

OCCC CASE NO. L20-00158

IN THE MATTER OF:	§	BEFORE THE
	§	
MASTER FILE NO. 1900065153	§	OFFICE OF CONSUMER
TROY DAVIS INC.	§	
9010 IH 20	§	CREDIT COMMISSIONER
EASTLAND, TEXAS 76448	§	
	§	STATE OF TEXAS

AGREED ORDER

The Office of Consumer Credit Commissioner (“OCCC”) issues this Agreed Order against Troy Davis Inc. (“Troy Davis Inc.”) based on the violations of law described below.¹

Statement of Facts and Law

To act as a holder of a commercial vehicle retail installment contract, a person must hold either: (1) a commercial motor vehicle sales finance license under Chapter 353 of the Texas Finance Code, or (2) a motor vehicle sales finance license under Chapter 348 of the Texas Finance Code.² 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.³

A purported lease is actually a retail installment transaction if the lessee: (1) contracts to pay compensation for use of the vehicle of an amount that is substantially equal to or exceeds the value of the vehicle, and (2) is bound to become the owner, or for no or nominal additional consideration, has the option to become the owner.⁴

Generally, Chapter 353 applies to a commercial vehicle retail installment transaction only if the contract states that Chapter 353 applies.⁵ If the contract does not state that Chapter 353 applies, then the transaction is governed by Chapter 348, and Chapter 353 does not apply.⁶

¹ Tex. Fin. Code §§ 14.208, 14.251.

² Tex. Fin. Code §§ 348.501, 353.501.

³ Tex. Fin. Code §§ 348.001(3), (7), (8), 353.001(4), (9), (10).

⁴ Tex. Fin. Code §§ 348.002, 353.003; *see also* Tex. Bus. & Comm. Code §§ 1.203, 2A.103(10).

⁵ Tex. Fin. Code § 353.009(a).

⁶ Tex. Fin. Code § 353.009(b).

Beginning December 15, 2018, Troy Davis Inc. engaged in activity requiring a license by entering 12 commercial vehicle retail installment transactions. These contracts purported to be leases. However, these contracts required payments in total equal to the purported cash price of the vehicle, and gave the lessee the option of owning the vehicle at the end of the lease term for \$1.00. Therefore, the purported leases were actually retail installment contracts. The purported leases did not state that Chapter 353 of the Finance Code applies to the transaction. For this reason, the transactions were subject to Chapter 348.

By accepting the cash price of a vehicle in one or more deferred installments without a motor vehicle sales finance license, Troy Davis Inc. violated Section 348.501 of the Texas Finance Code.

Order & Agreement

By signing below, Troy Davis Inc. waives all rights to any hearing or appeal, agrees to pay the administrative penalty and make the restitution as identified below, and otherwise agrees to comply with this Order and Texas law.

IT IS ORDERED that:

1. No later than **April 5, 2021**, Troy Davis Inc. must pay an administrative penalty of **One Thousand Two Hundred Dollars (\$1,200.00)** to the Office of Consumer Credit Commissioner.
2. Troy Davis Inc. must cease and desist characterizing retail installment transactions as leases.
3. In any future commercial vehicle retail installment contracts, Troy Davis Inc. must include a statement that Chapter 353 applies.
4. No later than **April 5, 2021**, Troy Davis Inc. must identify all motor vehicle retail installment transactions that it entered without a license and refund the retail buyer any finance charges that it collected or that remain collectible.
5. No later than **April 5, 2021**, Troy Davis Inc. must provide the OCCC with a spreadsheet of all transactions it identified and all buyers that it gave a refund. This list must include the buyer's name, account number,

transaction date, amount financed, amount of finance charges, and refund amount.

6. Troy Davis Inc. must keep a copy of each customer's refund check or payment history showing an account credit until the later of its first examination or the required retention period.⁷ During its first examination the OCCC will confirm that all refunds listed in the spreadsheet have been made.
7. This Agreed Order replaces and supersedes the Order to Cease and Desist Unlicensed Activity, To Take Affirmative Action, and to Make Restitution issued against Troy Davis Inc. on September 11, 2020.

Signed this 23 day of February, 2021.

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

AGREED:
Troy Davis Inc.

/s/ Derek Davis
Derek Davis, Owner
(signed electronically with permission)

⁷ See 7 Tex. Admin. Code § 84.704(b), (g).

CERTIFICATE OF SERVICE

I certify that on February 23, 2021, a true and correct copy of this Agreed Order has been sent to Troy Davis Inc. by the following methods:

Troy Davis Inc.
Attn: Derek Davis, Compliance Officer
9010 IH 20
Eastland, TX 76448
Troy@tditrucks.com

- hand-delivery
- facsimile
- electronic mail
- regular mail
- certified mail, return receipt requested

Troy Davis Inc.
Attn: Derek Davis, Statutory Agent
PO Box 528
Palo Pinto, TX 76484
Shale.davis@tditrucks.com

- hand-delivery
- facsimile
- electronic mail
- regular mail
- certified mail, return receipt requested

Lively & Associates, PLLC
Attn: Daniel R. Aguilar
301 Commerce St., Suite 2900,
Fort Worth, TX 76102
daniel.aguilar@livelyllp.com

- hand-delivery
- facsimile
- electronic mail
- regular mail
- certified mail, return receipt requested

/s/Audrey Spalding
Audrey Spalding
Assistant General Counsel
Office of Consumer Credit
Commissioner
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