

COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS.

COMMISSIONER OF BANKS
Docket No.: 2017-0013

In the Matter of
STATE ROAD AUTO SALES, INC.
Westport, MA

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) CONSENT ORDER
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WHEREAS, STATE ROAD AUTO SALES, Inc. (“State Road” or “Company”) has been advised of its rights to Notice and Hearing pursuant to Massachusetts General Laws chapter 30A, sections 10 and 11, and having waived those rights, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF A CONSENT ORDER (Consent Agreement) with the Division of Banks (Division) dated _____, 2021 whereby, solely for the purpose of settling this matter and without admitting any allegations of fact or the existence of any violations of law, State Road agrees to the issuance of this CONSENT ORDER (Consent Order) by the Commissioner of Banks (Commissioner);

WHEREAS, the Division through the Commissioner has jurisdiction over the licensing and regulation of persons and entities engaged in the business of a motor vehicle sales finance company in Massachusetts pursuant to Massachusetts General Laws (M.G.L.) Chapter 255B and its implementing regulation 209 Code of Massachusetts Regulations (C.M.R.) 20.00 *et seq.*;

WHEREAS, State Road has been a business entity conducting business in the Commonwealth of Massachusetts with its headquarters located at 851 State Road, Westport, Massachusetts;

WHEREAS, State Road has been conducting business at an additional location with an address of 327 State Road, Westport, Massachusetts;

WHEREAS, State Road has never applied for a motor vehicle sales finance company license with the Division;

WHEREAS, State Road has never applied for any type of banking license with any state or federal regulator;

WHEREAS, M.G.L. chapter 255B, section 2 governs the licensing requirements for entities engaged in the business of motor vehicle sales financing states, in part: “No person, other than a bank as defined in section one of chapter one hundred and sixty-seven, a national banking association, federal savings bank, federal savings and loan association, federal credit union, or any bank, trust company, savings bank, savings and loan association or credit union organized under the laws of any other state of the United States, shall engage in the business of a sales finance company without first obtaining from the commissioner a license to carry on said business in the city or town where the business is to be transacted as provided herein.”;

WHEREAS, M.G.L. chapter 255B, section 1 defines a “sales finance company”, in part, as follows: “Sales finance company”...(3) a retail seller engaged, in whole or in part, in the business of holding retail instalment contracts acquired from retail buyers...”;

WHEREAS, on or about February 25, 2010, based on information received that State Road may be engaging in unlicensed activity, the Commissioner issued a letter directing State Road to “cease engaging in the business of a motor vehicle sales finance company” until they either demonstrated that they were exempt from the licensing requirement or were appropriately licensed;

WHEREAS, on or about March 1, 2010, State Road sent a letter to the Division stating it did not engage in the sale of motor vehicles pursuant to M.G.L. c. 255B and provided what appeared to be a true lease as an example of their business;

WHEREAS, on or about December 29, 2011, the Division issued an industry letter titled, “The Applicability of Licensing Requirements to Motor Vehicle ‘Leasing’ Companies” (Industry Letter). The Industry Letter clarified the circumstances in which a purported motor vehicle lease agreement would be considered a retail installment contract subject to licensing as a motor vehicle sales finance company under M.G.L. c. 255B. Specifically, the Industry Letter stated, “if the so-called motor vehicle lease agreement: requires payments substantially equivalent to or in excess of the value of the motor vehicle, and; provides that the ‘lessee’ is bound to become, or has the option of becoming, the owner of the motor vehicle upon...full compliance with the terms of the contract, such contract is, in fact, a retail installment contract.”;

WHEREAS, on or about April 15, 2015 and on or about December 9, 2015, during an inspection of State Road conducted pursuant to M.G.L. c. 140, s. 58 to assess the Company’s level of compliance with applicable Massachusetts and federal statutes, rules and regulations governing the conduct of those engaged in the business of buying and selling second hand motor vehicles, State Road represented to inspectors that its vehicles were not sold, but leased to individuals who would own the vehicle upon completion of the lease;

WHEREAS, on or about October 25, 2016, based on information received that State Road may be engaging in unlicensed activity, the Commissioner issued a cease activity letter directing State Road to cease engaging in the business of unlicensed motor vehicle sales financing. Additionally, in the same letter, the Commissioner authorized an inspection of State Road pursuant to M.G.L. c. 255B, s. 6 to investigate potential unlicensed motor vehicle sales financing activity;

WHEREAS, on or about October 2, 2017, based upon review and investigation of information provided to the Division as of October 25, 2016, the Commissioner issued State Road a Cease Directive alleging State Road engaged in the business of a motor vehicles sales finance company without a license in violation of M.G.L. c. 255B, s. 2, and was subject to a fine of not more than five hundred dollars per finance contract under M.G.L. c. 255B, s. 21; State Road charged unlawful finance charges in violation of M.G.L. c. 255B, s. 14; State Road repossessed at least one vehicle without providing the required notice of right to cure and right to redeem, in sections 20A and 20B; and State Road wrongfully advertised as a motor vehicle sales finance company and as a bank in violation of M.G.L. chapter 93A, section 2(a), 940 CMR 5.02(9), and M.G.L. chapter 167, section 37;

WHEREAS, M.G.L. c. 255B, s.1 states a retail instalment contract includes a conditional sales contract and a contract for the leasing of a motor vehicle by which the lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the lessee is bound to become, or has the option of becoming, the owner of the motor vehicle upon full compliance with the terms of the contract;

WHEREAS, M.G.L. c. 255B, s.2 prohibits a person or business from engaging in the business of a motor vehicles sales finance company unless exempt from the licensing provisions of M.G.L. c. 255B, s. 1 through 25 or obtains a license issued by the Commissioner for the operation of a motor vehicle sales finance company in Massachusetts;

WHEREAS, M.G.L. c. 255B, s. 11 limits the amount of late fees charged on a retail installment contract to the lesser of 5 percent of the installment amount or \$5.00, assessed not less than 15 days after default;

WHEREAS, M.G.L. c. 255B, s. 11 limits the amount of returned payment fees charged on a retail installment contract to \$10.00;

WHEREAS, M.G.L. c. 255B, s. 16 authorizes a consumer who entered into a retail installment contract to a refund of unearned finance charges in the event of prepayment;

WHEREAS, M.G.L. c. 255B, s. 20A requires a lender to provide notice to the borrower of their rights and wait for the expiration of a 21 day right to cure period prior to repossessing a vehicle securing a loan;

WHEREAS, M.G.L. c. 255B, s. 20B requires a lender to provide the borrower with 20 days to redeem the vehicle following repossession before the disposal of the collateral and limits the fees that may be charged to the borrower in connection with a repossession to reasonable repossession and storage costs;

WHEREAS, M.G.L. chapter 93A, s. 2(a) prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce;

WHEREAS, 940 C.M.R. 5.02(9) states “it is an unfair or deceptive act or practice for a motor vehicle dealer or manufacturer to make any representation or statement of fact in an advertisement if the dealer or manufacturer knows or should know that the representation or statement is false or misleading or if the dealer or manufacturer does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based.”;

M.G.L. c. 167, s. 37, prohibits use of the term “bank” unless authorized to do under the laws of the commonwealth;

WHEREAS, the parties now seek to resolve by mutual agreement the matters identified above.

ORDER

NOW COME the parties in the above-captioned matter, the Division and the Company, and stipulate and agree as follows:

1. The Company shall pay an administrative penalty to the Division in the amount of twenty-five thousand dollars (\$25,000.00).
2. State Road shall immediately cease and desist from engaging in any business activity that is prohibited in Massachusetts, including but not limited to conduct proscribed by M.G.L. c. 255B, s. 1 through 25, M.G.L. c. 93A, s. 2(a), and M.G.L. c. 167, s. 37.
3. State Road shall establish, implement and maintain adequate internal policies and procedures to ensure that the Company refrains from engaging in any business activity that is prohibited in Massachusetts, including but not limited to conduct proscribed by M.G.L. c. 255B, s. 1 through 25, M.G.L. c. 93A, s. 2(a), and M.G.L. c. 167, s. 37.
4. State Road shall reimburse all affected consumers¹ pursuant to the following terms:
 - a. State Road shall pay seventy-five thousand dollars (\$75,000.00) towards consumer reimbursements. Additionally, the penalty amount referenced in paragraph 1 of this Consent Order of twenty-five thousand dollars

¹ “Affected Consumers” concern those consumers who entered into a lease agreement during an agreed upon period with the Company whereby the lessee paid an amount substantially equivalent to or in excess of the vehicle’s initial fair market value and had the option of becoming the owner of the motor vehicle upon full compliance with the terms of the contract for nominal additional consideration and satisfying other loan characteristics as agreed upon by the Company and the Division.

(\$25,000.00) will also be added to the consumer reimbursement amount of seventy-five thousand dollars (\$75,000.00), bringing the total amount of consumer reimbursement to one hundred thousand dollars (\$100,000.00) to be divided among all affected consumers equally and distributed by check for alleged substantial non-compliance with applicable state and federal statutes, rules, and regulations governing the conduct of those engaged in the business of a motor vehicle sales finance company in Massachusetts.

- b. Within fifteen (15) calendar days of the effective date of this Consent Order, State Road must submit to the Division for review and non-objection a written plan for providing redress to the consumers affected and consistent with this paragraph of the Agreement (“Redress Plan”). The Division will have the discretion to make a determination of non-objection to the Redress Plan or direct State Road to revise it. If the Division directs State Road to revise the Redress Plan, State Road must revise and resubmit the Redress Plan to the Division within five (5) business days. After receiving notification that the Division has made a determination of non-objection to the Redress Plan, State Road must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Redress Plan. The Redress Plan must:
 - i. Include the form of the letter (“Redress Notice”) and envelope to be sent affected consumers of their right to redress; the Redress Notice must include a statement that the payment is made in accordance with the terms of this Consent Order; State Road must

not include in any envelope containing a Redress Notice any materials other than the approved Redress Notice(s) and redress checks, unless State Road has written confirmation from the Division that the Division does not object to the inclusion of such additional materials;

ii. Describe the process for providing redress to affected consumers, and include the following requirements:

1. Prior to sending redress checks and Redress Notices, State Road must make reasonable attempts to obtain a current address for each affected consumer, at a minimum, the National Change of Address System; and
2. State Road must mail the Redress Notice to each affected consumer; and
3. State Road must mail a redress check to all consumers that respond to the Redress Notice, or where consumers cannot be located, State Road shall comply with General Laws chapter 200A regarding the disposition of unclaimed property.

iii. Certify that all remediation provided for under the Redress Plan has been provided to each affected consumer.

c. All checks sent to joint borrowers will be made payable to both borrowers. If a borrower demonstrates that a joint borrower should be removed as a payee (by, for example, providing the Company with a copy of a death certificate or other evidence that the joint borrower has died), then the Company may reissue the check in the sole borrower's name. If the Company is uncertain

as to the status of a joint borrower, the Company will refer the matter to the Division for further instructions.

- d. Any reimbursement payments mailed to a consumer shall be mailed to the consumer's last known address in the Company's records, or if the address is invalid, to the address set forth for such borrower in the U. S. Postal Service national change of address database (NCOA Database). If joint borrowers have different addresses, the reimbursement payment will be mailed to the address of the primary borrower.

1. Within one hundred twenty (120) days of the effective date of this Consent Order, State Road shall submit to the Division evidence of all consumer reimbursements under paragraph 4, including but not limited to: the consumer's name, the account number, the amount reimbursed, the date of reimbursement, and the check number.
2. State Road shall certify that it has made a reasonable good faith effort to identify the current address of all consumers who are entitled to refund checks. In all cases where consumers cannot be located, the Company shall comply with General Laws chapter 200A regarding the disposition of unclaimed property.
3. State Road shall agree to cooperate with a visitation(s) to be conducted by examiners from the Division of its books,

records, accounts, and documents to ensure compliance with this this Consent Order.

4. State Road acknowledges the Division's right to effectuate an investigation into any suspected unlicensed activity as described by M.G.L. 255B, s. 6.
5. Nothing in this Consent Order shall be construed as permitting State Road to violate any law, rule, regulation, or regulatory bulletin to which the Company is subject.
6. Failure to comply with the terms of this Consent Order shall constitute grounds for formal regulatory action pursuant to applicable provisions of the General Laws of the Commonwealth of Massachusetts.
7. This Consent Order shall become effective immediately upon the date of its issuance.
8. The provisions of this Consent Order shall be binding upon State Road and its respective subsidiaries, officers and directors, successors and assigns, and those persons in active participation with them, directly or indirectly, acting individually or through any corporate or other entity.
9. In consideration of this Consent Order, the Division agrees not to pursue any other remedial measures, sanctions or penalties relative to this matter unless the Division is made aware of material information that is not addressed in this

Consent Order, or if State Road fails to comply with the terms of this Consent Order.

10. The provisions of this Consent Order shall not limit, estop, or otherwise prevent any other state agency or department, from taking any other action under separate authority affecting the Company or any of its officers and directors, or their successors or assigns.
11. The provisions of this Consent Order shall remain effective and enforceable except to the extent that, and until such time as the Commissioner or a court of competent jurisdiction modifies, terminates, suspends, or sets aside any provision of this Consent Order.
12. In accordance with the terms of the Consent Agreement entered into by State Road and the Commissioner, State Road has waived all rights of appeal that it may have relative to this Consent Order or any of its provisions.
13. This Consent Order, the Consent Agreement, and Redress Plan are the complete documents representing the resolution of this matter. There are no other agreements between the Division and State Road.

BY ORDER AND DIRECTION OF THE COMMISSIONER OF BANKS:

Dated at Boston, Massachusetts, this ____th day of _____, 2021.

By:

Mary L. Gallagher
Commissioner of Banks