

**BEFORE THE ADMINISTRATOR OF CONSUMER CREDIT
STATE OF OKLAHOMA**



STATE OF OKLAHOMA,)
ex rel. DEPARTMENT OF)
CONSUMER CREDIT,)
)
Petitioner,)
)
v.)
)
SMART AUTO WHOLESALE, LLC.)
D/B/A FOSTER AUTO SUPERCENTER,)
)
Respondent.)

Case No. 16-0315-DIS

FINAL AGENCY ORDER

This matter was heard on the 2nd day of November, 2017, at approximately 9:41 a.m., the above numbered and entitled cause came on for hearing after having allowed the above-named Respondent additional time to appear (after convening at approximately 9:30 a.m.), 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 Chief Enforcement Attorney John T. Coyne and Respondent Smart Auto Wholesale, LLC., d/b/a Foster Auto Supercenter, located at 4050 S. Sheridan, Tulsa, Oklahoma 74145 (“Respondent”), did not appear in person or through an attorney, after such Respondent having been mailed a copy of the Amended Notice and Order of Hearing filed by Petitioner herein on September 13, 2017 (the “Notice of Hearing”), in Case No. 16-0315-DIS, pursuant to the requirements of Article II of the Administrative Procedures Act (the “APA”), 75 O.S. §§ 308a-323, by first class U.S. Mail certified with return receipt requested to Respondent, U.S. Postal Service (“USPS”) Tracking Number: 7016 2140 0000 5424 2358, at

the address of Respondent at 4050 S. Sheridan, Tulsa, Oklahoma 74145, and was delivered to Respondent by a representative of the USPS as verified through the USPS Tracking Results for Tracking Number: 7016 2140 0000 5424 2358 delivered to and received by an individual at the address of Respondent at 4050 S. Sheridan, Tulsa, Oklahoma 74145, on September 19, 2017, on behalf of Respondent which has been filed herein 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 filed herein and presented in the Hearing.

Petitioner's Chief Enforcement Attorney, John T. Coyne, announced that he had not heard from or spoken to Respondent about its appearance at the hearing in person or through an attorney. Mr. Coyne indicated that he wished to secure, in the absence of Respondent who had an opportunity for a hearing and for whom he had good and proper service, a hearing to present testimony from his witness, present evidence, and to create a record in this matter.

It was noted by Petitioner's Chief Enforcement Attorney, John T. Coyne, in his opening statement that a notice of hearing in this matter was originally sent to Respondent's registered agent on August 18, 2017, that was returned to Petitioner marked as "Attempted, address not known", and that subsequently the Amended Notice and Order of Hearing was sent directly to Respondent at its business address at 4050 S. Sheridan, Tulsa, Oklahoma 74145, on September 19, 2017, as aforesaid herein.

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.

Petitioner's Chief Enforcement Attorney John T. Coyne concluded his opening statement and called a witness.

WITNESSES AND EXHIBITS

As its witness, Petitioner called Sarah Reynolds to testify. Upon being duly sworn, Ms. Reynolds indicated that she is employed by Petitioner as an Examiner, that as an Examiner she performs investigations, and that she was sent on December 6, 2016, by the Chief Examiner, Drew S'Renco, to investigate Respondent, to determine whether Respondent, an auto dealer, was engaging in unlicensed activity or, in other words, was a dealer offering to engage or engaged in making consumer credit sales, consumer leases, consumer loans or supervised loans without a notification license. According to Ms. Reynolds, based on Petitioner records, Respondent has never held a notification license at this business location and currently holds no notification license. Continuing, Ms. Reynolds stated that she visited Respondent's business location at 4050 S. Sheridan, Tulsa, Oklahoma 74145, on December 6, 2016, that while there she met and spoke with Jeromy McMorris, who identified himself at that time as the General Manager of Respondent.

Ms. Reynolds stated that she asked Mr. McMorris what type of financing Respondent offered to its customers. Mr. McMorris responded that Respondent offers financing from banks and that Respondent puts the customer's information into DealerTrack and it comes back with offers and the customer decides. According to Ms. Reynolds, she asked if Respondent writes the contract with the customer and then assigned it to the bank and Mr. McMorris said they did do so. Upon being directed to Respondent's Finance Department, Ms. Reynolds stated that she asked for a copy of a contract and was provided one by LaToya Bradford, Respondent's Finance Manager, in Respondent's Finance Department. Ms. Bradford informed Ms. Reynolds that Respondent provided loans directly to customers who purchased cars from Respondent.

In response to questions from the Petitioner's Chief Enforcement Attorney John T. Coyne, Ms. Reynolds identified Petitioner's Exhibit A as a photograph she took of the exterior of the business location of Respondent at 4050 S. Sheridan, Tulsa, Oklahoma 74145, on December 6, 2016, that includes elevated signage (near the street) with Respondent's name "Foster Auto Supercenter", telephone number "(918) 794-3200" and stating "We Pay Cash for Cars" and additional signage posted near the curb stating: "Sell Us Your Car!" and that the photograph was an accurate representation of Respondent's business location and the signage she photographed at 4050 S. Sheridan, Tulsa, Oklahoma 74145, on December 6, 2016. Ms. Reynolds stated that the photograph of Respondent's business location depicts Respondent's business and of Respondent's business being open and doing business. In the absence of Respondent there was no objection to the admission of Petitioner's Exhibit A and Petitioner's Exhibit A was admitted into evidence.

Petitioner's Exhibit B was identified by Ms. Reynolds to be a document she photocopied entitled "Retail Installment Contract and Security Agreement" that was provided to Ms. Reynolds by Respondent's Finance Manager LaToya Bradford while Ms. Reynolds was at Respondent's Tulsa business location on December 6, 2016, which six-page "Retail Installment Contract and Security Agreement", a form of motor vehicle retail installment agreement or contract (the "installment contract") marked as Exhibit B, was admitted into evidence without objection.

In referring to Exhibit B, Ms. Reynolds noted that Respondent's Finance Manager, LaToya Bradford personally handed a copy of the installment contract to Ms. Reynolds while she was at Respondent's Tulsa business location, 4050 S. Sheridan, Tulsa, Oklahoma 74145, on

December 6, 2016. Petitioner's Chief Enforcement Attorney, John T. Coyne asked Ms. Reynolds questions about contents of the Retail Installment Contract and Security Agreement, which included, stating that the name of the motor vehicle lessor to be Foster Auto Supercenter, Respondent in Tulsa, Oklahoma, 4050 S. Sheridan, Tulsa, Oklahoma 74145, that the names of the motor vehicle buyers were Victoria Arnold and Douglas Arnold, and that the named-buyers, Victoria Arnold and Douglas Arnold, appear to be individual persons rather than an organization, that Respondent seller extending credit appears to be a person who regularly engages as a lender in credit sales of motor vehicles, that the vehicle previously purchased by the named-buyers, Victoria Arnold and Douglas Arnold, from Respondent on November 16, 2016, was a 2003 Hummer H2. The installment contract creates an obligation that is payable in installments. Reading from the installment contract on page 1 underneath the title Truth-in-Lending Disclosure, Ms. Reynolds stated that the annual percentage rate of interest is 15.95%, that the total finance charge is \$2,330.56, that the total dollar amount financed for the vehicle was \$8,549.00, that the total dollar amount of payments is \$10,879.56, and that the total sales price of the car financed is \$15,879.56. According to Ms. Reynolds, the installment contract creates an obligation that is payable in installments and the payments on Respondent-financed vehicle do not exceed the sum of \$54,600.00. In response to a question about language on page 4 of the installment contract under the heading "Security Agreement", Ms. Reynolds read from the first line that Respondent-financed car purchasers gave "...us a security interest in the Vehicle, all other property, and accessions", and stated that the "us" in that language refers to the Respondent. In response to a question about certain language on page 5 of the installment contract, Ms. Reynolds read into the record certain bolded language as follows "Any holder of

this consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof. Recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder.” Ms. Reynolds stated that such language identifies the installment contract as a consumer credit contract.

Petitioner’s Exhibit C was identified by Ms. Reynolds to be a photocopy of screen shots of Respondent’s website, www.fosterautosupercenter.com, that she printed out and stated that it is an accurate representation of the screen shots. The photocopy of the screen shots of Respondent’s website marked as Exhibit C was admitted into evidence without objection. It was noted that the bottom-screen shot from Respondent’s website as depicted in Exhibit C is an application to apply for credit in connection with the purchase of a car.

In response to questions about Respondent and the installment contract, Ms. Reynolds answered that Respondent’s name is on the form as is its address 4050 S. Sheridan, Tulsa, Oklahoma 74145, that Respondent does engage in in-house financing, that Respondent regularly engages in the sale of motor vehicles on credit, the dollar amount of the motor vehicle financed was less than \$54,600.00, 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)], and that Respondent’s Tulsa business location still does not have a notification license as of the date of the Hearing, November 2, 2017.

Upon the conclusion of Ms. Reynolds’ testimony, Petitioner rested.

Petitioner’s Chief Enforcement Attorney, John T. Coyne, stated that Petitioner was

recommending in this matter that Respondent pay a civil penalty for unlicensed activity involving consumer credit sales, consumer leases, or consumer loans, in the amount of Two Thousand Dollars (\$2,000.00), and that Respondent pay for the costs of the hearing. Mr. Coyne noted that Petitioner 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.

Accordingly, the Independent Hearing Examiner announced from the bench that his recommendation in this matter to Petitioner's Administrator would be that Respondent pay a civil penalty for unlicensed activity involving consumer credit sales, consumer leases, or consumer loans, in the amount of Two Thousand Dollars (\$2,000.00), that as Respondent is not the prevailing party in this matter, that Respondent shall pay for the costs of the hearing.

After reviewing the administrative record of this individual proceeding, reviewing the arguments, testimony and evidence presented at the November 2, 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 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 Smart Auto Wholesale, LLC., d/b/a Foster Auto Supercenter, located at 4050 S. Sheridan, Tulsa, Oklahoma 74145, did not appear in person or through an attorney,

after such Respondent having been mailed a copy of the Amended Notice and Order of Hearing filed by Petitioner herein on September 13, 2017, in Case No. 16-0315-DIS, pursuant to the requirements of Article II of the Administrative Procedures Act, 75 O.S. §§ 308a-323, by first class U.S. Mail certified with return receipt requested to Respondent, at the address of Respondent at 4050 S. Sheridan, Tulsa, Oklahoma 74145, and was delivered to Respondent by a representative of the U.S. Postal Service as verified through the USPS Tracking Results for Tracking Number: 7016 2140 0000 5424 2358 delivered to and received by an individual at the address of Respondent at 4050 S. Sheridan, Tulsa, Oklahoma 74145, on September 19, 2017, on behalf of Respondent, a sworn Affidavit of Service from the Petitioner's General Counsel, J. Steven Coates, that such service was secured, copies of each of which were filed herein and presented in the Hearing, that such notice was provided and that such notice was proper and reasonable, and the representation of Petitioner's Chief Enforcement Attorney, John T. Coyne, in the Hearing that Petitioner had secured good and proper service in this matter.

3. Respondent transacts its business of the sale of motor vehicles through cash sales, bank financing of vehicle sales, and by offering and granting in-house credit financing for the motor vehicles it sells at 4050 S. Sheridan, Tulsa, Oklahoma 74145. Respondent grants its consumer debtors to whom it offers and provides in-house credit financing of motor vehicles, the right to defer payment of debt or to incur debt and defer its payment (i.e., the right to make monthly payments over time) which constitutes an extension of credit to consumers.

4. On or about December 6, 2016, Petitioner's consumer credit examiner named Sarah Reynolds entered the business premises of Respondent at 4050 S. Sheridan, Tulsa, Oklahoma 74145 and spoke to its Manager, Mr. Jeromy McMorris. Petitioner's examiner asked

Mr. McMorris if Respondent offered in-house financing on the motor vehicles sold at its business location at 4050 S. Sheridan, Tulsa, Oklahoma 74145. Respondent's Finance Manager, LaToya Bradford, advised Petitioner's examiner Sarah Reynolds, in addition to cash sales of motor vehicles and vehicle financing through banks, at the 4050 S. Sheridan, Tulsa, Oklahoma 74145, business location, that Respondent does offer and does provide in-house financing on motor vehicles it sells at its 4050 S. Sheridan, Tulsa, Oklahoma 74145, business location.

5. The copy of the "Retail Installment Contract and Security Agreement", a form of retail installment sales agreement or contract, for Victoria Arnold and Douglas Arnold (Exhibit B) and that the named-buyers, Victoria Arnold and Douglas Arnold, appear to be individual persons rather than an organization, that Respondent as an auto dealer was the motor vehicle seller and lender as stated in Exhibit B, that Respondent lender extending credit is a person who regularly engages as a lender in credit transactions of motor vehicles, and that the vehicle sold from and financed by Respondent on November 16, 2016, was a 2003 Hummer H2. The motor vehicle seller and lender, an auto dealer, is listed in the installment contract as Respondent d.b.a. "Foster Auto Supercenter" with the business listed as 4050 S. Sheridan, Tulsa, Oklahoma 74145, and Respondent, as a motor vehicle seller and lender, extends credit and is a person who regularly engages as a motor vehicle seller and lender in credit transactions of motor vehicle sales.

The terms of the installment contract on Respondent-financed motor vehicle are stated to be monthly payments at an annual interest rate of 15.95%, the finance charge for the vehicle is \$2,330.56, the total amount financed for the vehicle was \$8,549.00, and that the total dollar amount of payments is \$10,879.56, that the amount financed was less than \$54,600.00, that

Respondent regularly engages as a seller and lender 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)], and that Respondent does not have a notification license as of the date of the hearing, November 2, 2017.

7. As of December 6, 2016, Respondent was not licensed in the State of Oklahoma pursuant to the provisions of 14A O.S. §§ 6-201 through 6-203 of the UCCC. 14A O.S. § 6-203.

8. 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.

9. Respondent failed to pay the notification filing fee of \$120.00 for each business location pursuant to OKLA. ADMIN. CODE § 160:5-1-2(2)(A).

CONCLUSIONS OF LAW

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

1. The UCCC defines “credit” in 14A O.S. § 1-301(7) to mean “...the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.”

2. 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.

3. 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 pay a civil penalty in the amount of Two Thousand Dollars (\$2,000.00) as authorized in 14A O.S. § 6-113(3), and that, as Respondent is not the prevailing party in this matter, Respondent shall pay court costs of \$777.75 incurred in this matter as authorized in 14A O.S. § 3-505(1).

WITNESS my hand this 12th day of December, 2017.



Scott Leshar
Administrator of Consumer Credit
State of Oklahoma

