

IN THE COURT OF COMMON PLEAS MONTGOMERY COUNTY, OHIO

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

Plaintiff,

v.

FISHER AUTO GROUP LLC
dba RACING RV'S LLC et al.,

Defendants.

CASE NO. 2021 CV 01548

JUDGE GREGORY F. SINGER
(VISITING JUDGE WILLIAM WOLFF)

CONSENT JUDGMENT AND
AGREED ENTRY AND ORDER
WITH DEFENDANTS

RECEIVED
ATTORNEY GENERAL OF OHIO

MAR 22 2022

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

PREAMBLE

This matter came upon the filing of a Complaint by Plaintiff, the Attorney General of Ohio, charging Defendants Fisher Auto Group LLC dba Racing RV's LLC ("Racing RV's") and owner Robert J. Fisher ("Fisher" and collectively with Racing RV's, "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 Defendants. Each of the 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 and Agreed Entry and Order ("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 Racing RV's is an Ohio limited liability company conducting business in Montgomery County and other counties in the State of Ohio with its principal place of business located at 6436 Brookville Salem Rd., Brookville, Ohio 45309.

2. Defendant Fisher is an individual whose address is 988 Clinton St., Clayton, Ohio 45315.
3. Defendant Fisher is the owner of and operated, dominated, controlled, and directed the business activities and sales conduct of Defendant Racing RV's, 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 Brookville to consumers residing in Montgomery and other Ohio counties.
5. Defendants, operating under the name Racing RV's, solicited individual consumers to enter into consumer transactions, specifically for the sale of used motor vehicles.
6. Defendant Racing RV's held license #UD018266 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 Racing RV's location.
8. Defendants failed to file applications for certificates of title within thirty days after the assignment or delivery of motor vehicles including a 2005 Freightliner Renegade, VIN No. 1FVHA6CVX5LN39374.
9. Defendants failed to obtain certificates of title on or before the fortieth day after the sale of motor vehicles, including the title to a 2005 Freightliner Renegade, VIN No. 1FVHA6CVX5LN39374.
10. Defendants failed to maintain a surety bond in an amount not less than \$25,000.00 after the Attorney General had paid a retail purchaser of the dealer from the Title Defect

Recision ("TDR") Fund.

11. TDR claims for this case totaling \$36,000.00 were paid from the TDR Fund, administered by the Ohio Attorney General's Office, after the Defendants failed to obtain a certificate of title on or before the fortieth day after the sale of the motor vehicle described above.
12. Defendant Fisher filed a voluntary Chapter 7 bankruptcy petition on April 19, 2021 in the United States Bankruptcy Court for the Southern District of Ohio, case number 3:21-bk-30643. No discharge order has yet been entered and the bankruptcy case remains open. Defendant Racing RV's did not file for bankruptcy protection.

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 Montgomery 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. After payments were made from the TDR Fund, Defendants failed to maintain a surety bond in an amount not less than \$25,000.00 after the Attorney General had paid a retail purchaser of the dealer from the TDR Fund, as required by R.C. 4505.181.
9. The acts or practices described in paragraphs 6-8 have been previously determined by Ohio courts to violate the CSPA, 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).
10. Pursuant to 11 U.S.C. 362(b)(4), Defendant Fisher's bankruptcy filing does not operate as a stay of this action or the relief sought and obtained in this Consent Judgment. Plaintiff commenced and is continuing this action against Defendants for violations of the CSPA and Certificate of Motor Vehicle Title Act and in doing so is exercising its police and regulatory power.
11. The parties agree and the Court finds that the TDR Fund repayment obligations and civil penalties assessed for violations of the CSPA are both in the nature of a fine, penalty, or forfeiture payable to and for a government unit and as such meet the exception to a

bankruptcy discharge enumerated in 11 U.S.C. 523(a)(7).

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 Racing RV's or any other name, the 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. Defendants are ORDERED, jointly and severally, to pay the amount of Twenty Five Thousand Dollars (\$25,000.00) as a recovery for and deposit into the TDR Fund.
- D. Pursuant to R.C. 1345.07(D), Defendants are assessed and ORDERED, jointly and severally, to pay a civil penalty in the amount of Fifteen Thousand Dollars (\$15,000.00). Payment of the foregoing amount, however, shall be suspended as long as Defendants comply with the provisions of this Consent Judgment and the TDR Fund recovery ordered in Paragraph C above is paid in accordance with the following forty-two (42) month payment schedule:

- Months 1-12 \$400.00 per month (\$4,800.00)
- Months 13-24 \$550.00 per month (\$6,600.00)

- Months 25-36 \$659.00 per month (\$7,908.00)
- Months 37-41 \$966.00 per month (\$4,830.00)
- Month 42 \$862.00 final payment

The first payment above is due on or before April 1, 2022 and each subsequent payment is due on or before the first day of each subsequent month until paid in full. If all payments are timely made pursuant to this payment schedule, the last payment will be due on or before September 1, 2025. If the TDR Fund recovery is not paid in accordance with this monthly payment schedule, the remaining balance of the TDR Fund recovery shall become immediately due and payable, together with the balance of the full civil penalty amount of Fifteen Thousand Dollars (\$15,000.00).

- E. Unless otherwise directed by Plaintiff, the monies ordered in Paragraphs C and D shall be made via certified check or money order, made payable to the "Ohio Attorney General's Office," and delivered to the Consumer Protection Section, Attn: Finance Specialist, 30 E. Broad St., 14th Floor, Columbus, Ohio 43215.
- F. 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 acceleration of the TDR Fund recovery and civil payment amounts in Paragraph D of this Consent Judgment, shall not be construed as a waiver of any of the obligations created by this Consent Judgment.
- G. Failure to pay any amounts under this Consent Judgment when due may result in any remaining balance being referred to the Ohio Attorney General's Collection Enforcement Section for collection. Should this occur, the Collections Enforcement Section will assess

additional collection costs and interest on the unpaid balance pursuant to Ohio law, including, but not limited to R.C. 131.02, 109.08, and 109.081.

- H. It is further ORDERED that in the event the Ohio Attorney General must initiate legal action or incur any costs to compel 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.
- I. IT IS FURTHER ORDERED that Defendant Fisher shall be prohibited from applying for or obtaining an auto dealer license under Chapter 4517 of the Revised Code if he is not in compliance with all of the provisions of this Consent Judgment.
- J. Notwithstanding anything to the contrary in this Consent Judgment, Plaintiff shall not take action to enforce the monetary payment provisions of this Consent Judgment against Defendant Fisher until the earliest of the following: (1) his bankruptcy case is closed; (2) his bankruptcy case is dismissed; or (3) he is either granted or denied a discharge. Any monetary payments made by Defendant Fisher prior to such time shall be deemed to be made voluntarily.
- K. Defendants shall not represent, directly or indirectly, that the Ohio Attorney General has sanctioned, condoned, or approved any part or aspect of the Racing RV's business operations.
- L. Defendants shall pay all court costs associated with this action.

IT IS SO ORDERED.

DATE

JUDGE WILLIAM WOLFF

Agreed to by:

DAVE YOST
Attorney General

/s/ Rosemary E. Rupert

Rosemary E. Rupert (0042389)
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/s/ Allison L. Harrison (per written approval)

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Attorney for Defendants

/s/ Robert J. Fisher (per written approval)

Robert J. Fisher, individually



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

Case Number:
2021 CV 01548

Case Title:
OHIO ATTORNEY GENERAL vs FISHER AUTO GROUP
LLC

Type:
Consent Judgment Entry

So Ordered,

A handwritten signature in black ink, appearing to read "William H. Wolff". The signature is stylized with a large, looping initial "W" and a distinct "H".