

OCCC CASE NO. L19-00051

IN THE MATTER OF:	§	BEFORE THE
	§	
MASTER FILE NO.: 1600055684	§	OFFICE OF CONSUMER
D A AUTO SALES INC.	§	
d/b/a D A AUTO SALEZ	§	CREDIT COMMISSIONER
2620 N. I-35 E.	§	
LANCASTER, TEXAS 75134	§	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 D A Auto Sales Inc. d/b/a D A Auto Salez (“D A Auto Salez”), 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

D A Auto Salez is a motor vehicle dealer that does not hold a license with the OCCC. D A Auto Salez is located at 2620 N. I-35 E., Lancaster, Texas 75134. According to records filed with the Texas Secretary of State, D A Auto Salez’ president and registered agent is Andre Gilbert Jr., 330 E. Camp Wisdom Rd. #12102, Dallas, Texas 75241.

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.

In 2016, D A Auto Salez began a license application with the OCCC, under master file number 1600055684. D A Auto Salez did not complete the application and did not pay the required application fee. The application lists Andre Gilbert Jr. as the compliance officer, and lists the following address for the business: 2620 N. Beckley St., Lancaster, Texas 75134.

In July 2017, the OCCC received a complaint against D A Auto Salez, alleging that D A Auto Salez failed to complete title work after the consumer paid off a vehicle by making six monthly payments. Based on this complaint, the OCCC conducted an investigation of D A Auto Salez for unlicensed activity. On February 20, 2018, the OCCC obtained records of transactions from D A Auto Salez. These records show that in 2017, D A Auto Salez entered at least six transactions where D A Auto Salez sold a motor vehicle and agreed to accept the cash price in deferred installments. The OCCC also identified transactions where D A Auto Salez filed liens on motor vehicles. On May 9, 2018, the OCCC's licensing department sent a letter to D A Auto Salez, explaining that D A Auto Salez must file a complete license application and obtain a license under Chapter 348. D A Auto Salez has not filed a complete license application with the OCCC and has not obtained a license.

By acting as a holder in motor vehicle retail installment transactions without a motor vehicle sales finance license, D A Auto Salez 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.⁵ 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.⁶

The Commissioner has reasonable cause to believe that D A Auto Salez has violated Chapter 348 of the Texas Finance Code by acting as a holder in

⁵ Tex. Fin. Code § 14.208(a).

⁶ Tex. Fin. Code § 14.251(b).

motor vehicle retail installment transactions without a motor vehicle sales finance license.

Order

IT IS ORDERED that:

1. D A Auto Salez 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. D A Auto Salez 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. D A Auto Salez 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**, D A Auto Salez must perform a self-review and identify each motor vehicle retail installment transaction that D A Auto Salez has entered, including each sale of a motor vehicle in which:
 - a. D A Auto Salez entered a retail installment contract;
 - b. D A Auto Salez accepted payments in one or more deferred installments; or
 - c. D A Auto Salez held a lien.
5. **No later than October 15, 2019**, D A Auto Salez must refund any finance charges that it charged or received from any retail buyers.
6. **No later than October 15, 2019**, D A Auto Salez must release any liens that are currently filed on any motor vehicles in D A Auto Salez' name. D A Auto Salez may not charge a fee to any buyer for releasing these liens.
7. **No later than October 15, 2019**, D A Auto Salez 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. D A Auto Salez 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.⁷
 - b. D A Auto Salez 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**, D A Auto Salez must create a spreadsheet labeled "L19-00051DAAutoSalezRestitution." 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 D A Auto Salez provided restitution or released a lien as described above, and each retail installment transaction that D A Auto Salez 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 D A Auto Salez released the lien, if applicable; and

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

ix. name of any creditor that D A Auto Salez assigned the transaction to, if applicable.

d. **No later than October 15, 2019**, D A Auto Salez 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

D A Auto Salez may be assessed an administrative penalty of up to \$1,000 for each day of violation of this Order.⁸

Right to Request Hearing

D A Auto Salez has the right to request a hearing regarding this Order.⁹ D A Auto Salez request must be made in writing and sent to the OCCC not later than 30 days after D A Auto Salez receives this Order. D A Auto Salez must send its request to:

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

If D A Auto Salez requests a hearing, a hearing on this matter will be set and conducted in accordance with Chapter 2001 of the Texas Government Code.¹⁰ If D A Auto Salez fails to request a hearing by this deadline, this Order is considered final and enforceable.¹¹

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.

⁸ Tex. Fin. Code § 14.208(c).

⁹ Tex. Fin. Code § 14.208(b).

¹⁰ Tex. Fin. Code § 14.208(b).

¹¹ Tex. Fin. Code § 14.208(c).

Signed this 28th day of August, 2019.

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

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 D A Auto Sales Inc. d/b/a D A Auto Salez by the following:

D A Auto Sales Inc.
d/b/a D A Auto Salez
Attn: Andre Gilbert Jr., President;
Thaddeus Underwood, Office Manager
2620 N. I-35 E.
Lancaster, Texas 75134
da_autos1@yahoo.com

- hand-delivery
- facsimile
- electronic mail
- regular mail
- certified mail, return receipt requested
#91 7199 9991 7037 5165 2916

D A Auto Sales Inc.
d/b/a D A Auto Salez
Attn: Andre Gilbert Jr., Compliance
Officer
2620 N. Beckley St.
Lancaster, Texas 75134

- hand-delivery
- facsimile
- electronic mail
- regular mail
- certified mail, return receipt requested
#91 7199 9991 7037 5165 2923

D A Auto Sales Inc.
d/b/a D A Auto Salez
Attn: Andre Gilbert Jr., Registered Agent
330 E. Camp Wisdom Rd. #12102
Dallas, Texas 75241

- hand-delivery
- facsimile
- electronic mail
- regular mail
- certified mail, return receipt requested
#91 7199 9991 7037 5165 2930

/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