

OCCC CASE NO. L19-00235

IN THE MATTER OF:	§	BEFORE THE
	§	
MASTER FILE NO.: 14675	§	OFFICE OF CONSUMER
JACKSON AUTOMOTIVE	§	
INVESTMENTS, LLC	§	CREDIT COMMISSIONER
d/b/a TOYOTA OF ROCKWALL	§	
1250 E. I-30	§	STATE OF TEXAS
ROCKWALL, TX 75087	§	

**ORDER TO CEASE AND DESIST, TO TAKE AFFIRMATIVE ACTION,  
AND TO MAKE RESTITUTION**

The Office of Consumer Credit Commissioner (“OCCC”) issues this Order to Cease and Desist, to Take Affirmative Action, and to Make Restitution against Jackson Automotive Investments, LLC d/b/a Toyota of Rockwall (“Toyota of Rockwall”).<sup>1</sup>

**Background 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.<sup>2</sup> 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.<sup>3</sup>

Toyota of Rockwall is a motor vehicle sales finance dealer licensed by the OCCC to operate as a holder under Chapter 348 of the Texas Finance Code. Toyota of Rockwall operates under master file number 14675 at one licensed location, under license number 56073. Toyota of Rockwall’s designated contact address is 1250 E. I-30, Rockwall, Texas, 75087, and its compliance officer is Suzanne Webster.

The OCCC is charged with accepting and investigating consumer complaints against its licensees.<sup>4</sup> On November 10, 2018, a consumer purchased a motor vehicle from Toyota of Rockwall. The consumer financed the \$27,500 balance by entering into a

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<sup>1</sup> Tex. Fin. Code §§ 14.208, 14.251(b).

<sup>2</sup> Tex. Fin. Code § 348.501.

<sup>3</sup> Tex. Fin. Code § 348.001(3), (7), (8).

<sup>4</sup> Tex. Fin. Code §§ 14.062, 14.202.

retail installment contract. A retail installment contract is an agreement to pay all or part of the cash price of a motor vehicle in one or more deferred installments.<sup>5</sup> On December 28, 2018, the OCCC received a complaint from the consumer regarding this transaction. In investigating the complaint, the OCCC identified the violations of law described below.

### **Conditioning Retail Installment Contract on Subsequent Assignment**

A motor vehicle sales finance dealer may not condition a retail installment contract on the subsequent assignment of that contract.<sup>6</sup>

In the November 2018 transaction, the retail installment contract signed by the consumer identifies Capital One Auto Finance (“Capital One”) as the intended assignee. Toyota of Rockwall attempted to assign the contract to Capital One, but Capital One rejected it. Upon rejection from Capital One, Toyota of Rockwall then sought to assign the contract to Toyota Financial Services, but that assignment was also rejected. After both Capital One and Toyota Financial Services rejected the assignment, Toyota of Rockwall denied a timely payment from the consumer, claiming to not be the lienholder. Because the consumer would not return the vehicle, Toyota of Rockwall repossessed it.

In this transaction, Toyota of Rockwall violated Chapter 348 of the Texas Finance Code by conditioning a retail installment contract on subsequent assignment to another holder.

### **Failure to Provide Notification of Disposition of Collateral**

Under Chapter 348, a dealer must comply with state statutes, including the Texas Business & Commerce Code, in its retail installment transactions.<sup>7</sup> Chapter 9 of the Business & Commerce Code allows two methods for a creditor to dispose of collateral after repossession: (1) disposition through a public or private sale, and (2) acceptance in full satisfaction.<sup>8</sup>

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<sup>5</sup> Tex. Fin. Code § 348.001(6) (defining retail installment contract); Tex. Fin. Code § 348.001(7) (defining retail installment transaction).

<sup>6</sup> Tex. Fin. Code § 348.1015.

<sup>7</sup> Tex. Fin. Code § 348.008(b).

<sup>8</sup> Tex. Bus. & Com. Code §§ 9.610–9.620.

In order to dispose of collateral through a public or private sale, the creditor must provide a notification of disposition to the debtor before the sale, conduct the sale in a commercially reasonable manner, and comply with requirements for calculating the surplus or deficiency after the sale.<sup>9</sup> In order to accept the collateral in full satisfaction of the debt, the creditor must provide the debtor with a proposal to accept the collateral in full satisfaction of the debt, and may only do so if the debtor consents, or does not make a timely objection to the proposal.<sup>10</sup> If the creditor disposes of collateral without complying with Chapter 9's requirements in a consumer transaction, the creditor is prohibited from seeking a deficiency from the debtor.<sup>11</sup>

In this transaction, Toyota of Rockwall violated Chapter 9 of the Business & Commerce Code by repossessing and selling the vehicle without providing a notification of disposition or a proposal to accept the vehicle in full satisfaction. Toyota of Rockwell is therefore prohibited from seeking a deficiency from the consumer.

### **Authority**

If the 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.<sup>12</sup> Additionally, the Commissioner may order a person who violates Chapter 348 or a rule adopted under Chapter 348 to make restitution to an identifiable person injured by the violation.<sup>13</sup>

The Commissioner has reasonable cause to believe that Toyota of Rockwall is violating Chapter 348 of the Texas Finance Code.

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<sup>9</sup> Tex. Bus. & Com. Code §§ 9.610, 9.611, 9.612, 9.614, 9.615, 9.616, 9.617.

<sup>10</sup> Tex. Bus. & Com. Code §§ 9.620, 9.621, 9.622.

<sup>11</sup> *Tanenbaum v. Econ. Lab., Inc.*, 628 S.W.2d 769, 772 (Tex. 1982); *see also* State Bar Committee Comment to Tex. Bus. & Comm. Code § 9.626 (explaining that Texas law continues to follow the "absolute bar" rule barring a noncomplying creditor from collecting and deficiency in a consumer transaction, despite statutory amendments that partially supersede *Tannenbaum*).

<sup>12</sup> Tex. Fin. Code § 14.208(a).

<sup>13</sup> Tex. Fin. Code § 14.251(b).

## Order

IT IS ORDERED that Jackson Automotive, LLC d/b/a Toyota of Rockwall:

1. cease and desist from conditioning any motor vehicle retail installment contract on subsequent assignment to another holder;
2. cease and desist from violating Chapter 9 of the Texas Business & Commerce Code;
3. **no later than December 6, 2019**, discharge the amount of any deficiency owed by the complaining consumer;
4. **no later than December 6, 2019**, notify any consumer reporting agencies of the discharged obligation, if Toyota of Rockwell previously reported the transaction to any consumer reporting agencies;
5. **no later than December 6, 2019**, send documentation of the discharged amount (including an account history showing a zero balance and any notification to a consumer reporting agency) to Audrey Spalding at [audrey.spalding@occc.texas.gov](mailto:audrey.spalding@occc.texas.gov).

## Violation of Order

You may be assessed an administrative penalty of up to \$1,000 for each day of violation of this Order.<sup>14</sup>

## Right to Request Hearing

You have the right to request a hearing regarding this Order.<sup>15</sup> Your request must be made in writing and sent to the OCCC not later than 30 days after you receive this Order. You must send your request to:

Audrey Spalding  
Assistant General Counsel  
Office of Consumer Credit Commissioner

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<sup>14</sup> Tex. Fin. Code § 14.208(c).

<sup>15</sup> Tex. Fin. Code § 14.208(b).

2601 N. Lamar Blvd.  
Austin, Texas 78705  
audrey.spalding@occc.texas.gov  
Fax: (512) 936-7610

If you request a hearing, a hearing on this matter will be set and conducted in accordance with Chapter 2001 of the Texas Government Code.<sup>16</sup> If you fail to request a hearing by this deadline, this Order is considered final and enforceable.<sup>17</sup>

All communications with the OCCC concerning this matter must be through Audrey Spalding, Assistant General Counsel. You may contact her by mail at 2601 N. Lamar Blvd., Austin, Texas 78705, by telephone at (512) 936-7659, or by email to audrey.spalding@occc.texas.gov.

Signed this 22 day of October, 2019.

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

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<sup>16</sup> Tex. Fin. Code § 14.208(b).

<sup>17</sup> Tex. Fin. Code § 14.208(c).

**CERTIFICATE OF SERVICE**

I certify that on October 22, 2019, a true and correct copy of this Order to Cease and Desist, to Take Affirmative Action, and to Make Restitution has been sent to Jackson Automotive, LLC d/b/a Toyota of Rockwall by regular mail and certified mail, return receipt requested, at:

Susan G. White  
Shackelford, Bowen, McKinley &  
Norton, LLP  
111 Congress Avenue, Suite 1070  
Austin, TX 78701  
swhite@shackelford.law

- hand-delivery
- facsimile
- electronic mail
- regular mail
- certified mail, return receipt requested  
#91 7199 9991 7036 0719 9336

Jackson Automotive LLC  
d/b/a Toyota of Rockwall  
Attn: Suzanne Webster, Compliance  
Officer  
1250 E. I-30  
Rockwall, TX 75087  
suzannew@toyotarockwall.com

- hand-delivery
- facsimile
- electronic mail
- regular mail
- certified mail, return receipt requested  
#91 7199 9991 7036 0719 9213

Jackson Automotive LLC  
d/b/a Toyota of Rockwall  
Attn: Jason Ortiges, Registered Agent  
783 Miramar  
Rockwall, TX 75087

- hand-delivery
- facsimile
- electronic mail
- regular mail
- certified mail, return receipt requested  
#91 7199 9991 7036 0719 9114

/s/Audrey Spalding  
Audrey Spalding  
Assistant General Counsel  
Office of Consumer Credit Commissioner  
State Bar No. 24111055  
2601 North Lamar Blvd.  
Austin, Texas 78705  
(512) 936-7659  
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audrey.spalding@occc.texas.gov