

SOAH DOCKET NO. 466-22-0322

OCCC CASE NOS. L21-00152, L21-00153, L21-00154, L21-00155, L21-00156, L21-00157, L21-00158, L21-00159, L21-00160, & L21-00161

OFFICE OF CONSUMER CREDIT COMMISSIONER	§	BEFORE THE
	§	
V.	§	
	§	
DUNCANVILLE N, LLC; COOLEY HOLDINGS 3, LLC; IRVING N MOTOR COMPANY, LLC; CLAY COOLEY REAL ESTATE HOLDINGS I, LLC; R L THORNTON MOTOR COMPANY, LLC; CLAY COOLEY GMC INVESTMENTS, LLC; PARK CITIES V MOTOR COMPANY, LLC; RICHARDSON V MOTOR COMPANY, LLC; IRVING K MOTOR COMPANY, LLC; ROCKWALL MOTOR COMPANY, LLC (COLLECTIVELY "CLAY COOLEY ENTITIES")	§	STATE OFFICE OF ADMINISTRATIVE HEARINGS
	§	STATE OF TEXAS

**FINAL ORDER TO REDUCE DOCUMENTARY FEES AND PAY RESTITUTION**

The Office of Consumer Credit Commissioner ("OCCC") issues this Final Order to Reduce Documentary Fees and Make Restitution against the above-named entities (collectively "Cooley" or "Clay Cooley Entities").

The OCCC hereby adopts the Proposal for Decision ("PFD") issued on October 11, 2022 in the above-cited docket, as modified by the Administrative Law Judge's ("ALJ") Exceptions Letter issued on November 16, 2022. The ALJ's Exceptions Letter recommends three changes to the PFD:

1. The following sentence to be added to Conclusion of Law 24, immediately after the first sentence: "For Cooley dealerships with a reasonable documentary fee greater the [sic] maximum documentary fee originally noticed by Cooley, OCCC should not

order lowering of documentary fees or restitution to customers.”

2. The PFD’s original, erroneous Attachment A to be replaced by the ALJ’s Corrected Attachment A.
3. The table incorporated in the PFD’s original Conclusion of Law No. 24 to be replaced by a corrected table reflecting the documentary fees calculated in the ALJ’s Corrected Attachment A.

The ALJ’s three recommended changes are hereby adopted and incorporated into the Findings of Fact and Conclusions of Law stated herein.

### I. FINDINGS OF FACT

1. On September 9, 2021, the Office of Consumer Credit Commissioner (OCCC) issued an Order to Reduce Documentary Fees and Make Restitution (Order to Reduce) against Duncanville N, LLC; Cooley Holdings 3, LLC; Irving N Motor Company, LLC; Clay Cooley Real Estate Holdings I, LLC; R L Thornton Motor Company, LLC; Clay Cooley GMC Investments, LLC; Park Cities V Motor Company, LLC; Richardson V Motor Company, LLC; Irving K Motor Company, LLC; and Rockwall Motor Company, LLC (collectively, “Cooley”).
2. On September 10, 2021, Cooley timely filed a request for hearing.
3. On October 1, 2021, this matter was referred to the State Office of Administrative Hearings (“SOAH”) for a contested case hearing.
4. On December 1, 2021, OCCC staff (“Staff”) sent Cooley a Notice of Hearing.
5. On May 4, 2022, the Administrative Law Judge (“ALJ”) issued Order No. 7, setting the hearing and providing the location of the hearing.
6. Together, the notice of hearing and Order No. 7 contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
7. The hearing on the merits convened in-person on June 20-22, 2022, before Administrative Law Judge Linda H. Brite at SOAH in Austin, Texas. General Counsel Michael Rigby appeared and represented Staff. Cooley appeared and was represented

by attorney Jay Stewart. The record closed on August 16, 2022, upon submission of written closing briefs.

8. On June 26, 2020, Cooley notified OCCC of their intent to charge buyers the following documentary fees:

<b>Dealership</b>	<b>Maximum Documentary Fee</b>
Clay Cooley Mitsubishi	\$299
Clay Cooley Chevrolet	\$299
Clay Cooley Chrysler Jeep Dodge Ram	\$299
Clay Cooley Hyundai of Rockwall	\$175
Clay Cooley Kia	\$199
Clay Cooley Nissan Duncanville	\$299
Clay Cooley Nissan Irving	\$299
Clay Cooley Volkswagen of Park Cities	\$220
Clay Cooley Volkswagen of Richardson	\$249
Young Chevrolet	\$299

9. From July 27, 2020 through June 12, 2021, Cooley charged buyers documentary fees over \$150.
10. Cooley’s cost analysis included costs for payroll, facilities, software, credit reports, forms and printing, and postage.
11. On February 16 and April 9, 2021, Cooley submitted revised cost analyses in response to Staff’s comments.
12. Establishing the documentary fee on a dealership-by-dealership basis is appropriate, rather than an enterprise-wide documentary fee.
13. Staff’s interpretation of 7 Texas Administrative Code § 84.205(d)(3)(B)(ii)(I) – to allow a buyer’s order or a retail installment sales contract but not both – is not a formal opinion adopted after formal proceedings.
14. Cooley’s cost analysis included facilities costs for document storage after the sale.
15. Insufficient evidence was presented to establish that the “We Owe” document is a legally required document.
16. Cooley incurred credit report costs in a substantial number of transactions where credit was not extended.

17. Cooley's reasonable costs for payroll, facilities, software, forms, credit reports, postage costs, and resultant documentary fee for each dealership are itemized in Corrected Attachment A.

## II. CONCLUSIONS OF LAW

1. OCCC has exclusive jurisdiction to enforce the documentary fee provisions of Chapter 348. Tex. Fin. Code § 348.006(i).
2. SOAH has jurisdiction to conduct the administrative hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law. Tex. Gov't Code §§ 2001.051-.052; 7 Tex. Admin. Code § 9.1.
3. Proper and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052.
4. The hearing was conducted pursuant to the Administrative Procedure Act. Tex. Gov't Code ch. 2001.
5. A documentary fee is an optional charge by the seller for handling documents required by local, state, or federal law relating to the sale and financing of a motor vehicle. Tex. Fin. Code § 348.006(c); 7 Tex. Admin. Code § 84.205(d)(2)(B).
6. Before charging a documentary fee greater than \$150, a seller must provide a written notification to OCCC, stating the amount of the maximum documentary fee that the seller intends to charge. 7 Tex. Admin. Code § 84.205(c)(1).
7. Before charging a documentary fee greater than \$150, a seller must submit a cost analysis showing that its documentary fee is reasonable. 7 Tex. Admin. Code § 84.205(d)(1).
8. The cost analysis must include an itemization of the amount of costs for each of the following categories: personnel; forms and printing; postage; software; facilities costs; and other costs. 7 Tex. Admin. Code § 84.205(d)(3)(a)(i).
9. Cooley had the burden of proof to show their documentary fees are reasonable, and that all included costs are reasonable, specified, and supported by adequate documentation. Tex. Fin. Code § 348.006(e); 7 Tex. Admin. Code § 84.205(d)(1).
10. Staff had the burden of proof to show Cooley charged a documentary fee greater than \$150 that is not supported by a complete cost analysis or that includes costs that are not reasonable, and Cooley should be ordered to lower their fees and provide affected buyers with restitution. Tex. Fin. Code §§ 14.208, 348.006(d); 7 Tex. Admin. Code §§

84.205(d)(1), (6).

11. A seller may include the costs of a written contract for the sale of the motor vehicle, as required by Texas Business and Commerce Code § 2.201, which may be in the form of a purchase agreement, buyer's order, bill of sale, or retail installment sales contract. 7 Tex. Admin. Code § 84.205(d)(3)(B)(ii)(I).
12. Courts give some deference to a reasonable agency interpretation of an ambiguous statute or rule. *Fiess v. State Farm Lloyds*, 202 S.W.3d 744, 747 (Tex. 2006) (citing *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-44 (1984)); *Corpus Christi v. Public Utility Comm'n of Tex.*, 51 S.W.3d 231, 261 (Tex. 2001).
13. Deference to agency interpretation is tempered by the following considerations: First, it applies to formal opinions adopted after formal proceedings, not isolated comments during a hearing or opinions in a court brief. Second, the language at issue must be ambiguous; an agency's opinion cannot change plain language. Third, the agency's construction must be reasonable; alternative unreasonable constructions do not make a policy ambiguous. *Railroad Comm'n of Tex. v. Tex. Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619, 625 (Tex. 2011) (*Fiess*, 202 S.W.3d at 747-48).
14. A dealer may include the costs of both the buyer's order and the retail installment sales contract for a transaction.
15. Costs must be determined in accordance with generally accepted accounting principles (GAAP). 7 Tex. Admin. Code § 84.205(d)(2)(B).
16. The facilities costs must be adjusted to include only direct fixed costs. The allowable facilities costs must include only the portion of facilities costs that corresponds to the percentage of time and space used for activities that may be included in the documentary fee. 7 Tex. Admin. Code § 84.205(d)(2)(B)(v).
17. Costs must be incurred either concurrently with or after the seller's preparation of a buyer's order or retail installment sales contract. Costs must be incurred before the title of the purchased motor vehicle is actually transferred or is legally required to have been transferred. 7 Tex. Admin. Code § 84.205(d)(2)(D)(i)-(ii).
18. If the conflict between the general provision and the special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision. Tex. Gov't Code § 311.026(b).
19. Document storage costs after the sale may not be included in the documentary fee.
20. A seller may include the cost of obtaining a credit report, if the seller incurs this cost

in a substantial number of transactions where credit is not extended, and the cost complies with the other requirements described in this subsection (e.g., the cost of obtaining a credit report to ensure compliance with the USA PATRIOT Act, 31 U.S.C. §5318(1)(2)(C)). 7 Tex. Admin. Code § 84.205(d)(1).

21. Cooley’s cost analysis included costs that are not reasonable. 7 Tex. Admin. Code § 84.205(d)(1).
22. When reviewing a cost analysis, OCCC may either determine that a noticed documentary fee is reasonable, or determine a maximum documentary fee that a seller may charge. 7 Tex. Admin. Code § 84.205(d)(5).
23. If a motor vehicle seller charges a documentary fee over \$150 that is not supported by a complete cost analysis or that includes costs that are not reasonable, OCCC may order the seller to provide restitution to affected buyers and lower its documentary fee prospectively. 7 Tex. Admin. Code § 84.205(d)(1), (6).
24. OCCC should affirm and modify its Order to Reduce to order Cooley to lower the documentary fees and provide restitution to customers charged a documentary fee greater than the following amounts:

<b>Clay Cooley Dealership</b>	<b>Documentary Fee</b>
Clay Cooley Mitsubishi	\$267.83
Clay Cooley Chevrolet	\$252.11
Clay Cooley Chrysler Jeep Dodge Ram	\$232.44
Clay Cooley Hyundai of Rockwall	\$202.58
Clay Cooley Kia	\$222.96
Clay Cooley Nissan Duncanville	\$254.89
Clay Cooley Nissan Irving	\$267.80
Clay Cooley Volkswagen of Park Cities	\$261.75
Clay Cooley Volkswagen of Richardson	\$256.43
Young Chevrolet	\$244.88

For Cooley dealerships with a reasonable documentary fee greater than the maximum documentary fee originally noticed by Cooley, OCCC should not order lowering of documentary fees or restitution to customers.

### III. ORDER

After review and due consideration, I hereby adopt the findings of fact and

conclusions of law identified above.

IT IS ORDERED that:

- (1) The Findings of Fact and Conclusions of Law set forth in the Proposal for Decision issued on October 11, 2022, as amended above, are adopted;
- (2) The ten dealerships comprising the Clay Cooley entities named herein may charge their customers maximum documentary fees as follows:

<b>Clay Cooley Dealership</b>	<b>Documentary Fee</b>
Clay Cooley Mitsubishi	\$267.83
Clay Cooley Chevrolet	\$252.11
Clay Cooley Chrysler Jeep Dodge Ram	\$232.44
Clay Cooley Hyundai of Rockwall	\$202.58
Clay Cooley Kia	\$222.96
Clay Cooley Nissan Duncanville	\$254.89
Clay Cooley Nissan Irving	\$267.80
Clay Cooley Volkswagen of Park Cities	\$261.75
Clay Cooley Volkswagen of Richardson	\$256.43
Young Chevrolet	\$244.88

- (3) Clay Cooley must provide restitution to buyers charged a documentary fee higher than the amounts shown for each respective dealership in the table incorporated in item (2), above;
- (4) The amount of restitution is not to exceed the amount of the documentary fee Clay Cooley charged or received, minus the amount shown for each respective dealership in the table incorporated in item (2), above; and
- (5) No later than 45 days after the date of this Order, Clay Cooley must submit a spreadsheet by email to [michael.rigby@occc.texas.gov](mailto:michael.rigby@occc.texas.gov) in Microsoft Excel format named "ClayCooleyDocFeeRestitution.xlsx" with the following columns:
  - a. Master File number of the licensed entity;
  - b. Name of the licensed entity;
  - c. Account number of the customer charged a documentary fee over the amount shown in the table incorporated in item (2);

- d. Name of the customer charged a documentary fee over the amount shown in the table incorporated in item (2);
- e. Address of the customer charged a documentary fee over the amount shown in the table incorporated in item (2);
- f. Telephone number of the customer charged a documentary fee over the amount shown in the table incorporated in item (2);
- g. Date the licensed entity charged the customer a documentary fee over the amount shown in the table incorporated in item (2);
- h. Amount of the documentary fee over the amount shown in the table incorporated in item (2) the licensed entity charged the customer;
- i. Date the licensed entity refunded any portion of a documentary fee over the amount shown in the table incorporated in item (2) to the customer;
- j. Amount of a documentary fee over the amount shown in the table incorporated in item (2) the licensed entity refunded to the customer; and
- k. Check number or other identifying form of any refund or payment.

SIGNED and ENTERED this 18th day of January 2023.

Leslie L. Pettijohn  
Consumer Credit Commissioner

By: \_\_\_/s/\_\_\_Christine Graham\_  
Christine Graham, pursuant to  
Delegation Order No. 22-001 of November 8, 2021



## SERVICE LIST

On January 18, 2023, Christine Graham, Office of Consumer Credit  
Commissioner, sent this Final Order to the following:

Duncanville N LLC  
Attn: Linda Groover, Compliance Officer  
1251 East Airport Freeway  
Irving, TX 75062  
linda@comeseeclay.com

hand delivery  
 email  
 regular mail  
 certified mail, return receipt requested  
#

Cooley Holdings 3 LLC  
Attn: Linda Groover, Compliance Officer  
1251 East Airport Freeway  
Irving, TX 75062  
linda@comeseeclay.com

hand delivery  
 email  
 regular mail  
 certified mail, return receipt requested  
#

Irving N Motor Company, LLC  
Attn: Linda Groover, Compliance Officer  
1500 East Airport Freeway  
Irving, TX 75062  
linda@comeseeclay.com

hand delivery  
 email  
 regular mail  
 certified mail, return receipt requested  
#

Clay Cooley Real Estate Holdings I LLC  
Attn: Linda Groover, Compliance Officer  
1251 East Airport Freeway  
Irving, TX 75062  
linda@comeseeclay.com

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 certified mail, return receipt requested  
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R L Thornton Motor Company  
Attn: Linda Groover, Compliance Officer  
9301 East R L Thornton Freeway  
Dallas, TX 75228  
linda@comeseeclay.com

- hand delivery
  - email
  - regular mail
  - certified mail, return receipt requested
- #

Clay Cooley GMC Investments LLC  
d/b/a Clay Cooley Mitsubishi  
Attn: Linda Groover, Compliance Officer  
1251 East Airport Freeway  
Irving, TX 75062  
linda@comeseeclay.com

- hand delivery
  - email
  - regular mail
  - certified mail, return receipt requested
- #

Park Cities V Motor Company LLC  
Attn: Linda Groover, Compliance Officer  
P.O. Box 153526  
Dallas, TX 75209  
linda@comeseeclay.com

- hand delivery
  - email
  - regular mail
  - certified mail, return receipt requested
- #

Richardson V Motor Company LLC  
Attn: Linda Groover, Compliance Officer  
P.O. Box 153526  
Irving, TX 75015  
linda@comeseeclay.com

- hand delivery
  - email
  - regular mail
  - certified mail, return receipt requested
- #

Irving K Motor Company, LLC  
Attn: Linda Groover, Compliance Officer  
1600 East Airport Freeway  
Irving, TX 75062  
linda@comeseeclay.com

- hand delivery
- email
- regular mail
- certified mail, return receipt requested

Rockwall Motor Company LLC  
Attn: Linda Groover, Compliance Officer  
P.O. Box 153526  
Irving, TX 75015  
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*Attorney for the Office of Consumer Credit  
Commissioner*