

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner of Banking and)
Insurance, State of New Jersey, to fine, suspend)
and/or revoke the motor vehicle installment seller)
license of ALNE Trade Motors Import Export)
LLC, Reference No. 1000323.)

FINAL ORDER

TO: ALNE Trade Motors Import Export LLC
c/o Alexandre Maciel, President
189 215 South Street
Newark, NJ 07114

THIS MATTER having been opened by the Commissioner of the New Jersey Department of Banking and Insurance (“Commissioner”), upon information that ALNE Trade Motors Import Export LLC (“Respondent”), may have violated various provisions of the Retail Installment Sales Act of 1960, N.J.S.A. 17:16C-1 to -61 (“Act”); and

WHEREAS, Respondent was licensed as a motor vehicle installment seller pursuant to N.J.S.A. 17:16C-2 until its license was suspended on June 17, 2017; and

WHEREAS, Respondent is subject to the provisions of the Act; and

WHEREAS, pursuant to N.J.S.A. 17:16C-2, no person shall engage in or continue to engage in the business of a motor vehicle installment seller in this State without first obtaining a license from the Commissioner as provided for in the Act; and

WHEREAS, pursuant to N.J.S.A. 17:16C-10(a)(1), the Commissioner may revoke, suspend or refuse to renew a license or impose a penalty pursuant to the Act if the Commissioner

finds, after notice and an opportunity for a hearing, that any person, applicant for or holder of the license has violated any of the provisions the Act or any order, rule or regulation made or issued pursuant to the Act; and

WHEREAS, pursuant to N.J.S.A. 17:16C-10(a)(5), the Commissioner may revoke, suspend or refuse to renew a license or impose a penalty pursuant to the Act if the Commissioner finds, after notice and an opportunity for a hearing, that any person, applicant for or holder of the license has demonstrated unworthiness, incompetence, bad faith or dishonesty in the transacting of business as a licensee; and

WHEREAS, pursuant to N.J.S.A. 17:16C-10(a)(6), the Commissioner may revoke, suspend or refuse to renew a license or impose a penalty pursuant to the Act if the Commissioner finds, after notice and an opportunity for a hearing, that any person, applicant for or holder of the license has engaged in any other conduct which would be deemed by the Commissioner to be the cause for denial of the license; and

WHEREAS, pursuant to N.J.S.A. 17:16C-55, any person, and any director, officer, employee, agent, or representative thereof, who or which shall engage in this State in the business of a motor vehicle installment seller without having first obtained a license, as required by the Act, shall be liable to a penalty of not more than \$1,000.00 for each offense; and

WHEREAS, pursuant to N.J.S.A. 17:16C-56, any person conducting business under the Act and any director, officer, partner, member, employee, agent, or representative thereof who shall knowingly violate any provision of this Act or shall directly or indirectly counsel, aid, or abet such violation shall be liable to a penalty of not more than \$500.00 for each offense; and

WHEREAS, the Commissioner issued Order to Show Cause OCF22-13 on March 14, 2022, alleging violations of the Act; and

WHEREAS, Order to Show Cause No. OCF22-13 was withdrawn and superseded by Amended Order to Show Cause OCF22-19, which was issued by the Commissioner on May 10, 2022, alleging violations of the Act by Respondent as follows:

FACTS COMMON TO ALL COUNTS

IT APPEARING that Respondent’s motor vehicle installment seller license was suspended on June 17, 2017 due to its failure to file its 2016 annual report with the Department of Banking and Insurance (“DOBI”) by April 1, 2017 pursuant to N.J.A.C. 3:1-7.6(a); and

IT FURTHER APPEARING that from July 17, 2017 to date, Respondent’s license to engage in the motor vehicle installment sales business in New Jersey was suspended; and

COUNT 1

IT FURTHER APPEARING that despite being unlicensed from July 17, 2017 to date, Respondent sold thirty nine (39) automobiles with accompanying installment sales contracts in New Jersey; and

IT FURTHER APPEARING that by selling thirty nine (39) automobiles with accompanying installment sales contracts in New Jersey with a suspended license, Respondent violated N.J.S.A. 17:16C-2; N.J.S.A. 17:16C-10(a)(1), (a)(5), and (a)(6); and N.J.S.A. 17:16C-55; and

IT FURTHER APPEARING that each act of selling a vehicle with an installment sales contract with a suspended license constitutes a separate violation of the Act; and

COUNT 2

IT FURTHER APPEARING that Respondent falsified an active license when attempting to assign retail installment contracts to a licensed Sales Finance Company, namely Western Funding, Incorporated (“Western Funding”), during Respondent’s unlicensed period, showing unworthiness, incompetence, bad faith, and/or dishonesty in the transaction of business as a motor vehicle installment seller; and

IT FURTHER APPEARING that by attempting to use a falsified license when attempting to assign retail assignment contracts to

Western Funding, and attempting to do so while Respondent did not have a valid motor vehicle installment seller license, Respondent violated N.J.S.A. 17:16C-10(a)(1), (a)(5), and (a)(6); and N.J.S.A. 17:16C-56; and

WHEREAS, as set forth in the accompanying Certification of Service of Brian R. Fitzgerald, Deputy Attorney General, attached hereto as Exhibit A, Respondent was given notice of the aforesaid charges and an opportunity to contest the charges at a hearing pursuant to the Amended Order to Show Cause, which was duly served upon Respondent by certified and regular mail to its last known mailing address; and

WHEREAS, that Respondent failed to provide written responses to the charges contained in the Amended Order to Show Cause, and therefore Respondent has waived its right to a hearing to contest these charges and the charges are deemed admitted;

WHEREAS, in Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123 (1987), the Supreme Court established factors in order to evaluate the imposition of fines in administrative proceedings. Here, the factors are applied as follows. Under factor one, Respondent showed bad faith by selling 39 automobiles with installment sales contracts during a period where it was not actively licensed, and by falsifying an active license when attempting to assign retail installment contracts to a licensed Sales Finance Company. Under factor two, ability to pay is considered. The Respondent has not provided evidence of inability to pay into the record in this case. Under factor three, Respondent profited by selling 39 automobiles with installment sales contracts. Under factor four, Respondent's falsifying an active license when attempting to assign retail installment contracts to a licensed Sales Finance Company caused the State to exert time and money to investigate its actions, and harmed the reputation of motor vehicle installment sellers and the business of motor vehicle installment sales in the eyes of the public. Under the fifth factor, there is evidence that Respondent's misconduct encompassed a period of approximately one year. Under the sixth factor, Respondent was not

criminally charged for its conduct. Under factor seven, there appears to be no past violations for Respondent. Following the guidance provided by the court in Kimmelman, four factors support a higher fine, one factor appears neutral, and two factors support a lower fine.

NOW, THEREFORE, IT IS on this 26 day of July 2022,

ORDERED, that the charges contained in Counts One and Two of the Amended Order to Show Cause are deemed admitted by Respondent; and

IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 17:16C-10(a)(1), (a)(5), and (a)(6), the motor vehicle installment seller license of Respondent is hereby **REVOKED** effective upon the execution of this Final order by the Commissioner; and

IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 17:16C-55, Respondent shall pay a civil penalty of \$39,000.00 to the Commissioner for the violations stated in Count 1 of the Amended Order to Show Cause; and

IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 17:16C-56, Respondent shall pay a civil penalty of \$500.00 to the Commissioner for the violation stated in Count 2 of the Amended Order to Show Cause; and

IT IS FURTHER ORDERED, that Respondent shall pay the above \$39,500.00 penalty to the Commissioner of Banking and Insurance, State of New Jersey, P.O. Box 040, Trenton, New Jersey 08625, Attention: Paulette Sibblies-Flagg, OCF Enforcement Unit, by certified check, cashier's check or money order made payable to the "State of New Jersey, General Treasury," within ten days from the date of service of this Order; and

IT IS FURTHER ORDERED, that in the event full payment of the penalty and costs is not made, the Commissioner may exercise any and all remedies available by law, including but not

limited to recovery of any unpaid penalties, in accordance with the Penalty Enforcement Law, N.J.S.A. 2A:58-10 to -12; and

IT IS FURTHER ORDERED, that the civil penalty in this Final Order is imposed pursuant to the police powers of the State of New Jersey for the enforcement of the law and the protection of the public health, safety and welfare, and is not intended to constitute debts which may be limited or discharged in a bankruptcy proceeding; and

IT IS FURTHER ORDERED, that the provisions of this Final Order represent a final agency decision and constitute a final resolution of the allegations contained in the Amended Order to Show Cause.



Marlene Caride
Commissioner