

OCCC CASE NO. L19-00182

IN THE MATTER OF:	§	BEFORE THE
	§	
	§	OFFICE OF CONSUMER
MASTER FILE NUMBER: 4502	§	
CARPLEX MOTORS, LLC	§	CREDIT COMMISSIONER
4608 NOLDA	§	
HOUSTON, TEXAS 77007	§	STATE OF TEXAS

ORDER TO MAINTAIN MINIMUM NET ASSETS NUNC PRO TUNC

The Office of Consumer Credit Commissioner (“OCCC”) issues this Order to Maintain Minimum Net Assets Nunc Pro Tunc against Carplex Motors, LLC (“Carplex”).¹

Clerical Error

This Nunc Pro Tunc Order is issued by the OCCC to correct a clerical error in the original Order to Maintain Minimum Net Assets that was served on Carplex on April 8, 2019. In footnotes 4, 5 and 6, the original order cites implementing rules for a net asset violation in Title 7 Texas Administrative Code Section 89.301(1). The corrected citation for implementing rules for regulated lenders is Title 7 Texas Administrative Code Section 83.301(1). Footnotes 7, 8, and 9 now cite Title 7 Texas Administrative Code Section 83.301(1).

A Nunc Pro Tunc Order may be issued to correct a clerical error.² Although a Nunc Pro Tunc Order is signed after an original order, the effect of a Nunc Pro Tunc Order relates back to the date the original order was signed.³ Therefore, any deadlines from the original order remain in place. If you fail to request a hearing by the deadline identified in the original Order dated April 8, 2019, this Order is considered final and enforceable.⁴

¹ Tex. Fin. Code § 14.208.

² Tex. R. Civ. P. 316

³ *Daniels v. Comm'n for Lawyer Discipline*, 142 S.W.3d 565, 573 (Tex. App. – Texarkana 2004); *Gen. Elec. Co. v. Canyon City Ice & Light Co.*, 136 S.W. 78, 79 (Tex. Civ. App. 1911).

⁴ Tex. Fin. Code § 14.208(c).

Statement of Facts and Law

Carplex is a regulated lender licensed by the OCCC under Chapter 342 of the Texas Finance Code. Carplex operates under master file number 4502 at two licensed locations, under license numbers 63556 and 35907. Carplex's compliance officer is Barry B. Spencer, and its designated contact address is 4608 Nolda, Houston, Texas 77007.

A regulated lender must report its minimum net asset within its annual report with the Consumer Credit Commissioner ("Commissioner").⁵ A regulated lender must maintain for each office for which a license is held net assets of at least \$25,000 that are used or readily available for use in conducting the business of that office.⁶

Net assets are the total value of acceptable assets used or designated as readily available for use in the business, less liabilities, other than those liabilities secured by unacceptable assets.⁷ Unacceptable assets include, but are not limited to, goodwill, unpaid stock subscriptions, lines of credit, notes receivable from an owner, property subject to the claim of homestead or other property exemption and encumbered real or personal property to the extent of the encumbrance.⁸ Generally, assets are available for use if they are readily convertible to cash within 10 business days.⁹

The balance sheet submitted by Carplex with its 2017 annual report shows the company has a net asset that is below the requirement. On September 5, 2018, the OCCC sent a letter to Carplex instructing to either correct the balance sheet if an error was made, or to transfer enough assets to the business to meet the net assets requirement. The letter instructed Carplex to submit a corrected balance sheet and documentation supporting all changes. As of the date of this Order, the OCCC has not received the requested information.

The Commissioner may issue an injunction ordering a regulated lender to report and maintain the required net asset minimum if the Commissioner has reasonable cause to believe that the regulated lender is violating Chapter 342 of

⁵ Tex. Fin. Code § 342.559.

⁶ Tex. Fin. Code § 342.153(a).

⁷ 7 Tex. Admin. Code § 83.301(1).

⁸ 7 Tex. Admin. Code § 83.301(1).

⁹ 7 Tex. Admin. Code § 83.301(1).

the Texas Finance Code.¹⁰ The Commissioner has reasonable cause to believe that Carplex is violating Chapter 342 of the Texas Finance Code, and therefore issues this Order, because Carplex failed to maintain minimum net asset requirements.

Order

IT IS ORDERED that Carplex Motors, LLC:

1. cease and desist from violating, and comply with the requirements set forth in 342.153(a) of the Texas Finance Code;
2. submit a new balance sheet with documents supporting all changes within 30 days of service of this Order, if it has not already done so; and
3. file timely, complete, and accurate annual reports reflecting compliance with the minimum net asset requirement.

Violation of Order

You may be assessed an administrative penalty of up to \$1,000 for each day of violation of this Order.¹¹ Multiple violations may also result in the suspension or revocation of your license.¹²

Right to Request Hearing

You have the right to request a hearing regarding this Order.¹³ Your request must be made in writing and sent to the OCCC not later than 30 days after you received the Order dated April 8, 2019. You must send your request to:

Alexandra Gullett
Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, Texas 78705

¹⁰ Tex. Fin. Code § 14.208.

¹¹ Tex. Fin. Code § 14.208(c).

¹² Tex. Fin. Code § 342.156(2).

¹³ Tex. Fin. Code § 14.208(b).

If you request a hearing, a hearing on this matter will be set and conducted in accordance with Chapter 2001 of the Texas Government Code.¹⁴ If you fail to request a hearing by this deadline, this Order is considered final and enforceable.¹⁵

All communications with the OCCC concerning this matter must be through Alexandra Gullett, Assistant General Counsel, who may be contacted by mail at 2601 N. Lamar Blvd., Austin, Texas 78705, by telephone at (512) 936-7659, or by email to alexandra.gullett@occc.texas.gov.

Signed this 9th day of May, 2019.

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

¹⁴ Tex. Fin. Code § 14.208(b).

¹⁵ Tex. Fin. Code § 14.208(c).

CERTIFICATE OF SERVICE

I certify that on May 9, 2019, a true and correct copy of this Order to Maintain Minimum Net Assets Nunc Pro Tunc has been sent to Carplex Motors, LLC by regular mail and certified mail, return receipt requested, at:

CMRRR: 91 7199 9991 7037 4758 9097
Carplex Motors, LLC
Attn: Barry B. Spencer, Compliance Officer
4608 Nolda
Houston, Texas 77007

CMRRR: 91 7199 9991 7037 4758 9103
Carplex Motors, LLC
Attn: Sean Anderson, Registered Agent
4608 Nolda
Houston, Texas 77007

/s/Alexandra Gullett
Alexandra L. Gullett
Assistant General Counsel
Office of Consumer Credit Commissioner
State Bar No. 24101840
2601 North Lamar Blvd.
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(512) 936-7659
(512) 936-7610 (fax)
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