

OCCC CASE NO. L18-00047

IN THE MATTER OF:	§	BEFORE THE
	§	
MASTER FILE NUMBER: 17220	§	OFFICE OF CONSUMER
RAHMAN INVESTMENT GROUP INC.	§	
d/b/a TRUCKS & CARS FOR LESS	§	CREDIT COMMISSIONER
14002 BAMMEL N. HOUSTON	§	
HOUSTON, TEXAS 77014	§	STATE OF TEXAS

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

The Office of Consumer Credit Commissioner (“OCCC”) issues this Order to Cease and Desist, to Take Affirmative Action, and to Make Restitution against Rahman Investment Group Inc. d/b/a Trucks & Cars for Less (“Trucks & Cars for Less”) based on the violations of law described below.¹

Statement of Facts and Law

Trucks & Cars for Less is a motor vehicle sales finance dealer that was licensed by the OCCC under Chapter 348 of the Texas Finance Code. Trucks & Cars for Less operated under master file number 17220 at one licensed location (license number 64091, issued on March 1, 2013), located at 14002 Bammel N. Houston, Houston, Texas 77014. This address is also Trucks & Cars for Less’s designated contact address. Ziyad Rahman is the compliance officer and registered agent for Trucks & Cars for Less.

The OCCC examined Trucks & Cars for Less on November 3, 2016. The examination revealed that Trucks & Cars for Less engaged in activity that violated Chapter 348 of the Texas Finance Code, and Title 7, Chapter 84 of the Texas Administrative Code.

In the examination report, the OCCC instructed Trucks & Cars for Less to release liens in transactions where the buyer did not enter a security agreement, and to deliver disclosures to buyers. During a follow-up examination on April 28, 2017, the OCCC discovered that Trucks & Cars for Less had not complied with the instructions. The OCCC repeated its instruction to complete the actions

¹ Tex. Fin. Code § 14.208.

described in the previous examination report. Trucks & Cars for Less has not completed the examination instructions.

Trucks & Cars for Less attempted to renew its motor vehicle sales finance license in July 2017. However, Trucks & Cars for Less's payment of the required annual license fee was not completed due to nonsufficient funds. Trucks & Cars for Less's motor vehicle sales finance license has expired due to its failure to pay the required annual fee.²

I. Failure to Use Compliant Contracts and Make Required Disclosures

Trucks & Cars for Less finances the sale of motor vehicles through retail installment contracts.³

Chapter 341 of the Finance Code requires motor vehicle retail installment contracts to be written in plain language.⁴ A dealer must use either a model contract adopted by rule of the Texas Finance Commission, or a contract that the dealer has submitted to the OCCC for plain-language review.⁵

Under Chapter 348 of the Texas Finance Code, a motor vehicle retail installment contract must contain required disclosures, including a conspicuous disclosure that warns the buyer not to sign the contract if the buyer has not read it or if it contains blank spaces, explains the buyer's right to a copy of the contract, and explains the buyer's right to pay off in advance the full amount due and obtain a refund under certain circumstances.⁶

Chapter 348 requires a motor vehicle sales finance dealer to comply with the federal Truth in Lending Act and its implementing rule, Regulation Z.⁷ The Truth in Lending Act applies to creditors that extend consumer credit that is payable in more than four installments or for which a finance charge is required.⁸ The Truth in Lending Act and Regulation Z require a creditor to disclose the

² See Tex. Fin. Code § 348.507 (explaining that a license expires following the license holder's failure to pay the required annual fee).

³ Tex. Fin. Code § 348.001 (defining retail installment contract, retail installment transaction, retail seller, and retail buyer).

⁴ Tex. Fin. Code § 341.502(a).

⁵ Tex. Fin. Code § 341.502(b)-(c); 7 Tex. Admin. Code §§ 84.801-84.808.

⁶ Tex. Fin. Code § 348.102(3).

⁷ Tex. Fin. Code § 348.009(a); 7 Tex. Admin. Code § 84.803.

⁸ Truth in Lending Act, 15 U.S.C. § 1602(g).

amount financed, finance charge, and annual percentage rate related to each retail installment transaction.⁹

During the 2016 examination, the examiner found that Trucks & Cars for Less entered retail installment transactions where it failed to use compliant retail installment contracts. The examiner obtained a copy of a motor vehicle financing contract that Trucks & Cars for Less entered into. This contract is a buyer's order issued by Burrell Printing Co., Inc. with form number bpc #24-4335 1/1/2010.¹⁰

Trucks & Cars for Less's contracts are not model plain-language contracts adopted by rule of the Texas Finance Commission, and have not been submitted to the OCCC for plain-language review. The contracts do not contain conspicuous disclosures regarding blank spaces, the right to a copy of the contract, or the right to pay off in advance. The contracts do not disclose the amount financed, finance charge, or annual percentage rate.

Trucks & Cars for Less violated Chapter 341 of the Finance Code by failing to use compliant plain-language contracts in motor vehicle retail installment transactions. Trucks & Cars for Less violated Chapter 348 by entering retail installment contracts that do not contain disclosures required by Chapter 348. Trucks & Cars for Less violated Chapter 348 of the Finance Code, the Truth in Lending Act, and Regulation Z by failing to disclose the amount financed, finance charge, or annual percentage rate. Trucks & Cars for Less must cease entering retail installment transactions where it fails to use compliant plain-language contracts or fails to make the disclosures required by Chapter 348, the Truth in Lending Act, and Regulation Z.

II. Enforcing Debt Without a Security Interest

Under Chapter 348 of the Finance Code, a dealer must comply with state statutes, including the Texas Business & Commerce Code, in its retail installment transactions. Chapter 9 of the Business & Commerce Code governs the rights of

⁹ Truth in Lending Act, 15 U.S.C. § 1632; Regulation Z, 12 C.F.R. §§ 226.18(b)-(e), 1026.18(b)-(e). The version of Regulation Z located at 12 C.F.R. Part 226 applies to motor vehicle dealers that service vehicles and routinely assign contracts, while the recodified version of Regulation Z located at 12 C.F.R. Part 1026 applies to dealers that do not service vehicles or do not routinely assign contracts. 12 U.S.C. § 5519; 76 Fed. Reg. 79,768 n. 2 (Dec. 22, 2011).

¹⁰ According to Burrell Printing Co., Inc., this buyer's order form "cannot be used as an Installment Contract." <https://www.burrellprinting.com/products/Auto-Dealers/Buyer-s-Orders---Bill-of-Sales/Texas-Buyer-s-Order>

a creditor with an enforceable security interest. If the creditor's security interest is enforceable, then the creditor's remedies under Chapter 9 include taking possession of the collateral after default and accepting the collateral in full satisfaction of the debt. If there is no enforceable security interest, then Chapter 9's remedies are not available to the creditor.

For a security interest to be enforceable, three requirements must be met: (1) value has been given; (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and (3) the debtor has authenticated a security agreement that provides a description of the collateral. A security agreement is an agreement that creates or provides for a security interest.

If a creditor has an enforceable security interest, Chapter 9 of the Business & Commerce Code allows the creditor to dispose of collateral after repossession through a public or private sale.¹¹ The creditor must conduct the sale in a commercially reasonable manner, and must comply with requirements for calculating the surplus or deficiency after the sale.¹² After applying the proceeds of the sale to reasonable expenses and the satisfaction of obligations, the creditor is required to pay the debtor any surplus.¹³ In a consumer transaction, if a creditor disposes of collateral without complying with Chapter 9's requirements, then the creditor is prohibited from seeking a deficiency from the debtor.¹⁴

As described above, during the 2016 examination, the examiner found that Trucks & Cars for Less entered retail installment transactions where it failed to use a compliant retail installment contract. In these transactions, the buyer did not authenticate a security agreement. The contracts used by Trucks & Cars for Less do not contain a security agreement. Because there was no security agreement, there was no enforceable security interest. Nonetheless, Trucks & Cars for Less enforced debts in the manner of a creditor with an enforceable security interest. Trucks & Cars for Less enforced debts by filing liens on motor vehicles.

¹¹ Tex. Bus. & Comm. Code §§ 9.610, 9.611, 9.612, 9.614, 9.615, 9.616, 9.617.

¹² Tex. Bus. & Com. Code §§ 9.610(b), 9.615, 9.616.

¹³ Tex. Bus. & Com. Code §§ 9.608(a)(4), 9.615(d)(1).

¹⁴ *Tanenbaum v. Econ. Lab., Inc.*, 628 S.W.2d 769, 772 (Tex. 1982); see also State Bar Committee Comment to Tex. Bus. & Comm. Code § 9.626 (explaining that Texas law continues to follow the "absolute bar" rule barring a noncomplying creditor from collecting any deficiency in a consumer transaction, despite statutory amendments that partially supersede *Tanenbaum*).

Trucks & Cars for Less violated Chapter 9 of the Business & Commerce Code by enforcing debts without a security interest. Trucks & Cars for Less may not engage in the enforcement activity described by Chapter 9 in any transactions where the buyer has not authenticated a security agreement. To correct this violation, Trucks & Cars for Less must release any current liens for these transactions.

III. Failure to Provide Privacy Notice

The Commissioner issues licenses under Chapter 348 of the Finance Code based on an expectation that the business will be operated in compliance with state and federal law.¹⁵ The federal Gramm-Leach-Bliley Act and its implementing rules require creditors to provide certain initial and annual privacy notices, and a reasonable opportunity and means to opt out of disclosure of their non-public personal information to non-affiliated third parties, when extending consumer credit.¹⁶ Under Chapter 348, federal statutes apply to retail installment transactions.¹⁷

During the 2016 examination, the examiner found that Trucks & Cars for Less failed to provide initial and annual notices, and did not provide buyers with a reasonable opportunity to opt out of disclosure of non-public personal information. By failing to take these actions, Trucks & Cars for Less violated the federal Gramm-Leach-Bliley Act and its implementing rules. To correct this violation, Trucks & Cars for Less must send initial and annual privacy notices to buyers with open accounts.

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,

¹⁵ Tex. Fin. Code § 348.504(a)(1); 7 Tex. Admin. Code § 84.104.

¹⁶ Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6802, 6803, *implemented by* FTC Privacy Rule, 16 C.F.R. Part 313, *and* Regulation P, 12 C.F.R. Part 1016. The FTC Privacy Rule, 16 C.F.R. Part 313, applies to motor vehicle dealers that service vehicles and routinely assign contracts, while Regulation P, 12 C.F.R. Part 1016, applies to dealers that do not service vehicles or do not routinely assign contracts. 12 U.S.C. § 5519; 76 Fed. Reg. 79,026 n. 7 (Dec. 21, 2011).

¹⁷ Tex. Fin. Code § 348.008(b).

or both to enforce compliance.¹⁸ 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.¹⁹

The OCCC may direct a licensee to review records and make appropriate changes to bring the licensee's records into compliance with the law.²⁰ The appropriate changes may include restitution to customers for unlawful charges or unlawful amounts.²¹

Order

IT IS ORDERED that:

1. With respect to using compliant retail installment contracts and making required disclosures:
 - a. Trucks & Cars for Less must cease and desist entering motor vehicle retail installment transactions where it does not use plain-language contracts in accordance with Section 341.502 of the Texas Finance Code. Each contract must be either a model plain-language contracts adopted by rule of the Texas Finance Commission, or a plain-language contract that has been submitted to the OCCC for plain-language review (and has not been disapproved by the OCCC).
 - b. Trucks & Cars for Less must cease and desist entering motor vehicle retail installment transactions where the contract does not contain the disclosures required under Section 348.102 of the Texas Finance Code.
 - c. Trucks & Cars for Less must cease and desist entering motor vehicle retail installment transactions where it does not make the disclosures required by the Truth in Lending Act and Regulation Z.

2. With respect to enforcing debt without a security interest:
 - a. Trucks & Cars for Less must comply with Chapter 9 of the

¹⁸ Tex. Fin. Code § 14.208(a).

¹⁹ Tex. Fin. Code § 14.251(b).

²⁰ 7 Tex. Admin. Code § 84.703.

²¹ 7 Tex. Admin. Code § 84.703.

Texas Business & Commerce Code in all transactions where it enforces a debt.

- b. In any motor vehicle retail installment transactions where it does not have an enforceable security interest, Trucks & Cars for Less must cease and desist all of the following enforcement activities:
 - i. filing liens;
 - ii. holding titles;
 - iii. repossessing vehicles;
 - iv. selling repossessed vehicles in a public or private sale (or otherwise disposing of repossessed vehicles);
 - v. accepting vehicles in full or partial satisfaction of debt; and
 - vi. charging buyers for any deficiencies following the sale of repossessed collateral.
- c. No later than **November 15, 2018**, Trucks & Cars for Less must review all retail installment transactions it entered from March 1, 2013, to the present for any transactions in which Trucks & Cars for Less agreed to accept payments over time but did not enter an enforceable security agreement with the buyer.
- d. No later than **November 15, 2018**, Trucks & Cars for Less must identify each of these transactions where Trucks & Cars for Less currently has a lien filed on the vehicle.
- e. No later than **November 15, 2018**, Trucks & Cars for Less must release any liens on these vehicles. Trucks & Cars for Less may not charge a fee to any buyer for releasing these liens.
- f. No later than **November 15, 2018**, for any transactions where Trucks & Cars for Less releases a lien as described above, if a balance is still owed by the buyer, Trucks & Cars for Less must send a letter to the buyer at the last known address. The letter must state:
 - i. that the lien on the vehicle is being released,
 - ii. that the transaction is an unsecured transaction, but there is still a remaining balance,
 - iii. the dollar amount of the remaining balance, and
 - iv. that Trucks & Cars for Less will continue accepting payments as described in the buyer's contract until the

balance is paid off.

- g. No later than **November 15, 2018**, Trucks & Cars for Less must review all retail installment transactions it entered from March 1, 2013, to the present for any transactions in which Trucks & Cars for Less repossessed a vehicle but did not enter an enforceable security agreement with the buyer.
 - h. No later than **November 15, 2018**, Trucks & Cars for Less must identify each of these transactions where Trucks & Cars for Less failed to pay the buyer any surplus following the sale, and any transactions where Trucks & Cars for Less charged or received a deficiency from the buyer following the sale.
 - i. No later than **November 15, 2018**, Trucks & Cars for Less must refund any surplus that it failed to pay the buyer in these transactions, and must refund any deficiency that it charged or received from the buyer following the sale.
3. With respect to privacy notices:
- a. Trucks & Cars for Less must cease and desist failing to provide initial privacy notices, annual privacy notices, and a reasonable opportunity to opt out in accordance with the Gramm-Leach-Bliley Act and its implementing rules.
 - b. No later than **November 15, 2018**, Trucks & Cars for Less must review all retail installment transactions it entered from March 1, 2013, to the present for any transactions in which Trucks & Cars for Less failed to provide an initial privacy notice.
 - c. No later than **November 15, 2018**, Trucks & Cars for Less must send a compliant initial privacy notice that accurately describes its practices to each of these buyers.
4. With respect to maintaining proof of refunds, release of liens, and correspondence:
- a. Trucks & Cars for Less must maintain documentation of the return of any titles, documentation of the release of any liens, and any correspondence with the buyer until the latest of the following:
 - i. the OCCC's next examination or investigation of Trucks & Cars for Less,

- ii. the fourth anniversary of the date of the retail installment transaction, or
 - iii. the second anniversary of the date on which the final entry is made in the buyer's record.
- b. Trucks & Cars for Less 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 latest of the following:
 - i. the OCCC's next examination or investigation of Trucks & Cars for Less,
 - ii. the fourth anniversary of the date of the retail installment transaction, or
 - iii. the second anniversary of the date on which the final entry is made in the buyer's record.²²
- c. No later than **November 22, 2018**, Trucks & Cars for Less must create a spreadsheet labeled "L18-00047TrucksCarsforLessRestitution." The spreadsheet must clearly list the total amount of refunds provided to buyers. In addition, the spreadsheet must list each buyer who received refunds, a release of lien, or a privacy notice as described above. 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. dollar amount of any surplus or deficiency amount refunded to the buyer as described above;
 - v. date of the refund;
 - vi. form of the refund (i.e. check for closed account, and credit on open account);
 - vii. date on which Trucks & Cars for Less released the lien, if applicable;
 - viii. date of any letter to the buyer stating the new balance, as described above; and
 - ix. date that Trucks & Cars for Less sent a privacy notice to the buyer.

²² See Tex. Fin. Code § 348.517(b); 7 Tex. Admin. Code § 84.704(b), (g).

- d. No later than **November 22, 2018**, Trucks & Cars for Less must provide the OCCC with a copy of the spreadsheet. The spreadsheet must be sent by e-mail to Matthew Nance at matthew.nance@occc.texas.gov.

Violation of Order

Trucks & Cars for Less may be assessed an administrative penalty of up to \$1,000 for each day of violation of this Order.²³

Right to Request Hearing

Trucks & Cars for Less has the right to request a hearing regarding this Order.²⁴ Trucks & Cars for Less's request must be made in writing and sent to the OCCC not later than 30 days after Trucks & Cars receives this Order. Trucks & Cars for Less must send its request to:

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

If Trucks & Cars for Less requests a hearing, a hearing on this matter will be set and conducted in accordance with Chapter 2001 of the Texas Government Code.²⁵ If Trucks & Cars for Less fails to request a hearing by this deadline, this Order is considered final and enforceable.²⁶

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.

²³ Tex. Fin. Code § 14.208(c).

²⁴ Tex. Fin. Code § 14.208(b).

²⁵ Tex. Fin. Code § 14.208(b).

²⁶ Tex. Fin. Code § 14.208(c).

Signed this 28th day of September, 2018.

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

CERTIFICATE OF SERVICE

I certify that on the October 1, 2018, a true and correct copy of this Order to Cease and Desist, to Take Affirmative Action, and to Make Restitution has been sent Rahman Investment Group Inc. d/b/a Trucks & Cars for Less by regular mail and certified mail, return receipt requested, at:

CMRRR # 91 7199 9991 7038 3509 9835
Rahman Investment Group Inc.
d/b/a Trucks & Cars for Less
Attn: Ziyad Rahman, Compliance Officer
14002 Bammel N. Houston
Houston, TX 77014

CMRRR # 91 7199 9991 7038 3509 9828
Rahman Investment Group Inc.
d/b/a Trucks & Cars for Less
Attn: Ziyad Rahman, Registered Agent
6423 Oakmont Creek Dr.
Spring, TX 77379

/s/ Matthew Nance
Matthew J. Nance
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