

OCCC CASE NOS. L19-00292, L19-00399, L19-00400, L19-00401, & L19-00402

IN THE MATTER OF:	§	BEFORE THE
	§	
MASTER FILE NO.: 11820	§	OFFICE OF CONSUMER
FENTON MOTORS OF DALLAS, INC.	§	
d/b/a FENTON HYUNDAI OF MESQUITE	§	CREDIT COMMISSIONER
16230 LBJ FWY.	§	
MESQUITE, TEXAS 75150	§	STATE OF TEXAS

**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 Fenton Motors of Dallas, Inc. d/b/a Fenton Hyundai of Mesquite (“Fenton Hyundai”).<sup>1</sup>

**Statement of Facts and Law**

Fenton Hyundai is a motor vehicle sales finance dealer that was previously licensed by the OCCC under Chapter 348 of the Texas Finance Code. Fenton Hyundai operated under master file number 11820 at one licensed location, under license number 50140. Fenton Hyundai’s designated contact address is 16230 LBJ Fwy. in Mesquite, Texas 75150, and its compliance officer is Stephanie Zellars.

Fenton Hyundai most recently renewed its motor vehicle sales finance license on June 22, 2018. The license expired on July 31, 2019.

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>

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<sup>1</sup> Tex. Fin. Code § 14.208.

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

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

A retail seller may accept a trade-in vehicle as part of a retail installment transaction.<sup>4</sup> If the retail seller accepts a trade-in vehicle, then it must pay in full the outstanding balance owed on the trade-in vehicle not later than 25 days after:

- (1) the retail installment contract is signed by the retail buyer and the retail buyer receives delivery of the motor vehicle; and
- (2) the retail seller receives delivery of the motor vehicle traded in and the necessary and appropriate documents to transfer title from the buyer.<sup>5</sup>

On January 7, 2019, the OCCC received a retail buyer's complaint against Fenton Hyundai.<sup>6</sup> The buyer purchased a new vehicle from Fenton Hyundai on November 26, 2018. At the time of the purchase, the buyer traded in a vehicle with an outstanding balance of \$9,700.00. Fenton Hyundai failed to timely pay off the balance owed on the trade-in vehicle within 25 days. After receiving the complaint, Fenton Hyundai paid the outstanding balance of the trade-in vehicle on January 29, 2019, which is 64 days after the retail installment transaction.

The OCCC then conducted an investigation of Fenton Hyundai. The investigation revealed 42 additional instances of failure to timely pay the balance of a trade-in vehicle. The OCCC has received four additional complaints against Fenton Hyundai from buyers whose trade-in balances Fenton Hyundai did not pay timely.<sup>7</sup>

By failing to pay the balances of trade-in vehicles timely, Fenton Hyundai has violated Chapter 348 of the Texas Finance Code.

### **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,

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<sup>4</sup> Tex. Fin. Code §§ 348.102(6) (requiring a retail installment contract to specify the vehicle traded in); Tex. Fin. Code § 348.111 (describing the right of a buyer to receive return of the vehicle traded in or its value upon rescission).

<sup>5</sup> Tex. Fin. Code § 348.408(c).

<sup>6</sup> OCCC Complaint No. 113527.

<sup>7</sup> OCCC Complaint Nos. 113870, 114031, 114153, and 114041.

or both to enforce compliance.<sup>8</sup> The Commissioner may also order such a person to make restitution to a person injured by the violation.<sup>9</sup>

The Commissioner has reasonable cause to believe that Fenton Hyundai has violated Chapter 348 of the Texas Finance Code by failing to timely pay the balance of trade-in vehicles to the vehicles' lienholders.

## **Order**

IT IS ORDERED that Fenton Motors of Dallas, Inc. d/b/a Fenton Hyundai of Mesquite:

- (1) cease and desist from violating, and otherwise comply with, Section 348.408(c) of the Texas Finance Code;
- (2) **no later than December 16, 2019**, conduct a self-review to identify each retail installment transaction where Fenton Hyundai has not paid in full the outstanding balance owed on a trade-in vehicle within 25 days as required by Section 348.408(c);
- (3) **no later than December 16, 2019**, pay the outstanding balanced owed on each transaction identified during the review described above;
- (4) **no later than December 16, 2019**, create a spreadsheet in Microsoft Excel format labeled "Fenton Hyundai Trade-In Balances" with the following data regarding each transaction identified during the self-review described above:
  - a. account number,
  - b. name of the retail buyer,
  - c. date of retail installment contract,
  - d. amount of outstanding balance owed on the trade-in as of the transaction date,
  - e. amount of outstanding balance on the trade-in paid by Fenton Hyundai,
  - f. date of Fenton Hyundai's payment of the outstanding balance

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<sup>8</sup> Tex. Fin. Code § 14.208(a).

<sup>9</sup> Tex. Fin. Code § 14.251(b).

- on the trade-in,
- g. person or entity to whom Fenton Hyundai paid the outstanding balance, and
  - h. the check number or other unique payment identifier;
- (5) **no later than December 16, 2019**, send a copy of the spreadsheet by email to Audrey Spalding at [audrey.spalding@occc.texas.gov](mailto:audrey.spalding@occc.texas.gov);
- (6) maintain complete and accurate records of all outstanding balances owed on trade-in vehicles and all payments of such balances, including copies of checks.<sup>10</sup>

### **Administrative Penalty**

You may be assessed an administrative penalty of up to \$1,000 for each day of violation of this Order.<sup>11</sup>

### **Right to Request Hearing**

You have the right to request a hearing regarding this Order.<sup>12</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  
2601 N. Lamar Blvd.  
Austin, Texas 78705  
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>13</sup> If you fail to request a hearing by this deadline, this Order is considered final and enforceable.<sup>14</sup>

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<sup>10</sup> 7 Tex. Admin. Code §§ 84.707(d)(2)(F)(iv), 84.708(e)(2)(F)(iv).

<sup>11</sup> Tex. Fin. Code § 14.208(c).

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

<sup>13</sup> Tex. Fin. Code § 14.208(b).

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

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](mailto:audrey.spalding@occc.texas.gov).

Signed this 4 day of November, 2019

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

**CERTIFICATE OF SERVICE**

I certify that on November 4, 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 Fenton Motors of Dallas, Inc. d/b/a Fenton Hyundai of Mesquite by the following:

Fenton Motors of Dallas, Inc. d/b/a  
Fenton Hyundai of Mesquite  
Attn: Stephanie Zellars, Compliance  
Officer  
16230 LBJ Fwy.  
Mesquite, TX 75150  
stephanie.zellars@fentonmotors.com

- hand-delivery
- facsimile
- electronic mail
- regular mail
- certified mail, return receipt  
requested #91 7199 9991 7037 4753 2680

Fenton Motors of Dallas, Inc. d/b/a  
Fenton Hyundai of Mesquite  
Attn: Brad Fenton, Registered Agent  
and President  
16230 LBJ Freeway  
Mesquite, TX 75150

- hand-delivery
- facsimile
- electronic mail
- regular mail
- certified mail, return receipt  
requested #91 7199 9991 7037 4753 2679

/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  
(512) 936-7610 (fax)  
audrey.spalding@occc.texas.gov