

OCCC CASE NO. L18-00126

IN THE MATTER OF:	§	BEFORE THE
	§	
MASTER FILE NUMBER: 5720	§	OFFICE OF CONSUMER
CALVIN L. WHITE & VIRGINIA A.	§	
WHITE d/b/a PIPER MOTORS	§	CREDIT COMMISSIONER
50 EAST LAKE DR	§	
HAMLIN, TEXAS 79520	§	STATE OF TEXAS

AGREED ORDER

The Office of Consumer Credit Commissioner (“OCCC”) and Calvin L. White & Virginia A. White d/b/a Piper Motors (“Piper Motors”) enter this Agreed Order under Section 14.208 of the Texas Finance Code.

Statement of Facts and Law

Under Chapter 348 of the Texas Finance Code, a person must hold a motor vehicle sales finance license in order to act as a holder of a motor vehicle retail installment contract.¹ A holder is a person who operates as a retail seller or holds and collects on a contract in which the person agrees to accept the cash price of a motor vehicle in one or more deferred installments.²

Piper Motors is a motor vehicle sales finance dealer that was licensed by the OCCC to operate as a holder under Chapter 348 of the Texas Finance Code. Piper Motors was in the business of selling motor vehicles to retail buyers in retail installment transactions under Chapter 348 of the Texas Finance Code. Piper Motors operated under master file number 5720 at one licensed location, license number 37175. Piper Motors’ designated contact address is 50 East Lake Dr, Hamlin, Texas 79520, and its compliance officer is Calvin L. White.

Piper Motors was originally licensed with the OCCC on April 12, 2005. Piper Motors’ motor vehicle sales finance license expired on July 31, 2018, due to Piper Motors’ failure to pay the required annual licensing renewal fee.³

¹ Tex. Fin. Code § 348.501.

² Tex. Fin. Code § 348.001(3), (7), (8).

³ Tex. Fin. Code § 348.507; 7 Tex. Admin. Code § 84.610(d).

The OCCC examined Piper Motors on October 25, 2016. The examination revealed that Piper Motors engaged in activity that violated Chapter 348 of the Texas Finance Code and Title 7, Chapter 84 of the Texas Administrative Code. During a follow-up examination on April 5, 2017, the OCCC discovered that Piper Motors had not corrected its previous violations.

I. Failure to Use Compliant Contracts and Make Required Disclosures

Piper Motors financed the sale of motor vehicles through retail installment contracts.⁴ Chapter 341 of the Finance Code requires motor vehicle retail installment contracts to be written in plain language.⁵ A dealer must use either a model contract adopted by rule of the Texas Finance Commission, or a contract that the dealer has submitted to the OCCC for plain-language review.⁶

Under Chapter 348 of the Texas Finance Code, a motor vehicle retail installment contract must contain required disclosures, including the place of business or address of the retail seller, each itemized charge, and a conspicuous disclosure warning the buyer not to sign the contract if the buyer has not read it or if it contains blank spaces.⁷

Chapter 348 requires a motor vehicle sales finance dealer to comply with the federal Truth in Lending Act and its implementing rule, Regulation Z.⁸ The Truth in Lending Act applies to creditors that extend consumer credit that is payable in more than four installments or for which a finance charge is required.⁹ The Truth in Lending Act and Regulation Z require a creditor to disclose the amount financed, finance charge, and annual percentage rate related to each retail installment transaction.¹⁰

⁴ Tex. Fin. Code § 348.001 (defining retail installment contract, retail installment transaction, retail seller, and retail buyer).

⁵ Tex. Fin. Code § 341.502(a).

⁶ Tex. Fin. Code § 341.502(b)-(c); 7 Tex. Admin. Code §§ 84.801-84.808.

⁷ Tex. Fin. Code § 348.102.

⁸ Tex. Fin. Code § 348.009(a); 7 Tex. Admin. Code § 84.803.

⁹ Truth in Lending Act, 15 U.S.C. § 1602(g).

¹⁰ Truth in Lending Act, 15 U.S.C. § 1632; Regulation Z, 12 C.F.R. §§ 226.18(b)-(e), 1026.18(b)-(e). The version of Regulation Z located at 12 C.F.R. Part 226 applies to motor vehicle dealers that service vehicles and routinely assign contracts, while the recodified version of Regulation Z located at 12 C.F.R. Part 1026 applies to dealers that do not service vehicles or do not routinely assign contracts. 12 U.S.C. § 5519; 76 Fed. Reg. 79,768 n. 2 (Dec. 22, 2011).

During the 2016 examination, the examiner found that Piper Motors entered retail installment transactions where it failed to use compliant retail installment contracts. During the 2017 follow-up examination, the examiner obtained copies of motor vehicle financing contracts that Piper Motors entered into. Several contracts are one-page slips with handwritten transaction information. These contracts include contact information for the buyer, a description of the vehicle with a corresponding dollar amount, a “TTL, Insp. Doc Fee” with a corresponding dollar amount, a downpayment, a balance, a payment schedule (including monthly payment amounts and first payment date), and signatures of the buyer and seller.

Piper Motors’ one-page contracts are not model plain-language contracts adopted by rule of the Texas Finance Commission, and have not been submitted to the OCCC for plain-language review. The contracts do not include the place of business or address of the retail seller. The contracts do not contain a conspicuous disclosure warning the buyer not to sign the contract if the buyer has not read it or if it contains blank spaces. The contracts do not disclose the amount financed, finance charge, or annual percentage rate.

Piper Motors violated Chapter 341 of the Finance Code by failing to use compliant plain-language contracts in motor vehicle retail installment transactions. Piper Motors violated Chapter 348 by entering retail installment contracts that do not contain disclosures required by Chapter 348. Piper Motors violated Chapter 348 of the Finance Code, the Truth in Lending Act, and Regulation Z by failing to disclose the amount financed, finance charge, or annual percentage rate.

II. Enforcing Debt Without a Security Interest

Under Chapter 348 of the Finance Code, a dealer must comply with state statutes, including the Texas Business & Commerce Code, in its retail installment transactions.¹¹ Chapter 9 of the Business & Commerce Code governs the rights of a creditor with an enforceable security interest. If the creditor’s security interest is enforceable, then the creditor’s remedies under Chapter 9 include taking possession of the collateral after default and accepting the collateral in full

¹¹ Tex. Fin. Code § 348.008(b).

satisfaction of the debt.¹² If there is no enforceable security interest, then Chapter 9's remedies are not available to the creditor.¹³

For a security interest to be enforceable, three requirements must be met: (1) value has been given; (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and (3) the debtor has authenticated a security agreement that provides a description of the collateral.¹⁴ A security agreement is an agreement that creates or provides for a security interest.¹⁵

As described above, during the 2016 examination, the examiner found that Piper Motors entered retail installment transactions where it failed to use a compliant retail installment contract. The one-page contracts used by Piper Motors do not contain a security agreement, and the buyer otherwise did not authenticate a security agreement. Because there was no security agreement, there was no enforceable security interest.

Despite this, Piper Motors enforced debts in the manner of a creditor with an enforceable security interest. Specifically, Piper Motors enforced debts by: (1) retaining titles to vehicles until buyers paid off their debt,¹⁶ (2) repossessing vehicles,¹⁷ and (3) accepting vehicles in full satisfaction of debt.¹⁸ Therefore, Piper Motors violated Chapter 9 of the Business & Commerce Code by enforcing debts without a security interest.

¹² Tex. Bus. & Com. Code §§ 9.607, 9.609(a), 9.620.

¹³ Tex. Bus. & Com. Code § 9.203(b); *see also Orix Credit Alliance, Inc. v. Omnibank, N.A.*, 858 S.W.2d 586, 593 (Tex. App. – Hous. [14th Dist.] 1993) (finding that no security interest was created where the security agreement did not adequately describe the collateral), *Winkle Chevy-Olds-Pontiac v. Condon*, 830 S.W.2d 740, 746 (Tex. App. – Corpus Christi, no pet.) (finding a motor vehicle leasing company liable for conversion where it repossessed a vehicle without authorization).

¹⁴ Tex. Bus. & Com. Code § 9.203(b).

¹⁵ Tex. Bus. & Com. Code § 9.102(a)(74).

¹⁶ During the 2017 follow-up examination, the examiner obtained payment histories from Piper Motors, documenting payments made by buyers. Several of these payment histories state "Title Given" at the end of the payment history, indicating that the title was returned to the buyer after the buyer paid off the debt. Under Chapter 2 of the Business & Commerce Code, reservation of title is limited to reservation of a security interest. Tex. Bus. & Com. Code § 2.401(b).

¹⁷ Several of Piper Motors' payment histories state "Repo," indicating that Piper Motors repossessed vehicles. Taking possession after default is an enforcement remedy available to a secured creditor under Chapter 9 of the Business & Commerce Code. Tex. Bus. & Com. Code § 9.609(a).

¹⁸ The 2016 examination report states that it is Piper Motors' business practice to waive the balance after repossession. Accepting collateral in full satisfaction of the debt is a remedy available to a secured creditor under Chapter 9 of the Business & Commerce Code, under certain circumstances. Tex. Bus. & Com. Code § 9.620.

III. Fees Not Itemized and Not Supported by Documentation

The principal balance of a retail installment contract is computed by adding the cash price, authorized itemized charges, and a documentary fee.¹⁹ A retail installment contract must contain each itemized charge.²⁰

A retail installment contract may include an itemized charge for registration, certificate of title, and license fees paid to a public official.²¹ A licensee must maintain documentation showing disbursement of sales tax and fees for license, title, and registration of the vehicle, such as a title application receipt.²²

A retail installment contract may include an itemized charge for fees prescribed by law and connected with the sale or inspection of the motor vehicle.²³ If the licensee includes an itemized charge for performing a state inspection, the licensee must maintain a copy of the work order, inspection receipt, or other evidence reflecting that the inspection was performed, including the date and cost of the inspection.²⁴

A retail installment contract may include a documentary fee for services rendered by the licensee, for or on behalf of the buyer, in handling and processing documents related to the motor vehicle sale.²⁵ If a dealer charges a documentary fee, it must charge the same amount for cash buyers and credit buyers.²⁶ A documentary fee included in the principal balance of a retail installment contract must be reasonable.²⁷ A documentary fee of \$150 or less is presumed reasonable.²⁸ Before charging a documentary fee greater than \$150, a licensee must notify the OCCC of the amount of the documentary fee it intends to charge, and must provide a cost analysis showing that the documentary fee is

¹⁹ Tex. Fin. Code § 348.006(a)(1).

²⁰ Tex. Fin. Code § 348.102(a)(7).

²¹ Tex. Fin. Code § 348.005(1).

²² 7 Tex. Admin. Code §§ 84.707(d)(2)(A)(iv), 84.708(e)(2)(A)(v) (requiring a licensee to maintain documents evidencing “fees for license, title, and registration of the vehicle”).

²³ Tex. Fin. Code § 348.005(3).

²⁴ 7 Tex. Admin. Code §§ 84.707(d)(2)(M), 84.708(e)(2)(H).

²⁵ Tex. Fin. Code § 348.006(a)(1)(C).

²⁶ Tex. Fin. Code § 348.006(c)(1).

²⁷ Tex. Fin. Code § 348.006(c)(2), (e).

²⁸ 7 Tex. Admin. Code § 84.205(b)(1).

reasonable.²⁹

During the 2016 examination, the examiner found that Piper Motors used one-page contracts that do not list each itemized charge, and instead combine several charges into a “TTL, Insp., Doc Fee” with a dollar amount of \$200, \$300, or \$325. During the 2017 follow-up examination, the examiner found that Piper Motors failed to maintain documentation, such as title application receipts, that could substantiate amounts paid to others for tax, title, and license.

Piper Motors has not filed notice of a documentary fee with the OCCC, and has not filed a cost analysis supporting the reasonableness of a fee above \$150. By failing to list each itemized charge and failing to maintain documentation of its charges, Piper Motors violated Chapter 348 of the Texas Finance Code and Title 7, Chapter 84 of the Texas Administrative Code.

IV. Additional Recordkeeping Violations

Under Chapter 348 of the Finance Code, a dealer must maintain records of retail installment transactions, to enable the OCCC to determine whether the dealer is complying with Chapter 348.³⁰ For each retail installment transaction, the dealer must maintain records until the later of: (1) the fourth anniversary of the date of the retail installment transaction, or (2) the second anniversary of the date on which the final entry is made in the record.³¹ Under Title 7, Chapter 84 of the Texas Administrative Code, dealers are required to maintain specific records, including a retail installment sales transaction report listing retail installment transactions,³² the application for certificate of title,³³ proof of release of lien for paid accounts,³⁴ and an account record with payment history.³⁵ A dealer must

²⁹ Tex. Fin. Code § 348.006(e); 7 Tex. Admin. Code § 84.205(b)(2). (c)-(d). Before June 1, 2016, a licensee was required to provide notice for a documentary fee over \$50 and a cost analysis for a documentary fee over \$125. *See* Tex. H.B. 3621 (2009) (amending § 348.006); 35 Tex. Reg. 1956 (adopting new § 84.205 effective March 14, 2010). From June 1, 2016 to August 31, 2017, a licensee was required to provide notice for a documentary fee over \$50 and a cost analysis for a documentary fee over \$150. *See* 41 Tex. Reg. 3120 (repealing and replacing § 84.205 effective June 1, 2016). From September 1, 2017 to the present, a licensee is required to provide both a notice and a cost analysis for a documentary fee over \$150. *See* Tex. H.B. 2949 (2017) (amending § 348.006 effective Sept. 1, 2017); 42 Tex. Reg. 3120 (amending §84.205 effective Sept. 7, 2017).

³⁰ Tex. Fin. Code § 348.517(a).

³¹ Tex. Fin. Code § 348.517(a).

³² 7 Tex. Admin. Code §§ 84.707(d)(1), 84.708(e)(1).

³³ 7 Tex. Admin. Code §§ 84.707(d)(2)(C), 84.708(d)(2)(B).

³⁴ 7 Tex. Admin. Code § 84.708(e)(2)(P).

also be able to access or produce a repossession report listing all transactions involving repossession by the dealer.³⁶

During the 2016 examination, the examiner found that Piper Motors was unable to produce a retail installment transaction report or a repossession report upon request. The examiner found transactions where Piper Motors did not maintain proof of release of lien for paid accounts. During the 2017 follow-up examination, the examiner found that Piper Motors was unable to produce some account records and ledgers. Therefore, Piper Motors violated Chapter 348 of the Finance Code and Title 7, Chapter 84 of the Texas Administrative Code by failing to maintain records for retail installment transactions.

V. Failing to Provide Privacy Notice

The Commissioner issues licenses under Chapter 348 of the Finance Code based on an expectation that the business will be operated in compliance with state and federal law.³⁷ The federal Gramm-Leach-Bliley Act and its implementing rules require creditors to provide certain initial and annual privacy notices, and a reasonable opportunity and means to opt out of disclosure of their non-public personal information to non-affiliated third parties, when extending consumer credit.³⁸ Under Chapter 348, federal statutes apply to retail installment transactions.³⁹

During the 2016 examination, the examiner found that Piper Motors failed to provide initial and annual notices, and did not provide buyers with a reasonable opportunity to opt out of disclosure of non-public personal information. By failing to take these actions, Piper Motors violated the federal Gramm-Leach-Bliley Act and its implementing rules.

³⁵ 7 Tex. Admin. Code § 84.708(e)(3)(A).

³⁶ 7 Tex. Admin. Code § 84.708(f)(1).

³⁷ Tex. Fin. Code § 348.504(a)(1); 7 Tex. Admin. Code § 84.104.

³⁸ Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6802, 6803, *implemented by* FTC Privacy Rule, 16 C.F.R. Part 313, *and* Regulation P, 12 C.F.R. Part 1016. The FTC Privacy Rule, 16 C.F.R. Part 313, applies to motor vehicle dealers that service vehicles and routinely assign contracts, while Regulation P, 12 C.F.R. Part 1016, applies to dealers that do not service vehicles or do not routinely assign contracts. 12 U.S.C. § 5519; 76 Fed. Reg. 79,026 n. 7 (Dec. 21, 2011).

³⁹ Tex. Fin. Code § 348.008(b).

Authority

If the Consumer Credit Commissioner (“Commissioner”) has reasonable cause to believe that a person is violating Chapter 348 of the Texas Finance Code, the Commissioner may issue an order to cease and desist from the violation, an order to take affirmative action, or both to enforce compliance.⁴⁰

The Commissioner has reasonable cause to believe that Piper Motors has violated Chapter 348 of the Texas Finance Code, and Title 7, Chapter 84 of the Texas Administrative Code by failing to make required disclosures, by enforcing debt without a security interest, by charging fees that are not supported by documentation, and by failing to maintain required records.

Order & Agreement

By signing below, Piper Motors waives all rights to any hearing or appeal, and otherwise agrees to comply with this Agreed Order and Texas law.

IT IS ORDERED that:

1. Piper Motors must cease and desist entering motor vehicle retail installment transactions where it does not use plain-language contracts in accordance with Section 341.502 of the Texas Finance Code.
2. Piper Motors must cease and desist entering motor vehicle retail installment transactions where the contract does not contain the disclosures required under Section 348.102 of the Texas Finance Code.
3. Piper Motors must cease and desist entering motor vehicle retail installment transactions where it does not make the disclosures required by the Truth in Lending Act and Regulation Z.
4. Piper Motors must cease and desist enforcing debts without

⁴⁰ Tex. Fin. Code § 14.208(a).

complying with Chapter 9 of the Texas Business & Commerce Code.

5. Piper Motors must cease and desist failing to list each itemized charge in motor vehicle retail installment transactions.
6. Piper Motors must cease and desist charging a “TTL, Insp., Doc Fee” or similar combined fee.
7. Piper Motors must cease and desist charging fees for tax, title, license, registration, or inspection without maintaining documentation showing amounts actually disbursed to others.
8. Piper Motors must cease and desist failing to maintain records required by Title 7, Chapter 84 of the Texas Administrative Code.
9. Piper Motors must cease and desist failing to provide initial privacy notices, annual privacy notices, and a reasonable opportunity to opt out in accordance with the Gramm-Leach-Bliley Act and its implementing rules.
10. Piper Motors will not enter any new motor vehicle retail installment transactions unless it first obtains a license with the OCCC under Chapter 348 of the Texas Finance Code. Piper Motors represents to the OCCC that it has not entered any new motor vehicle retail installment transactions since its license expired on July 31, 2018. If Piper Motors has entered any new motor vehicle retail installment transactions without a license, then Piper Motors will be considered to be in violation of this Order.
11. In connection with motor vehicle retail installment transactions, Piper Motors will not accept any payments, continue acting as a lienholder, or otherwise enforce debts unless it first obtains a license with the OCCC under Chapter 348 of the Texas Finance Code. Piper Motors represents to the OCCC that it is not currently accepting any payments, and is not currently holding any liens, in connection with motor vehicle retail installment transactions.

12. The Order to Cease and Desist, to Take Affirmative Action, and to Make Restitution, issued against Piper Motors on July 3, 2018, is withdrawn, replaced, and superseded by this Agreed Order.

Signed this 22nd day of January, 2019.

/s/ Leslie Pettijohn
Leslie L. Pettijohn
Consumer Credit Commissioner
State of Texas

AGREED:

/s/ Calvin L. White
Calvin L. White
Owner and Compliance Officer
Calvin L. White & Virginia A. White d/b/a Piper Motors
(signed electronically with permission)

CERTIFICATE OF SERVICE

I certify that on January 22, 2019, a true and correct copy of this Agreed Order has been sent to Calvin L. White & Virginia A. White d/b/a Piper Motors through its attorney, Derek D. Rollins, by:

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