

FILED
COMMON PLEAS COURT
MUSKINGUM CO., OHIO

IN THE COURT OF COMMON PLEAS OF MUSKINGUM COUNTY, OHIO

STATE OF OHIO, ex rel.
MICHAEL DEWINE
ATTORNEY GENERAL OF OHIO
30 East Broad St., 14th Floor
Columbus, Ohio 43215

Plaintiff,

v.

BALDERSON MOTOR SALES, INC.
c/o Thomas P. Balderson
2811 Coldspring Rd.
Zanesville, Ohio 43701

and

THOMAS P. BALDERSON, Individually,
2811 Coldspring Rd.
Zanesville, Ohio 43701

Defendants.

CASE NO. CH 708-0359

JUDGE

CONSENT JUDGMENT AND
AGREED ENTRY AND ORDER
WITH DEFENDANTS
BALDERSON MOTOR SALES INC.
AND THOMAS BALDERSON
INDIVIDUALLY

478/362-368

RECEIVED
ATTORNEY GENERAL OF OHIO

JAN 14 2019

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

PREAMBLE

This matter came upon the filing of a complaint by Plaintiff, State of Ohio, charging Defendants Balderson Motor Sales, Inc., and Thomas P. Balderson ("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 Consent Judgment pursuant to R.C. 1345.07(F), to the

imposition of this Consent Judgment, and to the rights of Plaintiff to enforce this Consent Judgment.

FINDINGS OF FACT

1. Defendant Balderson Motor Sales, Inc. ("BMS") is a corporation for profit operating at 721 Taylor Street, Zanesville, Ohio 43701.
2. Defendant Thomas P. Balderson ("Balderson") is an individual whose address is 2811 Coldspring Road, Zanesville, Ohio 43701.
3. Defendant Balderson had an ownership interest in and operated Defendant BMS, and dominated, controlled and directed the business activities and sales conduct of BMS, and exercised the authority to establish, implement or alter the policies of BMS, and committed, allowed, directed, ratified or otherwise caused the following unlawful acts to occur.
4. Defendants were at all times relevant to this action engaged in the business of soliciting, promoting, purchasing, selling, financing and collecting the proceeds of the sales of used motor vehicles from their location in Zanesville to consumers residing in Muskingum and other Ohio counties as well as consumers in other states.
5. Defendants, operating under the name Balderson Motor Sales, Inc., solicited individual consumers to enter into consumer transactions, specifically for the sale of used motor vehicles.
6. Defendants held license #UD016473 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.

7. Defendants were displaying or selling used motor vehicles at the BMS 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 (40th) day after the sale of motor vehicles.
10. The Title Defect Recision ("TDR") Fund, which is administered by the Ohio Attorney General's Office, paid \$48,684.29 in consumer claims because Defendants failed to obtain certificates of title within Forty (40) days of the sale of motor vehicles.

CONCLUSIONS OF LAW

1. The Attorney General is the proper party to commence these proceedings under the authority vested in him by 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 Balderson resides in, Defendants operated their business from, and Defendants engaged in the complained of transactions in Muskingum County.
4. Defendants were "suppliers," as the 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 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. 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 Balderson Motor Sales, Inc., 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. 4504.01 *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 TDR Fund, which is administered by the Ohio Attorney General, in the amount of Forty Eight Thousand Six Hundred Eighty Four Dollars and Twenty Nine Cents (\$48,684.29). Payment shall be paid at the rate Eight-Hundred Ninety-Four Dollars and Seventy-Four Cents (\$894.74) per month. Payment shall begin on January 15, 2019 and thereafter monthly until paid in full.
- D. Pursuant to R.C. 1345.07(D), Defendants, jointly and severally, shall pay a civil penalty in the amount of Fifty Thousand Dollars (\$50,000.00), with Forty Five Thousand Dollars (\$45,000.00) of the civil penalty suspended as long as the Defendants are in compliance with all provisions of the Consent Judgment, including the payment provisions. Payment of the unsuspended Five Thousand Dollars (\$5,000.00) shall be paid at the rate of Eight-Hundred Ninety-Four Dollars and Seventy-Four Cents per month. Payments shall begin on the 15th of the month following the last payment made to the TDR Fund.
- E. Payments due pursuant to paragraphs C and D above shall be made to the Ohio Attorney General Finance Specialist, 30 E. Broad St., 14th Floor, Columbus, Ohio 43215. This is a Sixty (60) month payment plan. The payment plan requires 59 monthly payments of \$894.74 and a final 60th payment of \$894.63. If all payments are made pursuant to these paragraphs the last payment will be due on or before December 15, 2023.
- F. It is further ORDERED that if the Defendants fail to make any payment due hereunder in accordance with the payment schedule herein, all remaining payments shall immediately become due and payable hereunder.

- G. 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 in Paragraph F of this Consent Judgment, shall not be construed as a waiver of any of the obligations created by this Consent Judgment.
- H. Defendants are hereby notified that if they fail to make any payment due in accordance herein, the unpaid amount due under this Consent Judgment it may be referred to the Ohio Attorney General's Collection Enforcement Section for collection. Should the unpaid amount be referred for collection, the Collections Enforcement Section will assess additional collection fees and interest against the Defendants, pursuant to Ohio law, including, but not limited to R.C. 131.02, 109.08, and 109.081.
- I. 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.
- J. IT IS FURTHER ORDERED that Defendant Balderson shall be prohibited from maintaining, 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.
- K. Defendants shall not represent, directly or indirectly, that the Ohio Attorney General has sanctioned, condoned, or approved any part of their business operations.

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

IT IS SO ORDERED

DATE 12/10/18

JUDGE [Signature]

Agreed to by:

MICHAEL DEWINE
Attorney General

[Signature]
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Assistant Attorney General
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Counsel for Plaintiff

[Signature]
Thomas P. Balderson, Individually
2811 Coldspring Rd.
Zanesville, Ohio 43701
Defendant

[Signature]
Balderson Motor Sales, Inc.
By: Thomas P. Balderson
Defendant

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