

BEFORE THE ADMINISTRATOR OF CONSUMER CREDIT
STATE OF OKLAHOMA



STATE OF OKLAHOMA)
ex rel. DEPARTMENT OF)
CONSUMER CREDIT,)
)
Petitioner,)
)
v.)
)
CHARIOT MOTORS,)
)
Respondent.)

Case No. 16-0218-DIS

FINAL AGENCY ORDER

This matter was heard on the 6th day of April, 2017, at approximately 10:11 a.m., the above numbered and entitled cause came on for hearing at the Office of the Oklahoma Department of Consumer Credit, 3613 N.W. 56th Street, Suite 240, Oklahoma City, Oklahoma 73112. The State of Oklahoma *ex rel.* Oklahoma Department of Consumer Credit (“Petitioner”), was represented by Petitioner’s General Counsel J. Steven Coates and Respondent Chariot Motors, located at 8440 S. Shields, Oklahoma City, Oklahoma 73149 (“Respondent”), appeared through an individual named David Okhovat, the owner of Respondent, and who appeared pro se without an attorney.

Pursuant to the requirements of Article II of the Oklahoma Administrative Procedures Act, 75 O.S. §§ 308a-323, a copy of the Notice and Order of Hearing filed in this matter on March 6, 2017 (the “Notice of Hearing”), was served upon Respondent at 8440 S. Shields, Oklahoma City, Oklahoma 73149, setting the April 6, 2017, hearing date, time and place in Case No. 16-0218-DIS, pursuant to the requirements of Article II of the Administrative Procedures

Act (the "APA"), 75 O.S. §§ 308a-323, by certified U.S. Mail, return receipt requested, served on and received by Respondent on March 8, 2017, as verified by a signed return receipt (green card) signed by David Okhovat on behalf of Respondent and a sworn Affidavit of Service from Petitioner's General Counsel, J. Steven Coates, that such service was secured, copies of each of which were presented in the Hearing. Such service was further evidenced by the personal appearance of David Okhovat as the owner of Respondent, at the Hearing.

Neither party to these proceedings requested that a court reporter record this matter. No proposed findings of fact were submitted to Petitioner by either party to these proceedings.

The witnesses in this matter, Mark Swan for Petitioner, and David Okhovat for the Respondent, were both sworn in prior to Petitioner presenting its case.

Petitioner's General Counsel J. Steven Coates waived providing an opening statement and called a witness.

WITNESSES AND EXHIBITS

As its witness, Petitioner called Mark Swan to testify. Upon being duly sworn, Mr. Swan indicated that he is employed by Petitioner as a Consumer Credit Examiner, that he has been so employed for two years, that as a Consumer Credit Examiner he performs investigations, and that he was sent by his supervisor Drew S'Renco to determine whether Respondent, as an auto dealer, was offering any kind of financing to consumers or, in other words, a dealer offering to engage or engaged in making consumer credit sales, consumer leases, consumer loans or supervised loans without a notification license. Continuing, Mr. Swan stated that he visited Respondent's business location at 8440 S. Shields, Oklahoma City, Oklahoma, on November 9, 2016, that while there he met David Okhovat, who identified himself as the owner of Respondent, and that

Respondent had no notification license at that time and at no time previously has Respondent held notification licensure from the Department.

In response to a question from Mr. Coates, Mr. Swan identified Petitioner's Exhibit 1 as a photograph of the business card of David Okhovat that includes his name, business address, and telephone numbers, and that the photograph was an accurate representation of the business card he photographed. When asked if he had any objection to the admission of Exhibit 1 into the record, Mr. Okhovat said that he had no objection. Accordingly, Petitioner's Exhibit 1 was admitted without objection.

In response to a question from Mr. Coates, Mr. Swan identified Exhibit 2 to be a photograph he took of signage at Respondent's business location at 8440 S. Shields, Oklahoma City, Oklahoma, with the business name, business address, and telephone number displayed, and that the photograph was an accurate representation of the signage he photographed. Respondent, through Mr. Okhovat, noted that the sign underneath his business sign for "Chariot Motors" stating "Financing with No Interest" with phone number 632-7838, was not his sign, that his phone number was 634-0088, and stated no objection to Exhibit 2. Accordingly, there being no objection, Exhibit 2 was admitted into evidence.

Petitioner's Exhibit 3 was identified by Mark Swan to be a retail installment sales agreement or contract that was provided to Petitioner under subpoena from Respondent which was admitted into evidence without objection. In referring to Exhibit 3, Mr. Swan read from the retail installment sales agreement or contract and stated that the name of the purchaser was Charles Edward Henderson who appears to be an individual person rather than an organization, that Respondent as an auto dealer was the seller as stated in Exhibit 3, that the seller extending

credit is a person who regularly engages as a seller in credit transactions of motor vehicles, that the vehicle sold by Respondent on November 17, 2016, was a 2003 Volkswagen Beetle, that the payments on the vehicle are stated to be a \$400.00 cash down payment and thereafter \$150.00 every two weeks with the first payment due on May 15, 2016, that the total sale price of the vehicle was \$4,500.00, of which amount \$4,100.00 was financed, that the amount financed was less than \$50,000.00, that Respondent regularly engages in the sale of motor vehicles on credit, that Respondent is not licensed as a Supervised Financial Organization [14A O.S. §1-301(20)] that Respondent holds no license to make supervised loans [14A O.S. §3-501(1)].

Petitioner's Exhibit 4 was identified by Mark Swan to be a retail installment sales agreement or contract that was provided to Petitioner through subpoena which was admitted into evidence without objection. In referring to Exhibit 4, Mr. Swan read from the contract and stated that the name of the purchaser(s) are individual person(s) named Allen Raines or Kelly Raines rather than an organization, that Respondent as an auto dealer was the seller, that the seller extending credit is a person who regularly engages as a seller in credit transactions of motor vehicles, that the vehicle sold on December 27, 2014, was a 2003 Honda Pilot, that the obligation of the buyer was payable in 18.48 bi-weekly installment payments, that the vehicle's total purchase price is \$6,465.00, with a down payment of \$0.00, that the balance of \$6,465.00 was to be financed through installment payments of \$350.00 every two weeks with the first payment due January 15, 2015, that the amount financed was less than \$50,000.00, that Respondent as an auto dealer, regularly engages in the sale of motor vehicles on credit, that Respondent is not licensed as a Supervised Financial Organization [14A O.S. §1-301(20)] that Respondent holds no license to make supervised loans [14A O.S. §3-501(1)].

Petitioner's Exhibit 5 was identified by Mark Swan to be a retail installment sales agreement or contract that was provided to Petitioner through subpoena which was admitted into evidence without objection. In referring to Exhibit 5, Mr. Swan read from the contract and stated that the name of the purchaser appeared to be an individual person named Michelle Lea Coker rather than an organization, that Respondent as an auto dealer was the seller, that the seller extending credit is a person who regularly engages as a seller in credit transactions of motor vehicles, that the vehicle sold on March 11, 2015, was a 2002 Ford Escape, that the obligation of the buyer was payable in installment payments, that the vehicle's total purchase price is \$5,800.00, with a down payment of \$900.00, and that the balance of \$4,900.00 was to be financed through installment payments of \$300.00 a month with the first payment due April 11, 2015, that the amount financed was less than \$50,000.00, that Respondent as an auto dealer, regularly engages in the sale of motor vehicles on credit, that Respondent is not licensed as a Supervised Financial Organization [14A O.S. §1-301(20)] that Respondent holds no license to make supervised loans [14A O.S. §3-501(1)].

Mr. Swan testified that Respondent does now have a notification license as of December 29, 2016, that Respondent secured its notification license after Mr. Swan conducted his investigation and before Respondent received a notice of hearing from Petitioner. Upon the conclusion of Mr. Swans' testimony, Petitioner rested.

Respondent's owner David Okhovat, having been duly sworn, testified that the sign underneath his business sign for "Chariot Motors" stating "Financing with No Interest" with phone number 632-7838, was not his sign, that it was from an earlier business that is no longer there, and that it had been covered by a plastic tarp which the wind blew away, that he allows

people to pay out their obligations because he has to do so because his competition all along South Shields allows it, that he gives people time to pay, that he charges no interest when people pay out their obligations, that the that he recently bought his building, and that he has been in the auto business for thirty years. Mr. Okhovat offered no exhibits for admission into evidence and presented no witnesses to testify other than himself.

Petitioner's General Counsel J. Steven Coates stated that Petitioner was recommending in this matter that Respondent pay a fine as a civil penalty for unlicensed activity involving consumer credit sales, consumer leases, or consumer loans, in the amount of Seven Hundred Fifty Dollars (\$750.00), and that Respondent pay for the costs of the hearing. Mr. Coates noted that, subsequent to the filing of the Notice of Hearing, Respondent had recently become licensed by the Department on December 8, 2016, and that accordingly the Department was not requesting the issuance of a Cease and Desist Order in this matter. By requesting a civil penalty in this case, Petitioner has invoked the provisions of 14A O.S. §6-113(3) that authorize a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) where a person or respondent violates 14A O.S. §6-113(3) by engaging in or offering to engage in making consumer credit sales, consumer leases, or consumer loans, without filing notification with the Administrator.

In response to Petitioner's recommendation and as his closing statement, Mr. Okhovat stated that he has had different businesses in this country for 35 years and did not know anything about Petitioner and did not know why no one sent him a letter or something that he needed a [notification] license, that if someone would have sent him a letter that he needed a [notification] license that he would have gotten a license, that he does not believe that he can be penalized for not knowing about his need for a notification license when he never knew or heard about such a

license, and that when he was informed that he needed a license, he applied for a license and got a license. Mr. Okhovat cited no authority in support of his opinion that he should have received a letter from Petitioner to inform him of the need for a notification license prior to Petitioner's investigation into the status of his licensure.

At that time, there being nothing further to be said by either party, the duly appointed Independent Hearing Examiner, noted that he would take this matter under advisement with no announcement that day as to a recommendation to the Administrator. Subsequently, the duly appointed Independent Hearing Examiner considered the testimony and evidence presented, and reviewed the pertinent statutes and Department rules in order to prepare a proposed order.

After reviewing the administrative record of this individual proceeding, reviewing the arguments, testimony and evidence presented at the April 6, 2017 hearing and reviewing the Proposed Order filed by the Independent Hearing Examiner, Bryan Neal, the Administrator of Consumer Credit issues the following findings, conclusions and orders.

JURISDICTION AND AUTHORITY

1. The Administrator of Consumer Credit (the "Administrator") is responsible for the enforcement of the Uniform Consumer Credit Code, 14A O.S. § 1-101 *et seq.*, (the "UCCC"). 14A O.S. § 6-501.

2. The term "licensee" or "license," as used in the UCCC, includes any entity or individual that has filed or is required to file notification with the Administrator pursuant to the provisions of 14A O.S. §§ 6-201 through 6-203 of the UCCC. 14A O.S. § 6-203(2).

3. Any person other than a supervised financial organization or a person holding a license to make supervised loans issued under Part 5 of Article 3 of the UCCC, engaged in

making in this state consumer credit sales, consumer leases, or consumer loans and any person having an office or place of business in this state who takes assignments of and undertakes direct collection of payments from or enforcement of rights against debtors arising from these sales, leases or loans is required to file notification with the Administrator within thirty (30) days after commencing business in this state and thereafter on or before January 31 of each year. 14A O.S. §§ 6-201 and 6-202.

4. Any person required to file notification pursuant to the provisions of Sections 6-201 and 6-202 of the UCCC, on or before January 31st of each year, shall pay to the Administrator an annual fee for each location within this state at which business is transacted. A late fee shall be charged for any notification filed after January 31. 14A O.S. § 6-203(1).

5. The notification filing fee is \$120.00 for each business location within this state at which business is transacted. OKLA. ADMIN. CODE § 160:5-1-2(2)(A).

6. The Administrator may, after notice and hearing, censure, probate, suspend, revoke or refuse to renew any license, or in addition to or in lieu of censure, probation, suspension or revocation, order refunds for unlawful charges if the Administrator finds that:

(a) The licensee has failed to pay the annual license fee imposed by the UCCC, or an examination fee, investigation fee or charge imposed by the Administrator under the authority of the UCCC;

(b) The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of the UCCC or any rule or order lawfully made pursuant to and within the authority of the UCCC; or

(c) Any fact or condition exists which, if it had existed or had been known to exist at the time of the original application for such license, clearly would have justified the Administrator in refusing to issue such license. 14A O.S. §3-505.

7. After notice and hearing, the Administrator may order a creditor or a person acting in the creditor's behalf to cease and desist from engaging in violations of the UCCC. 14A O.S. §6-108.

8. Any entity or individual offering to engage or engaged in making consumer credit sales, consumer leases, consumer loans or supervised loans in this state without a license or notification filing as required by the UCCC shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00). 14A O.S. §6-113(3).

FINDINGS OF FACT

The Administrator of Consumer Credit finds that the following facts were proven by clear and convincing evidence:

1. The proceedings in this matter were conducted in accordance with the provisions of Article 3, Part 5, of the Uniform Consumer Credit Code, 59 O.S. § 3-501 *et seq.* and Article II of the Administrative Procedures Act, 75 O.S. §§ 308a to 323.

2. Respondent through its owner, Mr. Okhovat admitted that it transacts business through cash sales of motor vehicles and by offering and granting in-house credit financing for the motor vehicles it sells at 8440 S. Shields, Oklahoma City, Oklahoma 73149. While Respondent does not charge interest on the monthly payments made by its consumer debtors to Respondent, Respondent grants its consumer debtors to whom it offers and provides in-house credit financing, the right to defer payment of debt or to incur debt and defer its payment (i.e., the

right to make bi-weekly or monthly payments over time) which constitutes an extension of credit to consumers.

4. On November 9, 2016, a consumer credit examiner named Mark Swan entered the business premises of Respondent at 8440 S. Shields, Oklahoma City, Oklahoma 73149 and spoke to the owner, David Okhovat. Petitioner's examiner asked Mr. Okhovat if he offered in-house financing on the motor vehicles sold at the business location. Mr. Okhovat did advise Petitioner's examiner in addition to cash sales of motor vehicles at the business location, that he does offer and does provide some in-house financing on the motor vehicles sold at his business location. Mr. Okhovat also mentioned that he does not charge interest on any vehicle sales.

5. On December 5, 2016, Petitioner issued a subpoena duces tecum to David Okhovat of Chariot Motors at the address of 8440 S. Shields, Oklahoma City, Oklahoma 73149. Respondent was requested to submit documents to Petitioner no later than January 3, 2017. Eleven (11) Retail Installment Sale Contracts were received by January 3, 2017. Three (3) of the Retail Installment Sale Contracts received under subpoena were presented at the Hearing and admitted into evidence.

6. The copy of the Retail Installment Sale Contract for Charles Edward Henderson (Exhibit 3) as an individual person rather than an organization (the "contract"), lists the purchase of a 2003 Volkswagen Beetle on November 17, 2016. The Seller, an auto dealer, is listed as Respondent Chariot Motors with the business address listed as 8440 S. Shields, Oklahoma City, Oklahoma 73149, and that the seller extending credit is a person who regularly engages as a seller in credit transactions of motor vehicles. The terms of the contract are 27.33 bi-weekly payments in the amount of \$150.00 with the first payment scheduled on December 1, 2016, with

a \$400.00 cash down payment with the first payment due on December 15, 2016, that the total sale price of the vehicle was \$4,500.00, of which amount \$4,100.00 was financed, that the amount financed was less than \$50,000.00, that Respondent regularly engages in the sale of motor vehicles on credit, that Respondent is not licensed as a Supervised Financial Organization [14A O.S. §1-301(20)] that Respondent holds no license to make supervised loans [14A O.S. §3-501(1)]. An annual interest percentage rate of 0% is listed in the contract.

7. The copy of the Retail Installment Sale Contract for the individual persons named Allen Raines or Kelly Raines (Exhibit 4) rather than an organization (the “contract”), lists the purchase of a 2003 Honda Pilot on December 27, 2014. The Seller, an auto dealer, is listed as Respondent Chariot Motors with the business address listed as 8440 S. Shields, Oklahoma City, Oklahoma 73149, and that the seller extending credit is a person who regularly engages as a seller in credit transactions of motor vehicles. The terms of the contract are 18.48 bi-weekly payments in the amount of \$350.00 with the first payment scheduled on January 15, 2015. The total sales price of the vehicle is \$6,465.00, of which amount \$6,465.00 was financed, that the amount financed was less than \$50,000.00, that Respondent regularly engages in the sale of motor vehicles on credit, that Respondent is not licensed as a Supervised Financial Organization [14A O.S., §1-301(20)] that Respondent holds no license to make supervised loans [14A O.S. §3-501(1)]. An annual interest percentage rate of 0% is listed in the contract.

8. The copy of the Retail Installment Sale Contract for an individual person named Michelle Lea Coker (Exhibit 5) rather than an organization (the “contract”), lists the purchase of a 2002 Ford Escape on March 11, 2015. The Seller, an auto dealer, is listed as Respondent Chariot Motors with the business address listed as 8440 S. Shields, Oklahoma City, Oklahoma

73149, and that the seller extending credit is a person who regularly engages as a seller in credit transactions of motor vehicles. The terms of the contract are 16 monthly payments in the amount of \$300.00 with the first payment scheduled on April 11, 2015. The total sales price of the vehicle is \$5,800.00, of which amount \$4,900.00 was financed, that the amount financed was less than \$50,000.00, that Respondent regularly engages in the sale of motor vehicles on credit, that Respondent is not licensed as a Supervised Financial Organization [14A O.S. §1-301(20)] that Respondent holds no license to make supervised loans [14A O.S. §3-501(1)]. An annual interest percentage rate of 0% is listed in the contract.

9. As of December 29, 2016, Respondent is licensed in the State of Oklahoma pursuant to the provisions of 14A O.S. §§ 6-201 through 6-203 of the UCCC. The notification filing application was received on December 16, 2016.

10. Respondent did not file notification with Petitioner pursuant to the provisions of 14A O.S. §§ 6-201 and 6-202 of the UCCC, on or before January 31, 2016.

CONCLUSIONS OF LAW

The Administrator of Consumer Credit concludes that based on the evidence and testimony in this individual proceeding that:

1. Respondent has violated 14A O.S. §§ 6-201 and 6-202 for failure to file notification with Petitioner pursuant to the provisions of 14A O.S. §§ 6-201 and 6-202 of the UCCC, on or before January 31, 2016.

2. Respondent has violated 14A O.S. §6-113(3), by engaging in or offering to engage in making consumer credit sales, consumer leases, or consumer loans, without filing notification with the Administrator.

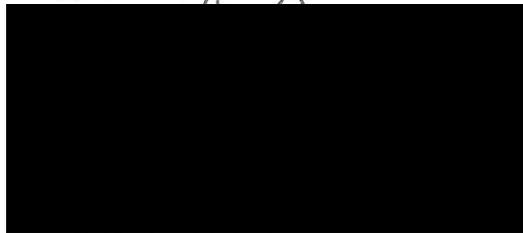
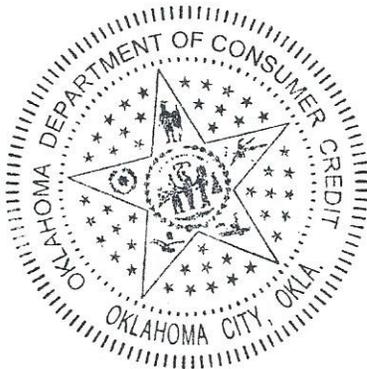
ORDER

Based upon the findings of fact and conclusions of law in this individual proceeding and based upon the recommendation of the Independent Hearing Examiner, the Administrator of Consumer Credit issues the following orders:

1. Respondent hereby is found to have violated 14A O.S. §§ 6-201 and 6-202 for failure to file notification with Petitioner pursuant to the provisions of 14A O.S. §§ 6-201 and 6-202 of the UCCC, on or before January 31, 2016, and to have violated 14A O.S. §6-113(3), by engaging in or offering to engage in making consumer credit sales, consumer leases, or consumer loans, without filing notification with the Administrator, for which violation Respondent shall be fined a civil penalty in the amount of Seven Hundred Fifty Dollars (\$750.00) as authorized in 14A O.S. § 6-113(3).

2. As Respondent is not the prevailing party in this matter, Respondent shall pay court costs of \$471.75 incurred in this matter as authorized in 14A O.S. §3-505(1).

WITNESS my hand this 30th day of May, 2017.



Scott Leshner
Administrator of Consumer Credit
State of Oklahoma