

OCCC CASE NO. L22-00055

IN THE MATTER OF:	§	BEFORE THE
	§	
	§	OFFICE OF CONSUMER
MASTER FILE NO.: 1700059536	§	
D3 LENDING, LLC	§	CREDIT COMMISSIONER
11311 REEDER RD. BLDG. A	§	
DALLAS, TEXAS 75229	§	STATE OF TEXAS

ORDER TO CEASE AND DESIST UNLICENCED ACTIVITY, TAKE AFFIRMATIVE ACTION, AND MAKE RESTITUTION

The Office of Consumer Credit Commissioner (“OCCC”) issues this Order to Cease and Desist Unlicensed Activity, Take Affirmative Action, and Make Restitution against D3 Lending, LLC (“D3 Lending”), based on the violations of law described below.¹

Statement of Facts and Law

Under Chapter 348 of the Texas Finance Code, a person must hold a motor vehicle sales finance license issued by the OCCC in order to act as a holder of a motor vehicle retail installment contract.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 person who does not hold a Chapter 348 license (or another authorization to act as a holder) may not collect payments on motor vehicle retail installment contracts, and may not indirectly collect payments by repossessing motor vehicles or selling repossessed motor vehicles.⁴

D3 Lending is a motor vehicle acceptance company that does not hold a license with the OCCC. D3 Lending is located at 11311 Reeder Rd. Bldg. A, Dallas, Texas 75229. D3 Lending is owned by David A. Kost I.

¹ Tex. Fin. Code §§ 14.208, 14.251.
² Tex. Fin. Code § 348.501.
³ Tex. Fin. Code § 348.001(3), (7), (8).
⁴ Tex. Fin. Code §§ 348.001(3), (7), (8), 348.501.

D3 Lending is affiliated with 1and2 Automotive, LLC (“1and2 Automotive”).⁵ 1and2 Automotive is a motor vehicle dealer that was previously licensed with the OCCC, under master file number 1400050029, license numbers 150502 and 157796. 1and2 Automotive was located at 11311 Reeder Rd. Bldg. A, Dallas, Texas 75229. 1and2 Automotive’s compliance officer and sole member was David A. Kost I.

In December 2017, D3 Lending filed an application for a motor vehicle sales finance license with the OCCC. The application was assigned master file number 1700059536 and application ID number 33575. In its license application, D3 Lending stated that it would act as a related finance company for 1and2 Automotive, and would buy notes for vehicles sold by 1and2 Automotive. Between 2015 and 2020, the OCCC received 35 consumer complaints against 1and2 Automotive. In connection with D3 Lending’s license application, the OCCC requested information from D3 Lending to address 1and2 Automotive’s compliance issues. In October 2020, the OCCC revoked 1and2 Automotive’s motor vehicle sales finance licenses because of repeated cash price violations and failure to comply with an OCCC order to furnish information.⁶ In January 2021, the OCCC denied D3 Lending’s license application because of its failure to provide necessary documents.

In 2020, a consumer filed two complaints against 1and2 Automotive.⁷ In connection with these complaints, the consumer and 1and2 Automotive provided the OCCC with documents mentioning D3 Lending. These documents included an account history with notes stating “Account Transfer- D3 Lending,” a receipt from D3 Lending reflecting amounts due for a “Side Note,” and an “Agreement to Accept Collateral in Full Satisfaction of Indebtedness After Voluntary Return” in which D3 Lending agreed to accept a vehicle in satisfaction of the consumer’s indebtedness.

In 2021, the OCCC conducted an investigation to determine whether D3 Lending engaged in unlicensed motor vehicle sales finance activity. The OCCC contacted a different motor vehicle dealer that took assignment of retail installment contracts from 1and2 Automotive, and obtained a list of transactions from the dealer management system. This list contained more than 5,000 transactions where the system included the notation “Account Transfer- D3 Lending” or the notation

⁵ See Tex. Bus. Orgs. Code § 1.002(1) (defining “affiliate” as a “person who controls, is controlled by, or is under common control with another person”).

⁶ OCCC Case No. L21-00092.

⁷ OCCC Complaint ID Nos. 115834 & 116802.

“Transfer to D3 Lending.” In November 2021, the OCCC sent a request to D3 Lending for a list of all transfers or assignments from 1and2 Automotive to D3 Lending. David A. Kost I responded that he was unable to produce this information because D3 Lending’s records had been seized in a foreclosure.

The OCCC has reasonable cause to believe that D3 Lending acted as a holder under Chapter 348 of the Texas Finance Code by accepting payments on motor vehicle retail installment contracts and accepting transfers of motor vehicle retail installment contracts. By performing these actions without a motor vehicle sales finance license, D3 Lending violated Chapter 348 of the Texas Finance Code.

Authority

If the Consumer Credit Commissioner (“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, to take affirmative action, or both to ensure compliance.⁸ The Commissioner may order a person who violates Chapter 348 or its implementing rules to make restitution to an identifiable person.⁹ In addition, if the OCCC has reasonable cause to believe that a person is violating Chapter 348, then the OCCC may conduct an investigation to discover a violation or obtain required information.¹⁰

The Commissioner has reasonable cause to believe that D3 Lending has violated Chapter 348 of the Texas Finance Code by acting as a holder without a motor vehicle sales finance license.

Order

IT IS ORDERED that:

1. D3 Lending must comply with, and cease and desist from violating, the motor vehicle sales finance license requirement found in Section 348.501 of the Texas Finance Code.
2. D3 Lending must cease and desist entering into new transactions in which it agrees to accept the cash price of a motor vehicle in one or more deferred

⁸ Tex. Fin. Code § 14.208(a).

⁹ Tex. Fin. Code § 14.251(b).

¹⁰ Tex. Fin. Code §§ 14.202, 348.515.

installments. D3 Lending must cease and desist accepting credit applications.

3. D3 Lending must cease and desist advertising motor vehicle retail installment transactions. D3 Lending must remove any advertisements (including any physical signs and any material on a website) suggesting that D3 Lending will finance vehicles, that consumers may apply for credit, or that consumers may pay for vehicles in more than one payment.
4. D3 Lending must cease and desist collecting payments on existing motor vehicle retail installment transactions. D3 Lending must cease and desist repossessing vehicles, and must cease and desist selling repossessed motor vehicles.
5. D3 Lending must allow the OCCC to conduct an investigation of the records of the business.
6. **No later than 30 days after the date of this Order**, D3 Lending must perform a self-review and identify each motor vehicle retail installment transaction that D3 Lending entered or accepted payments on, including each sale of a motor vehicle in which:
 - a. D3 Lending entered a retail installment contract;
 - b. D3 Lending purported to take transfer or assignment of a retail installment contract;
 - c. a buyer applied for credit through an application provided by D3 Lending;
 - d. D3 Lending accepted payments in one or more deferred installments;
or
 - e. D3 Lending held a lien.
7. **No later than 30 days after the date of this Order**, D3 Lending must refund any finance charges that it charged or received from any retail buyer.
8. **No later than 30 days after the date of this Order**, D3 Lending must release any liens that are currently filed on any motor vehicles in D3 Lending' name. D3 Lending may not charge a fee to any buyer for releasing these liens.

9. **No later than 30 days after the date of this Order**, D3 Lending must identify each retail installment transaction that it assigned to another creditor.
10. With respect to maintaining proof of required refunds:
 - a. D3 Lending must maintain complete and accurate records of all refunds, including copies of refund checks for closed accounts and ledgers showing account credits for open accounts, until the later of the following:
 - i. the fourth anniversary of the date of the retail installment transaction; or
 - ii. the second anniversary of the date on which the final entry is made in the buyer's record.¹¹
 - b. D3 Lending must maintain documentation of the release of any liens until the later of the following:
 - i. the fourth anniversary of the date of the retail installment transaction; or
 - ii. the second anniversary of the date on which the final entry is made in the buyer's record.
11. **No later than 30 days after the date of this Order**, D3 Lending must create a Microsoft Excel spreadsheet named "L22-00055_D3Lending." The spreadsheet must clearly list the total amount of refunds provided to buyers. In addition, the spreadsheet must list each retail installment transaction for which D3 Lending provided restitution or released a lien as described above, and each retail installment transaction that D3 Lending assigned to another creditor. The spreadsheet must include a row for each buyer and the following columns:
 - a. account number;
 - b. name of the retail buyer;
 - c. date of retail installment contract;
 - d. amount of finance charge;
 - e. amount of finance charge refunded to the buyer;
 - f. date of the refund;
 - g. form of the refund (i.e., check for closed account, and credit for open account);

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

- h. date on which D3 Lending released the lien, if applicable; and
- i. name of any creditor that D3 Lending assigned the transaction to, if applicable.

12. **No later than 30 days after the date of this Order**, D3 Lending must provide a copy of the spreadsheet to the OCCC. The spreadsheet must be sent by email to Matthew Nance at matthew.nance@occc.texas.gov.

Violation of Order

If you violate this Order, the OCCC may impose an administrative penalty of up to \$1,000 for each day.¹²

Right to Request Hearing

You have the right to request a hearing regarding this Order.¹³ To request a hearing, you must send a written hearing request to the OCCC no later than 30 days after the date of this Order.¹⁴ You must send your request to Matthew Nance, Deputy General Counsel, by mail to 2601 N. Lamar Blvd., Austin, TX 78705, or by email to matthew.nance@occc.texas.gov.

If you request a hearing, a hearing will be set and conducted in accordance with Chapter 2001 of the Texas Government Code.¹⁵ If you fail to request a hearing by this deadline, the Order will be considered final and enforceable.¹⁶

All communications with the OCCC concerning this matter must be through Matthew Nance, Deputy General Counsel, who may be contacted by mail at 2601 N. Lamar Blvd., Austin, TX 78705, by telephone at 512-936-7660, or by email to matthew.nance@occc.texas.gov.

¹² Tex. Fin. Code § 14.208(c).

¹³ Tex. Fin. Code § 14.208(b).

¹⁴ Tex. Fin. Code § 14.208(b).

¹⁵ Tex. Fin. Code § 14.208(b).

¹⁶ Tex. Fin. Code § 14.208(c).

Signed this 10th day of June, 2022.

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

CERTIFICATE OF SERVICE

I certify that on June 10, 2022, a true and correct copy of this Order to Cease and Desist Unlicensed Activity, Take Affirmative Action, and Make Restitution has been sent to D3 Lending, LLC by the following:

D3 Lending, LLC
Attn: David A. Kost I,
Compliance Officer
11311 Reeder Rd. Bldg. A
Dallas, TX 75229
dkost@1and2automotive.com

- email
- eFileTexas.gov electronic service
- regular mail
- certified mail, return receipt requested
9214 8901 9403 8300 0079 2894 97

D3 Lending, LLC
Attn: D3 Lending LLC,
Registered Agent
11311 Reeder Rd. Bldg. A
Dallas, TX 75229
dow@1and2automotive.com

- email
- eFileTexas.gov electronic service
- regular mail
- certified mail, return receipt requested
9214 8901 9403 8300 0079 2895 58

/s/Matthew Nance
Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
State Bar No. 24074794
2601 N. Lamar Blvd.
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