

OCCC CASE NO. L19-00179

IN THE MATTER OF:	§	BEFORE THE
	§	
	§	OFFICE OF CONSUMER
MASTER FILE NO.: 1800060930	§	
NICA MOTORS, INC.	§	CREDIT COMMISSIONER
9600 NEW LAREDO HWY.	§	
SAN ANTONIO, TEXAS 78211	§	STATE OF TEXAS

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

The Office of Consumer Credit Commissioner (“OCCC”) issues this Order to Cease and Desist Unlicensed Activity, to Take Affirmative Action, and to Make Restitution against Nica Motors, Inc. (“Nica Motors”), 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 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 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.⁴

Nica Motors is a motor vehicle dealer that does not hold a license with the OCCC. Nica Motors is located at 9600 New Laredo Hwy., San Antonio, Texas 78211.

In February 2018, the OCCC received information from the Texas Department of Motor Vehicles, indicating that Nica Motors had filed liens on

¹ Tex. Fin. Code § 14.208.
² Tex. Fin. Code § 348.501.
³ Tex. Fin. Code § 348.001(3), (7), (8).
⁴ Tex. Fin. Code § 348.515.

motor vehicles. Based on this information, the OCCC conducted an investigation of Nica Motors for unlicensed activity. On May 24, 2018, the OCCC obtained records of transactions from Nica Motors. These records show that in 2017, Nica Motors entered at least one transaction where it sold a motor vehicle and agreed to accept the cash price in deferred installments.

In May 2018, Nica Motors filed an application for a motor vehicle sales finance license with the OCCC, under master file number 1800060930 and application ID number 36693. In June 2018, the OCCC requested items necessary to file a complete license application, including a disclosure of owners and principal parties, a statement of experience, a personal employment history for each principal party, and fingerprints for each principal party.⁵ Nica Motors did not provide these items. In July 2018, the OCCC denied Nica Motors' license application. Nica Motors has not obtained a license with the OCCC.

By acting as a holder in a motor vehicle retail installment transaction without a motor vehicle sales finance license, Nica Motors violated Chapter 348 of the Texas Finance Code.

Authority

If the 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, an order to take affirmative action, or both to enforce compliance.⁶ Additionally, the Commissioner may order a person who violates Chapter 348 or a rule adopted under Chapter 348 to make restitution to an identifiable person injured by the violation.⁷

The Commissioner has reasonable cause to believe that Nica Motors has violated Chapter 348 of the Texas Finance Code by acting as a holder in motor vehicle retail installment transactions without a motor vehicle sales finance license.

⁵ See 7 Tex. Admin. Code § 84.602 (listing information required for a motor vehicle sales finance license application).

⁶ Tex. Fin. Code § 14.208(a).

⁷ Tex. Fin. Code § 14.251(b).

Order

IT IS ORDERED that:

1. Nica Motors 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. Nica Motors must cease and desist from advertising or entering into new transactions in which it agrees to accept the cash price of a motor vehicle in one or more deferred installments.
3. Nica Motors must cease and desist from collecting payments on existing transactions that require a motor vehicle sales finance license.
4. **No later than October 15, 2019**, Nica Motors must perform a self-review and identify each motor vehicle retail installment transaction that Nica Motors has entered, including each sale of a motor vehicle in which:
 - a. Nica Motors entered a retail installment contract;
 - b. Nica Motors accepted payments in one or more deferred installments; or
 - c. Nica Motors held a lien.
5. **No later than October 15, 2019**, Nica Motors must refund any finance charges that it charged or received from any retail buyers.
6. **No later than October 15, 2019**, Nica Motors must release any liens that are currently filed on any motor vehicles in Nica Motors' name. Nica Motors may not charge a fee to any buyer for releasing these liens.
7. **No later than October 15, 2019**, Nica Motors must identify each retail installment transaction that it assigned to another creditor.
8. With respect to maintaining proof of refunds and release of liens:
 - a. Nica Motors 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.⁸
- b. Nica Motors 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.
- c. **No later than October 15, 2019**, Nica Motors must create a spreadsheet labeled "L19-00179NicaMotorsRestitution." 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 Nica Motors provided restitution or released a lien as described above, and each retail installment transaction that Nica Motors assigned to another creditor. The spreadsheet must include a row for each buyer and the following columns:
- i. account number;
 - ii. name of the retail buyer;
 - iii. date of retail installment contract;
 - iv. amount of finance charge;
 - v. amount of finance charge refunded to the buyer;
 - vi. date of the refund;
 - vii. form of the refund (i.e. check for closed account, and credit on open account);
 - viii. date on which Nica Motors released the lien, if applicable; and
 - ix. name of any creditor that Nica Motors assigned the transaction to, if applicable.
- d. **No later than October 15, 2019**, Nica Motors must provide the OCCC with a copy of the spreadsheet. The spreadsheet must be

⁸ See 7 Tex. Admin. Code § 84.704(b), (g).

sent by e-mail to Matthew Nance at
matthew.nance@occc.texas.gov.

Violation of Order

Nica Motors may be assessed an administrative penalty of up to \$1,000 for each day of violation of this Order.⁹

Right to Request Hearing

Nica Motors has the right to request a hearing regarding this Order.¹⁰ Nica Motors request must be made in writing and sent to the OCCC not later than 30 days after Nica Motors receives this Order. Nica Motors must send its request to:

Matthew Nance
Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, Texas 78705

If Nica Motors requests a hearing, a hearing on this matter will be set and conducted in accordance with Chapter 2001 of the Texas Government Code.¹¹ If Nica Motors fails to request a hearing by this deadline, this Order is considered final and enforceable.¹²

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, Texas 78705, by telephone at (512) 936-7660, or by email to matthew.nance@occc.texas.gov.

Signed this 28th day of August, 2019.

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

⁹ Tex. Fin. Code § 14.208(c).

¹⁰ Tex. Fin. Code § 14.208(b).

¹¹ Tex. Fin. Code § 14.208(b).

¹² Tex. Fin. Code § 14.208(c).

CERTIFICATE OF SERVICE

I certify that on August 28th, 2019, a true and correct copy of this Order to Cease and Desist Unlicensed Activity, to Take Affirmative Action, and to Make Restitution has been sent to Nica Motors, Inc. by the following:

Nica Motors, Inc.
Attn: Mizar Barahona, Compliance
Officer; Daniel Barahoma,
Registered Agent
9600 New Laredo Hwy.
San Antonio, Texas 78211
nicamotorsinc@sbcglobal.net

- hand-delivery
- facsimile
- electronic mail
- regular mail
- certified mail, return receipt requested
#91 7199 9991 7037 5165 2947

Nica Motors, Inc.
Attn: Chris Barahona,
Registered Agent
5472 W. Prue Rd.
San Antonio, Texas 78240

- hand-delivery
- facsimile
- electronic mail
- regular mail
- certified mail, return receipt requested
#91 7199 9991 7037 5165 2954

/s/ Matthew Nance
Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
State Bar No. 24074794
2601 North Lamar Blvd.
Austin, Texas 78705
512-936-7660 (phone)
512-936-7610 (fax)
matthew.nance@occc.texas.gov