01(C) as they were, at all times relevant herein, engaged in the business of effecting consumer transactions by performing services, for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D), from individuals in Butler County and other counties in the State of Ohio.
3. Defendants engaged in "consumer transactions" by offering for sale, selling or financing the purchase of used motor vehicles to individuals for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).

4. Defendants were used motor vehicle dealers as that term is defined in R.C. 4517.01(L), as they were engaged in the business of selling, displaying, offering for sale, or dealing in used motor vehicles.
5. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
6. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(1)-(3), in that Defendants reside in, operated their business from, and engaged in the transactions complained of herein in Butler County.
7. The Defendants committed unfair and deceptive acts and practices in violation of the CSPA and RISA when:
 - a. Defendants repossessed automobiles before the payments were due, in violation of R.C. 1317.16.
 - b. When repossessing vehicles, Defendants failed to send a notice setting forth specifically the circumstances constituting a default within five (5) days after repossessing a consumer's motor vehicle, in violation of R.C. 1317.12.
 - c. Defendants failed to provide notice to the consumers at least ten (10) days prior to disposition of the collateral stating the time and place the collateral would be sold and the minimum price for which such collateral would be sold, together with a statement that the debtor could be held liable for any deficiency resulting from such sale, in violation of R.C. 1317.16.
 - d. Defendants failed to provide a proper accounting and/or refund to consumers after reselling the consumers' repossessed automobiles in violation of R.C. 1317.16.
 - e. Defendants failed to legibly disclose the terms of contracts and/or failed to fill in

all the blanks of the retail installment contracts, in violation of R.C. 1317.04.

8. The Defendants committed unfair and deceptive acts and practices in violation of the CSPA when:

- a. Defendants failed to provide consumers at the time of the initial deposits with dated written receipts stating clearly and conspicuously whether the deposits were refundable and under what conditions, in violation of Ohio Administrative Code 109:4-3-07.
- b. The Defendants failed to file applications for certificates of title within Thirty (30) days after the assignment of delivery of motor vehicles as required by R.C. 4505.06(A)(5)(b).
- c. The Defendants sold motor vehicles to consumers, in the ordinary course of business, and then failed to obtain certificates of title on or before the Fortieth (40th) day of sale of the motor vehicles as required by R.C. 4505.181(B)(1).
- d. Defendants delivered motor vehicles to consumers pursuant to sales which were contingent upon financing without written agreements stating the parties' obligations should such financing not be obtained, in violation of O.A.C. 109:4-3-16(B)(30).
- e. Defendants engaged in consumer transactions while having unsatisfied judgments against them that arose from prior consumer transactions.
- f. Defendants failed to post a bond after the attorney general paid a retail purchaser of the dealer from the Title Defect Recision Fund due to the Defendants failure to deliver title to the purchaser.
- g. Defendants advertised "Guaranteed Financing" without clearly and conspicuously

stating in close proximity to the offer any material exclusions, reservations, limitations, modifications, or conditions, in violation of O.A.C. 109:4-3-02(A)(1).

ORDER

For purposes of affecting this Consent Judgment Entry and Order, it is therefore **ORDERED, ADJUDGED AND DECREED** that:

1. Plaintiff's request for a Declaratory Judgment is GRANTED; and it is therefore DECLARED that the acts and practices enumerated in Plaintiff's Complaint violate the CSPA, R.C. 1345.01 et seq., and the Substantive Rules enacted thereunder, in the manner set forth therein.
2. It is further ORDERED that the Defendants or their agents, servants, representatives, sales persons, employees, successors, assigns, and all persons acting on behalf of Defendants, directly or indirectly, through any corporate device or private device, partnership or association, including any person or entity which purchases any interest in the business and continues to operate the business, in connection with any consumer transaction, is permanently enjoined from committing any act or practice in violation of the CSPA, RISA, or the Certificate of Motor Vehicle Act. It is also ORDERED that:
 - a. Defendants shall not engage in acts and practices, including those acts and practices referred to in the background-statement of facts that violate the CSPA, the RISA and the Certificate of Motor Vehicle Title Act.
 - b. Defendants shall send a notice setting forth specifically circumstances constituting a default within five (5) days after repossessing a consumer's motor vehicle.

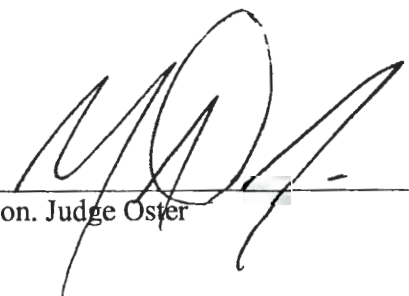
-
- c. Defendants shall refrain from preventing consumers from inspecting the vehicles after the vehicles have been repossessed.
 - h. Defendants shall refrain from failing to dispose of a consumer's vehicle after repossession in a commercially reasonable manner, and failing to provide notice to the consumer at least ten (10) days prior to disposition of the collateral stating the time and place the collateral would be sold and the minimum price for which such collateral would be sold, together with a statement that the debtor could be held liable for any deficiency resulting from such sale.
 - i. In the event of a repossession, Defendants shall provide a proper accounting and/or refund to consumers after reselling the consumers' repossessed automobiles.
 - j. Defendants shall provide consumers at the time of the initial deposits with dated written receipts stating clearly and conspicuously whether the deposits are refundable and under what conditions.
 - k. Defendants shall file applications for certificates of title within thirty (30) days after the assignment of delivery of the motor vehicle.
 - l. Defendants shall, when selling motor vehicles to consumers in the ordinary course of business, obtain certificates of title on or before the 40th day of sale of the motor vehicles.
 - m. Defendants shall return down payments to consumers in the event that they are unable to arrange financing.
 - n. Defendants shall fill in all the blanks in documents before presenting the documents to consumers.

-
- o. Defendants shall use a Spot Delivery Agreement when the completion of the transaction is contingent upon financing approval.
 - p. Pursuant to R.C. 4505.181(A)(2), Defendants shall post with the Attorney General's office in favor of the State of Ohio a bond of a surety company authorized to do business in Ohio, in an amount of not less than \$25,000, to be used solely for the purpose of compensating retail purchasers of motor vehicles, manufactured homes, or mobile homes who suffer damages due to failure of the Defendants to comply with R.C. 4505.181. The bond must be effect until at least June 24, 2017.
 - q. Defendants shall pay any and all outstanding judgments against them that arose out of consumers transactions associated with their motor vehicle dealership.
 - r. Defendants shall clearly and conspicuously state in close proximity to any offer any material exclusions, reservations, limitations, modifications, or conditions.
3. It is further ORDERED that the Defendants shall pay consumer restitution in the amount of \$24,994 to the Attorney General to be distributed to consumers who have filed consumer complaints against the Defendants with the Attorney General at the Attorney General's sole discretion. (Exhibit A)
4. It is further ORDERED that the Defendants shall make a payment to the State of Ohio in the amount of \$50,000, to be placed in the Ohio Attorney General's Consumer Protection Enforcement Fund, to be used by the Attorney General as provided by R.C. 1345.51. \$25,000 of this amount is suspended upon strict and full compliance with the terms of this Consent Judgment.

5. It is further ORDERED that the Defendants shall make a payment to the State of Ohio in the amount of \$3,100 to be placed in the Title Defect Recision Fund.
6. It is further ORDERED that the Defendants shall make a payment of \$16,366.56 to AurGroup Financial Credit Union by May 22, 2015. If the payment is not made by May 22, 2015 the amount of the payment will increase by \$1.22 per day. The payment to AurGroup Financial Credit Union will reverse the transaction with consumer Sue Kisaberth and, upon payment, title to the 2013 Hyundai Sonata (last 6 of VIN 512785) shall be transferred to Dixie Imports.
7. A payment of \$28,094 shall be due upon the execution of this Consent Judgment.
8. The remaining \$25,000 shall be paid in monthly payments of \$2,500, with the first payment due in June 2015 and the last payment due in March 2016. The monthly payments shall be made by Defendants and received by the Attorney General on or before the last day of each month.
9. It is further ORDERED that if the Defendants fail to deliver any payment or perform any obligation due hereunder to the Attorney General, all amounts, including the suspended payment referenced in Paragraph 4 of this Order, shall immediately become due and payable hereunder. As a further means of ensuring compliance with this Consent Judgment, if Defendants fail to deliver any payment or perform any obligation due hereunder, Defendants shall be ENJOINED from acting as a Supplier in the used auto industry in the State of Ohio until the final judgment amount is satisfied.
10. It is further ORDERED that the acceptance of any payment by the Plaintiff subsequent to the time it is due or the failure of the Plaintiff to insist on strict performance of any order contained within this Consent Judgment, including, but not limited to, the obligation

created by the acceleration provision of this Consent Judgment, shall not be construed as a waiver of any of the obligations created by this Consent Judgment.

11. It is further ORDERED that in the event the Ohio Attorney General must initiate legal action or incur any costs to compel the Defendants to abide by this Consent Judgment, upon proof of the violation, the Defendants shall be liable to the Ohio Attorney General for any such costs associated with proving that violation, including, but not limited to, a reasonable sum for attorneys' fees.
12. It is further ORDERED that Defendants shall not represent directly or indirectly or in any way whatsoever that the Court or the Ohio Attorney General has sanctioned, condoned, or approved any part or aspect of Defendants' business operation.
13. It is further ORDERED that the Defendants shall pay all court costs associated with this matter.
14. This Court shall retain jurisdiction to enforce compliance with this Consent Judgment.

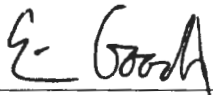


Hon. Judge Oster

SIGNATURES

Accepted:

MICHAEL DEWINE
ATTORNEY GENERAL

BY:  Date: 5/20/15
Eric M. Gooding (0086555)
Assistant Attorney General
Consumer Protection Section
441 Vine Street, 1600 Carew Tower
Cincinnati, Ohio 45202
(513) 852-1527
(877) 381-1751 (fax)
Eric.Gooding@ohioattorneygeneral.gov

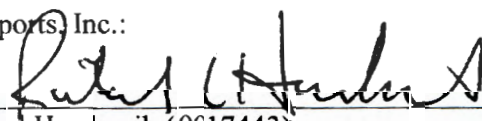
Counsel for the Ohio Attorney General

Accepted:

BY:  Date: 5-18-15
Mustapha Aittrouha

BY:  Date: 5-18-15
Earl Burns

For Dixie Imports, Inc.:

BY:  Date: 18 May 2015
Richard Hurchanik (0017443)
110 North Third Street
Hamilton, Ohio 45011
(513) 867-1717
(513) 895-442 (fax)

Counsel for Defendants

Exhibit A

First	Last	Amount
Savannah	Chambers	\$2,000
Jennifer	Davis	\$1,500
Tammy	Glover	\$1,500
April	Goolsby	\$2,126
Fredericka	Jim	\$2,150
James	Johnson	\$4,189
Leslie	Lawson	\$1,700
Tonya	Lewis	\$3,000
Carlos	Lopez	\$1,500
Kameela	Spear	\$1,000
Brittney	Terry	\$2,329
Patricia	Troxell	\$2,000