

IN THE COURT OF COMMON PLEAS DELAWARE COUNTY, OHIO

STATE OF OHIO, ex rel.
DAVE YOST
ATTORNEY GENERAL OF OHIO

Plaintiff,

v.

DIAMOND AUTO GROUP LLC et al.,

Defendants.

CASE NO. 21 CV H 05 0218

JUDGE DAVID M. GORMLEY

CONSENT JUDGMENT AND
AGREED ENTRY AND ORDER
WITH DEFENDANTS

RECEIVED
ATTORNEY GENERAL OF OHIO

JUN 22 2021

PREAMBLE

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

This matter came upon the filing of a Complaint by Plaintiff, the Attorney General of Ohio, charging Defendants Diamond Auto Group LLC and owner Brian Hartney ("hereinafter 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 the matters contained herein and all claims alleged against them. 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 Diamond Auto Group LLC ("Diamond Auto") was an Ohio limited liability company last operating at 214 N. Liberty St., Powell, Ohio 43065.
2. Defendant Brian Hartney ("Hartney") is an individual whose address is 11435 Silk

TERMINATION CODE 7

Carnation Way, Royal Palm Beach, FL 33411.

3. Defendant Hartney was the owner of and operated Defendant Diamond Auto and dominated, controlled and directed the business activities and sales conduct of Diamond Auto, and exercised the authority to establish, implement or alter the policies of it, 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 Powell to consumers residing in Delaware and other Ohio counties.
5. Defendants, operating under the name Diamond Auto Group LLC, solicited individual consumers to enter into consumer transactions, specifically for the sale of used motor vehicles.
6. Defendant Diamond Auto held license #UD022755 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 their Diamond Auto location.
8. Defendants failed to file applications for certificates of title within thirty days after the assignment or delivery of a motor vehicle.
9. Defendants failed to obtain certificates of title on or before the fortieth day after the sale of motor vehicles.

10. The Defendants maintained a net worth bond pursuant to O.A.C. 4501:1-3-11 which requires all applicants for used motor vehicle dealer licenses made after January 1, 2017 to post with the Plaintiff, in favor of this state, a bond of a surety company authorized to do business in this state, in an amount not less than twenty-five thousand dollars. The surety principal is Western Surety Company and the bond number is 72049336. The surety bond is used solely for the purpose of replenishing funds that have been dispersed to compensate retail purchasers of motor vehicles, pursuant to section 4505.181 of the Revised Code.
11. Title Defect Recision ("TDR") consumer claims for this case totaling \$49,719.98 were paid from the TDR Fund, administered by the Ohio Attorney General's Office, after the Defendants failed to obtain certificates of title on or before the fortieth day after the sale of the motor vehicles.
12. A \$25,000.00 claim was made by the Plaintiff to Western Surety Company leaving a remaining balance due the TDR Fund in the amount of \$24,719.98 after the claim was paid.

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 Ohio Civ. R. 3(C)(1)-(3), in that Defendants resided in, operated their business from, and engaged in the transactions complained of in Delaware County.
4. Defendants were “suppliers” as that term is defined in R.C. 1345.01(C) as they engaged in the business of effecting or soliciting “consumer transactions” as that term is defined in R.C. 1345.01(A).
5. Defendants were 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).
6. Defendants committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02 by failing to file applications for certificates of title within thirty 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 day after the sale of the motor vehicles as required by R.C. 4505.181(B)(1).
8. Such acts or practices have been previously determined by Ohio courts to violate the CSPA Act, R.C. 1345.01 et seq. 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, R.C. 1345.01 *et seq.*, and the Certificate of Motor Vehicle Title Act, R.C.

4505.01 *et seq.* in the manner set forth herein.

- B. Defendants, individually and doing business under the name Diamond Auto Group, 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 any unfair, deceptive, or unconscionable acts or practices that violate the CSPA, R.C. 1345.01 *et seq.*, its Substantive Rules, O.A.C. 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 TDR Fund in the amount of Twenty-Four Thousand Seven Hundred Nineteen Dollars and Ninety-Eight Cents (\$24,719.98).
- D. Pursuant to R.C. 1345.07(D), the Defendants shall jointly and severally pay a civil penalty in the amount of Twenty-Five Thousand Dollars (\$25,000.00) with Twenty-Thousand Dollars (\$20,000.00) of the civil penalty suspended as long as they comply with all provisions of the Consent Judgment, including the payment provisions.
- E. Payment of Twenty-Nine Thousand Seven Hundred Nineteen Dollars and Ninety-Eight (\$29,719.98) due pursuant to paragraphs C and D above shall be made via a certified checks or money orders, made payable to the "Ohio Attorney General's Office," and delivered to the Consumer Protection Section Finance Specialist, 30 E. Broad St., 14th

Floor, Columbus, Ohio 43215. Payment shall be made at the rate of Five-Hundred Dollars (\$500.00) per month for 36 months. Thereafter payments shall be made at the rate of \$800.00 for 14 months. Payment shall begin on July 1, 2021 and continue each month thereafter until paid in full. Payments are due on or before the 1st of each month. This is a fifty-one (51) month payment plan. The payment plan requires 36 monthly consecutive payments of \$500.00, then 14 monthly consecutive payments of \$800.00, and a final 51st payment of \$519.98. If all payments are made pursuant to these paragraphs, the last payment will be due on or before September 1, 2025.

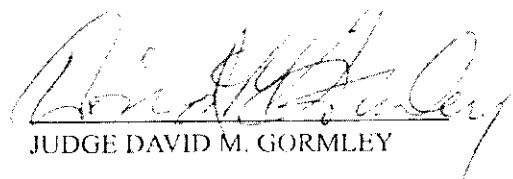
- F. It is further ORDERED that if the Defendants fail to make any payment due hereunder in accordance with the payment schedule herein, all remaining payments, including the balance of the full civil penalty amount of Twenty-Five Thousand Dollar (\$25,000.00), shall immediately become due and payable 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 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 them, 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 the Ohio Attorney General must initiate legal action or incur any costs to compel the Defendants to abide by this Consent Judgment, Defendants shall be liable to the Ohio Attorney General, should he prevail, for all related enforcement costs, including, but not limited to, a reasonable sum for attorneys' fees, investigative costs, and interest and collection costs as permitted by statute.
- J. IT IS FURTHER ORDERED that the Defendants shall be prohibited from applying for or obtaining an auto dealer under Chapter 4517 of the Revised Code if they are 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 or aspect of the business operations.
- L. Defendants shall pay all court costs associated with this action.

IT IS SO ORDERED.

DATE


JUDGE DAVID M. GORMLEY

THIS IS A FINAL APPEALABLE ORDER.
THERE IS NO RIGHT TO A JURY TRIAL.
The Court's decision is based on the evidence presented and the law.
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Agreed to by:

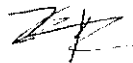
DAVE YOST
Attorney General

/s/ Rosemary E. Rupert

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