

**RECEIVED**  
ATTORNEY GENERAL OF OHIO

JAN 14 2019

CONSUMER PROTECTION SECTION  
PUBLIC INSPECTION FILE

**IN THE COURT OF COMMON PLEAS  
MONTGOMERY COUNTY, OHIO**

STATE OF OHIO, ex rel.	)	CASE NO. 2017 CV 05423
MICHAEL DEWINE	)	
ATTORNEY GENERAL OF OHIO	)	JUDGE RICHARD S. SKELTON
	)	
Plaintiff,	)	<u>CONSENT JUDGMENT AND</u>
	)	<u>AGREED ENTRY AND ORDER</u>
v.	)	<u>WITH DEFENDANTS</u>
	)	<u>SOUTH DAYTON AUTO &amp; TRUCK</u>
SOUTH DAYTON AUTO & TRUCK	)	<u>SERVICE, LLC AND SHANE S. SMITH</u>
SERVICE, LLC, et al.	)	
	)	
Defendants.	)	

**PREAMBLE**

This matter came upon the filing of a complaint by Plaintiff, State of Ohio, charging Defendants South Dayton Auto & Truck Service, LLC and Shane S. Smith ("Defendants") with violations of the Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 *et seq.*, and the Certificate of Motor Vehicle Title Act, R.C. 4505.01 *et seq.* Plaintiff and Defendants have agreed to settle and resolve all matters alleged in that complaint. By signing this Consent Judgment and Agreed Entry and Order ("Consent Judgment"), Defendants waive service of process of the summons and complaint, and/or any defects therein, submit to the personal jurisdiction of this Court, consent to the entry of this Judgment pursuant to R.C. 1345.07(F), to the imposition of this Consent Judgement, and to the rights of Plaintiff to enforce this Consent Judgment.

### **FINDINGS OF FACT**

1. Defendant South Dayton Auto & Truck Service, LLC (“South Dayton Auto”) is an Ohio corporation operating at 888 East Franklin Street, Centerville, Ohio 45459.
2. Defendant Shane S. Smith (“Smith”) is an individual whose address is 1008 Hyde Park Drive, Kettering, Ohio 45429.
3. Defendant Smith had an ownership interest in and operated Defendant South Dayton Auto; Smith dominated, controlled, and directed the business activities and sales conduct of South Dayton Auto; and Smith exercised the authority to establish, implement, or alter the policies of South Dayton Auto. Smith committed, allowed, directed, ratified, or otherwise caused the unlawful acts that gave rise to this lawsuit.
4. Defendants were, at all times relevant to this lawsuit, engaged in the business of soliciting, promoting, purchasing, selling, and financing used motor vehicles, as well as collecting the proceeds of those sales from Defendants’ location in Centerville to consumers residing in Montgomery and other Ohio counties.
5. Defendants, operating under the name South Dayton Auto & Truck Service, LLC solicited individual consumers to enter into consumer transactions, specifically for the sale of used motor vehicles.
6. Defendant South Dayton Auto held license # UD019346, 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.
7. Defendants were displaying or selling used motor vehicles at the South Dayton Auto location.

8. Defendants failed to file applications for certificates of title within Thirty (30) days after the assignment or delivery of motor vehicles.
9. Defendants failed to obtain certificates of title on or before the Fortieth (40<sup>th</sup>) day after the sale of motor vehicles.
10. The Title Defect Recision Fund, which is administered by the Ohio Attorney General's Office, paid \$19,566.22 in consumer claims because Defendants failed to obtain certificates of title within Forty (40) days of the sale of motor vehicles.
11. The Defendants continued to operate after failing to post a bond after the Attorney General paid retail purchasers of the Defendants from the Title Defect Recision Fund due to Defendants' failure to deliver titles to the purchasers.

#### **CONCLUSIONS OF LAW**

1. The Attorney General is the proper party to commence these proceedings under the authority vested in him by the R.C. 1345.07 of the CSPA, and the Certificate of Motor Vehicle Title Act, and by virtue of his statutory and common law authority to protect the interests of the citizens of the State of Ohio.
2. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
3. This Court has venue to hear this case, pursuant to Civ.R. 3(B)(1)-(3), because Defendant Smith resides in, Defendants operated their business from, and Defendants engaged in the complained of transactions in Montgomery County.
4. Defendants were "suppliers," as that term is defined in R.C. 1345.01(C), because they engaged in the business of effecting or soliciting "consumer transactions, as that term is defined in R.C. 1345.01(A).

5. 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 of R.C. 1345.01 (A) and (D).
6. Defendants committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02, by failing to file applications for certificates of title within Thirty (30) days after the assignment or delivery of motor vehicles as required by R.C. 4505.06(A)(5)(b).
7. Defendants committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by selling motor vehicles to consumers, in the ordinary course of business, and then failing to obtain certificates of title on or before the Fortieth (40th) day of the sale of the motor vehicles as required by R.C. 4505.181(B)(1).
8. The actions, as set forth above, are in violation of the CSPA, and the Certificate of Motor Vehicle Title Act.
9. The Defendants committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) by continuing to operate after failing to post a bond after the Attorney General paid retail purchasers of the Defendants from the Title Defect Recision Fund due to Defendants’ failure to deliver titles to the purchasers as required by R.C. 4505.181(A)(2).
10. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 *et seq.* The Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

#### **ORDER**

- A. The court hereby DECLARES that the acts and practices described above violate the CSPA, and the Certificate of Motor Vehicle Title Act in the manner set forth herein.

- B. Defendants, doing business under the name South Dayton Auto & Truck Service, LLC or any other name, their officers, agents, representatives, salespersons, employees, successors, or assigns, and all persons acting in concert and participation with them, directly or indirectly, through any corporate device, partnership or association, are hereby PERMANENTLY ENJOINED from engaging in unfair, deceptive, or unconscionable acts or practices that violate the CSPA, R.C. 1345.01 *et seq.*, and its Substantive Rules, 109:4-3-01 *et seq.*, or the Certificate of Motor Vehicle Title Act, R.C. 4505.01 *et seq.*, including, without limitation, violations of the specific statutes described in this Consent Judgment.
- C. IT IS FURTHER ORDERED that the Defendants, jointly and severally, shall reimburse the Title Defect Recision (“TDR”) Fund, which is administered by the Ohio Attorney General, in the amount of Nineteen Thousand Five Hundred Sixty-Six Dollars and Twenty-Two Cents (\$19,566.22). A payment of Five Thousand Dollars (\$5,000.00) shall be made at or before the filing of this Consent Judgment. The remainder due the TDR Fund shall be paid in the amount of One Thousand Dollars (\$1,000.00) monthly for 14 consecutive months, and a final payment of Five Hundred Sixty Six Dollars and Twenty-Two Cents (\$566.22). The first payment is due October 1, 2018 and thereafter on or before the 1<sup>st</sup> of each month until paid in full. Payment shall be made to the Ohio Attorney General Finance Specialist, 30 E. Broad St., 14th Floor, Columbus, Ohio 43215.
- D. Pursuant to R.C. 1345.07(D), Defendants, jointly and severally, shall pay a civil penalty in the amount of Twenty Thousand Dollars and no Cents (\$20,000.00). Seventeen Thousand Five Hundred Dollars (\$17,500.00) of the civil penalty is **suspended so long as** the Defendants are in compliance with all of the provisions of the Consent Judgment.

Payment of the unsuspended Two Thousand Five Hundred Dollar (\$2,500.00) civil penalty shall be paid at the rate of One Thousand Dollars per month for two months and a final payment of Five Hundred Dollars (\$500.00) shall be made. Payments shall begin on the 1<sup>st</sup> of the month following the last payment made to TDR. Payment shall be made to the Ohio Attorney General Finance Specialist, 30 E. Broad St., 14th Floor, Columbus, Ohio 43215.

- E. Defendants shall obtain and post with Plaintiff, on or before the execution of this Consent Judgment, and in favor of the State of Ohio, a bond in favor of the State of Ohio from a surety company authorized to do business in this State, in an amount of not less than Twenty-Five Thousand Dollars (\$25,000.00), to be used solely for the purpose of compensating retail purchasers of motor vehicles, manufactured homes, or mobile homes who suffer damages due to the failure of Defendants to transfer title as required by R.C. 4505.181(A)(2). This surety shall remain in effect for a period of three years from the date of its issuance.
- F. IT IS FURTHER ORDERED that Defendant Smith shall be prohibited from applying for or obtaining an auto dealer or salesperson license under Chapter 4517 of the Revised Code if he is not in compliance with all of the provisions of this Consent Judgment.
- G. Defendants shall not represent, directly or indirectly, that the Ohio Attorney General has sanctioned, condoned, or approved any part or aspect of their business operations.
- H. IT IS FURTHER ORDERED that, in the event that the Ohio Attorney General must initiate legal action or otherwise incur any costs to compel Defendants to abide by this Consent Judgment, and the Attorney General should prevail in that action, **then** Defendants, jointly and severally, shall be liable to the Ohio Attorney General for all

related enforcement costs, including but not limited to, a reasonable sum for attorney fees and investigative costs.

I. Defendants, jointly and severally, shall pay all court costs associated with this action.

**IT IS SO ORDERED**

\_\_\_\_\_  
DATE

\_\_\_\_\_  
JUDGE

Agreed to by:

MICHAEL DEWINE  
Attorney General

\_\_\_\_\_  
/s/ Rosemary E. Rupert  
Rosemary E. Rupert (0042389)  
Assistant Attorney General  
Consumer Protection Section  
30 East Broad Street, 14<sup>th</sup> Floor  
Columbus, Ohio 43215-3428  
614-466-8831 (phone)  
614-466-8898 (fax)  
*Counsel for Plaintiff*

\_\_\_\_\_  
/s/ Christopher B. Epley  
Christopher B. Epley (0070981)  
10 West Second Street, Suite 2400  
Dayton, Ohio 45402  
937-228-7511 (phone)  
937-228-8825 (fax)  
*Counsel for Defendants*

\_\_\_\_\_  
/s/ Shane S. Smith  
Shane S. Smith  
1008 Hyde Park Drive  
Kettering, Ohio 45429  
*Defendant*

\_\_\_\_\_  
/s/ Shane S. Smith  
South Dayton Auto & Truck Service, LLC  
By: Shane S. Smith  
*Defendant*



General Division  
Montgomery County Common Pleas Court  
41 N. Perry Street, Dayton, Ohio 45422

**Type:** Consent Judgment Entry  
**Case Number:** 2017 CV 05423  
**Case Title:** STATE OF OHIO ATTORNEY GENERALS OFFICE vs SOUTH  
DAYTON AUTO AND TRUCK SERVICE LLC

So Ordered

*W. S. Skelton*