



The Commonwealth of Massachusetts
Office of the Inspector General

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Jamey Tesler, Acting Registrar
Registry of Motor Vehicles
10 Park Plaza, Suite 4160
Boston, MA 02116

Licensing Board
Town of Watertown
Administration Building
149 Main Street
Watertown, MA 02472

Re: Penta Auto Body Co., Inc. and Violations of RMV's Rules for Used Motor Vehicle Dealers

Dear Acting Registrar Tesler and members of the Watertown Licensing Board:

In the course of conducting an investigation, the Massachusetts Office of the Inspector General ("OIG") obtained information regarding certain conduct by Penta Auto Body Co., Inc. ("Penta Auto Body").¹ Specifically, the OIG found that Penta Auto Body, which holds a Class 2 used motor vehicle dealer's license from the town of Watertown, failed to comply with several requirements of its license. Because this information may warrant administrative action by the Registry of Motor Vehicles ("RMV") or the Watertown Licensing Board, the OIG is summarizing its preliminary investigative findings in this letter pursuant to 945 CMR 1.09(3)(c).

Most seriously, Penta Auto Body failed to record two transactions with Steven Simmons, a civilian dispatcher at the Massachusetts State Police's Weston barracks who is responsible for assigning towing services on a section of the Massachusetts Turnpike. Penta Auto Body operates one of the companies providing towing services on that section of the highway. The OIG found Penta Auto Body officials did not record the title, produce receipts or generate any other documentation for either vehicle transaction. In doing so, company officials not only violated state law and RMV regulations, but they also concealed the fact that Penta Auto Body was the source of two vehicles acquired by the dispatcher, a Massachusetts Department of Transportation

¹ Penta Auto Body Co., Inc. does business with the Massachusetts Department of Transportation, the Massachusetts State Police and other public entities under the name Perfection Towing.

("MassDOT") employee. These violations are particularly concerning because, as a dispatcher at the Massachusetts State Police barracks, Mr. Simmons is in position to favor Penta Auto Body's towing business, Perfection Towing.

In addition, Penta Auto Body did not record more than two dozen vehicle transactions from May 2017 to November 2018 in its Used Vehicle Record Book as required under its dealer's license. The OIG also found that company officials failed to fully document other transactions, an RMV requirement for used vehicle dealers. Company officials also did not record transactions within twenty-four hours of the purchase or sale as required of Class 2 licensees.

Background

State law requires used motor vehicle dealers to obtain a license annually from the municipal licensing authority where the dealer conducts business.² The license is filed with the registrar of motor vehicles.³ The statute authorizes the registrar to make rules and regulations that motor vehicle dealers must comply with as a condition of maintaining a license.⁴ If a licensee fails to comply with the statute or the registrar's rules and regulations, the municipal licensing authority shall revoke the dealer's license.⁵

State law further requires used motor vehicle dealers to record all vehicle and parts purchases, sales, exchanges or consignments in an RMV-approved book or electronic data management system.⁶ The dealer must enter a description of the vehicle, including its vehicle identification number, along with the name and address of the seller and/or buyer.⁷ These records must be kept for at least five years and made available to the RMV and police upon request.⁸

² See M.G.L. c. 140, §§ 57, 59.

³ See 540 CMR 18.02(2)(a)(1).

⁴ See M.G.L. c. 140, § 60.

⁵ See M.G.L. c. 140, § 59 ("All licenses granted under this section shall be revoked by the licensing board or officer if it appears, after hearing, that the licensee is not complying with sections fifty-seven to sixty-nine, inclusive, or the rules and regulations made thereunder; and no new license shall be granted to such person thereafter, nor to any person for use on the same premises, without the approval of the registrar. The hearing may be dispensed with if the registrar notifies the licensing board or officer that a licensee is not so complying.").

⁶ M.G.L. c. 140, § 62. Chapter 276 of the Acts of 2018, enacted on October 24, 2018, permits dealers to use an approved electronic data management system in lieu of a Used Vehicle Record Book. Prior to that date, dealers were required to use a Used Vehicle Record Book.

⁷ M.G.L. c. 140, § 62.

⁸ M.G.L. c. 90D, § 16(b) ("Every dealer shall maintain for five years a record in such form as the registrar shall prescribe of every vehicle bought, sold or exchanged by him, or received by him for sale or exchange, which shall be open to inspection by the registrar, his agents or by any police officer during reasonable business hours.").

Information related to the purchase or sale of a used vehicle must be recorded “at the time” of the transaction.⁹ As explained by the RMV in its “Instructions for Entering Information in the Used Vehicle Record (“UVR”)” found at the front of the Used Vehicle Record Book, entries must be made within one day of the transaction and in chronological order.¹⁰ Entries must include the odometer reading and other identifying information.¹¹

State law also provides that a dealer must document its role in each sale by promptly executing a warranty of title for submission to the RMV.¹² This requirement was instituted in part because every car purchased from a dealer carries implied and express warranties under federal and state law.¹³ As expressed in the RMV’s UVR:

[I]f a dealer finds a buyer for a consigned vehicle which was displayed on the dealer’s lot, ... the dealer must first purchase the vehicle from the private-party owner before selling it to the buyer. The transaction must be in accordance with the Regulations of the Attorney General at 940 CMR 5.00 for the retail sale of motor vehicles and the warranty coverage required by state and federal law will apply and the vehicle cannot be delivered without proper execution and delivery of the Certificate of Title.¹⁴

As noted above, a municipal licensing board must revoke the license of a dealer not in compliance with the statute or with the registrar’s rules.¹⁵ In addition, “[f]ailure to maintain the ‘Used Vehicle Record Book’ in either authorized form may be punished ... by a fine of not more than \$500.00 or by imprisonment for not more than one year, or both.”¹⁶ The registrar may also suspend or revoke the licensee’s dealer plates for improper or incomplete recordkeeping.¹⁷

For many years and continuing up to the present, Penta Auto Body has held a Class 2 license to buy and sell second-hand motor vehicles, approved by the Watertown Licensing Board

⁹ M.G.L. c. 140, § 62.

¹⁰ Office of the Gen. Counsel of the Registry of Motor Vehicles, *Instructions for Entering Information in the Used Vehicle Record (UVR)* in MASS. REGISTRY OF MOTOR VEHICLES, USED VEHICLE RECORD BOOK at 1.

¹¹ *See id.* at 1-2.

¹² M.G.L. c. 90D, § 16(a) (“If a dealer buys a vehicle and holds it for resale and procures the certificate of title from the owner ..., he need not send the certificate to the registrar but, upon transferring the vehicle to another person ..., shall promptly execute the assignment and warranty of title by a dealer, showing the names and addresses of the transferee ...”).

¹³ *See, e.g.*, 16 C.F.R. § 455 (FTC Used Motor Vehicle Trade Regulation Rule); M.G.L. c. 90, § 7N (Lemon Aid Law); M.G.L. c. 106, § 2-314 (Implied Warranty of Merchantability).

¹⁴ *Instructions for Entering Information in the Used Vehicle Record (UVR)* at 2.

¹⁵ M.G.L. c. 140, § 59.

¹⁶ *Instructions for Entering Information in the Used Vehicle Record (UVR)* at 3. *See* M.G.L. c. 140, § 69.

¹⁷ *See* 540 CMR 18.02(2)(a)(12).

and filed with the RMV. At the time of the OIG's examination of its transactions, Penta Auto Body utilized a Used Vehicle Record Book for its vehicle transaction recordkeeping.

Findings

The OIG received an allegation that Penta Auto Body gave a car to Mr. Simmons. The OIG subsequently found evidence that Penta Auto Body was the source of two cars that Mr. Simmons acquired.

In 2016, Mr. Simmons registered a 2000 Volvo sedan. In 2017, Mr. Simmons registered a 1996 Toyota Corolla. The prior registered owners of each of the vehicles were longtime customers of Penta Auto Body. The former Volvo owner told the OIG that when he decided he no longer needed the vehicle, he sold it to Michael Paul, who manages motor vehicle sales for Penta Auto Body. The Volvo was sold from Penta Auto Body's property on Pleasant Street in Watertown where the company is licensed to sell used vehicles. The Corolla's former owner decided to sell the car prior to moving out of state. He called Penta Auto Body, arranged the sale with Mr. Paul and dropped the car off at the Watertown dealership. Neither prior owner knows Mr. Simmons.

The OIG conducted separate interviews with Mr. Simmons and Mr. Paul. The OIG did not find either person's account credible or candid.

Mr. Simmons initially said he bought the cars from Michael Penta, Penta Auto Body's owner. Shortly afterwards he changed his account, saying he purchased the cars from Mr. Paul, whom he called a friend he has known since they were teenagers attending Newton North High School. (Mr. Simmons said he also knows Mr. Penta from high school.) Mr. Simmons said he paid cash for each of the vehicles. He said he does not have a receipt or any other evidence documenting either transaction.

In contradiction to Mr. Simmons' statements, Mr. Paul initially told the OIG that he does not know Mr. Simmons. He later amended this statement, saying he knows him but only as a customer who gets his cars serviced at Penta Auto Body. Mr. Paul said they do not have a personal relationship. He said he did not sell any cars to Mr. Simmons.

As noted above, state law and regulations require used motor vehicle dealers to comply with the RMV's recordkeeping rules. A Class 2 dealer must document all purchases, exchanges, sales and consignments.¹⁸ Entries must be made chronologically and within one day of the transaction.¹⁹ Entries must include the vehicle identification number, odometer reading and other identifying information.²⁰ A dealer is required to document when it offers a vehicle for sale on a

¹⁸ M.G.L. c. 140, § 62.

¹⁹ *Instructions for Entering Information in the Used Vehicle Record (UVR)* at 1.

²⁰ M.G.L. 140, § 62.

consignment basis.²¹ When a buyer for a consigned vehicle is found, the dealer must purchase it from the seller before selling it to the buyer.²²

On November 8, 2018, OIG staff asked for and received permission from Mr. Penta to review the company's Used Vehicle Record Book. The Used Vehicle Record Book did not contain any information about the two vehicles Mr. Simmons acquired from Penta Auto Body.

OIG investigators found that Penta Auto Body officials violated state law and RMV rules when they failed to document their involvement in Mr. Simmons' acquisition of two cars. Mr. Paul, who manages vehicle sales for Penta Auto Body, arranged the transactions, and both vehicles were acquired from Penta Auto Body's premises; however, there is no record in Penta Auto Body's Used Vehicle Record Book of the purchase, sale or consignment of either vehicle. Penta Auto Body did not title either vehicle or generate any documentation for the transactions, including the price Mr. Simmons paid.

During its review of Penta Auto Body's Used Vehicle Record Book, OIG investigators also observed that the most recent entry was May 23, 2017. However, the OIG also found sales forms for twenty-six vehicle transactions that Penta Auto Body completed after May 23, 2017. Penta Auto Body violated Chapter 140 of the Massachusetts General Laws by failing to record the purchase or sale of at least twenty-six vehicles between May 23, 2017 and November 8, 2018.²³

Even during the period prior to May 23, 2017, when Penta Auto Body was recording entries in its Used Vehicle Record Book, it failed to comply with the recordkeeping law applicable to motor vehicle dealers. The OIG found numerous entries in the Used Vehicle Record Book that were not recorded in chronological order. For example, page 281 of Penta Auto Body's Used Vehicle Record Book reported acquiring a Toyota Highlander on November 25, 2016 and selling it the next day. The following five entries in the Used Vehicle Record Book all pre-date the acquisition of this vehicle. If Penta Auto Body officials had recorded the transactions contemporaneously as required by law,²⁴ the entries necessarily would be in chronological order.

²¹ *Instructions for Entering Information in the Used Vehicle Record (UVR)* at 2.

²² *See id.*

²³ *See* M.G.L. c. 140, § 62 ("Every licensee shall keep a book on the licensed premises, in such form as shall be approved by the registrar, in which, **at the time** of the purchase, sale, exchange or receipt for the purpose of sale, of any second hand motor vehicle or parts thereof, shall be legibly written in the English language an account and description of such motor vehicle or parts, with the name and address of the seller, of the purchaser, and of the alleged owner or other person from whom such motor vehicle or parts were purchased or received or to whom they were delivered, as the case may be." (emphasis added)). The statute also requires recording the vehicle's identifying numbers.

²⁴ *Id.*

The OIG also found a number of entries in the Used Vehicle Record Book that did not contain complete information about the vehicle as required under state law. For example, page 290 of the Used Vehicle Record Book reported that Penta Auto Body sold a 2005 Nissan Maxima to a Revere resident on February 21, 2017; however, the section for information on when and from whom the vehicle was acquired is entirely blank. On the following page, Penta Auto Body recorded having possession of a 2004 Chevy,²⁵ but the sections on its acquisition and disposition were entirely blank.

Conclusion

Penta Auto Body officials' failure to document their used motor vehicle transactions appears to violate their legal obligations as licensed motor vehicle dealers. Their failure to document the transactions with Mr. Simmons is particularly troubling. It effectively kept the provenance of Mr. Simmons's vehicles secret and the terms under which Mr. Simmons acquired the cars unverifiable. Because Mr. Simmons is a public employee responsible for assigning towing services for the Massachusetts State Police, and Penta Auto Body provides such services, these actions create, at the very least, the appearance of impropriety, raising questions regarding whether Penta Auto Body officials sought to improperly influence Mr. Simmons and whether Mr. Simmons abused his position or received any unwarranted privileges from the company.

The OIG is bringing these matters to your attention so that your agency can determine whether any administrative action is required. We will contact you in thirty days to follow up. Please feel free to contact this office if we can be of assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "George Xenakis 18/11/19".

George A. Xenakis
Director of Investigations

cc: State Ethics Commission

²⁵ Penta Auto Body's Used Vehicle Record Book entry for this transaction describes the vehicle make as "Chevy," the model as "silver" and the color as "silver."