

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

OFFICE OF FINANCIAL REGULATION,

Petitioner,

vs.

Case No. 15-6961

SOHAIL ENTERPRISES, INC., d/b/a  
SAM'S CAR,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on March 11, 2016, via video teleconference in Pensacola and Tallahassee, Florida, before Garnett W. Chisenhall, a duly-designated Administrative Law Judge of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Scott Anthony Tavolieri, Esquire  
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For Respondent: Mirza A. Ahman, pro se  
Sohail Enterprises, Inc.  
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STATEMENT OF THE ISSUE

Whether Respondent violated certain provisions within chapter 520, Florida Statutes (2010),<sup>1/</sup> as alleged in Petitioner's Administrative Complaint; and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On September 8, 2015, the Office of Financial Regulation ("OFR") issued a four-count Administrative Complaint alleging that Sohail Enterprises, Inc., d/b/a Sam's Car ("Sam's Car" or "Respondent"), violated certain provisions within chapter 520 by: (1) failing to have all statutorily-required items in its motor vehicle retail installment contracts; (2) collecting late fees in excess of the maximum amount allowed; (3) failing to maintain documentation of refunds due to customers for surplus tag and title charges; and (4) selling motor vehicles on installment payments without having a motor vehicle retail installment license.

Mirza A. Ahmad, the president of Sam's Car, responded to OFR's Administrative Complaint by disputing the allegations therein and requesting a formal administrative hearing.

The case was referred to DOAH, and the undersigned scheduled a final hearing for February 16, 2016. However, on January 27, 2016, OFR filed an unopposed Motion for Continuance asking that the final hearing be continued because two of its key witnesses were unavailable to testify on February 16, 2016. The undersigned granted the aforementioned Motion and re-scheduled the final hearing to occur on March 11, 2016.

Sam's Car filed a Motion for Summary Judgment on March 4, 2016, and OFR responded on March 8, 2016.

The final hearing took place as scheduled on March 11, 2016. The undersigned addressed Sam's Car's Motion for Summary Judgment at the outset and noted that a Motion for Summary Judgment was an unauthorized pleading in cases conducted pursuant to Florida Administrative Code Chapter 28-106. In addition, even if Sam's Car's Motion for Summary Judgment were to be construed as a motion to relinquish jurisdiction, the undersigned was unable to definitively ascertain at the outset of the final hearing whether there were no material facts in dispute. Accordingly, the undersigned deferred ruling on Sam's Car's Motion for Summary Judgment, and the Final Hearing proceeded.

During the final hearing, OFR presented testimony from six witnesses, and OFR's Exhibits 1 through 35 were accepted into evidence. Sam's Car presented testimony from three witnesses, and Sam's Car's Exhibits A through P were accepted into evidence.

The proceedings were recorded and a one-volume Transcript was filed with DOAH on April 14, 2016. The Parties filed Proposed Recommended Orders that were carefully considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Sam's Car is a motor vehicle retail installment seller based in Pensacola, Florida, and is governed by chapter 520.

2. Mirza Ahmad is the president and 50-percent owner of Sam's Car.

3. Between January 7, 2009, and December 31, 2010, Sam's Car held license number MV0902721 enabling it to conduct business as a motor vehicle retail installment seller. In other words, Sam's Car could offer financing so that its customers could purchase vehicles through installment payments.

4. At some point in 2010, Mr. Ahmad decided to convert the sole proprietorship named Mirza Aftab Ahmad, d/b/a Sam's Car, into a corporation named Sohail Enterprises, Inc., d/b/a Sam's Car.

5. If a sole proprietorship licensed as a motor vehicle retail installment seller wishes to convert to a corporation, the new corporation must file a new application to be licensed as a motor vehicle retail installment seller. Accordingly, Mr. Ahmad filed an application in December of 2010 for a motor vehicle retail installment seller's license on behalf of Sohail Enterprises, Inc., d/b/a Sam's Car.

6. Mr. Ahmad did not renew license number MV0902721, and the license went into inactive status on December 31, 2010.

7. Sam's Car could not enter into retail installment contracts with an inactive license.

8. OFR ultimately issued license number MV9905731 to Sohail Enterprises, Inc., d/b/a Sam's Car, and that license became effective on March 16, 2011.

9. Sam's Car never moved to re-activate license number MV0902721, and OFR deemed that license to have retroactively expired on December 31, 2010.

10. Sam's Car was not licensed to enter retail installment sales contracts between January 1, 2011, and March 15, 2011.

11. OFR licenses motor vehicle retail installment sellers such as Sam's Car and is responsible for ensuring that licensees comply with chapter 520. OFR may conduct examinations and investigations to determine whether any provision of chapter 520 has been violated.

12. In March of 2014, OFR contacted Mr. Ahmad and notified him that OFR would soon be conducting an on-site examination of Sam's Car.

13. During an on-site examination, OFR examiners visit a motor vehicle retail installment seller's office, identify themselves, and examine various records in order to verify that the licensee complied with chapter 520 during the time period in question.

14. OFR examiners arrived at Sam's Car on March 19, 2014, and spent approximately six hours examining and scanning particular records of Sam's Car.

15. The examiners began by requesting that the office manager of Sam's Car provide them with all the motor vehicle installment contracts that Sam's Car had entered into in 2011 and 2012 ("the examination period").

16. Some of the requested records were at Mr. Ahmad's home rather than at Sam's Car. Accordingly, one of the examiners returned to Sam's Car on April 9, 2014, to scan those documents after they had been retrieved from Mr. Ahmad's home.

17. The examiners reviewed 20 to 25 records from Sam's Car and determined that several of the sales contracts utilized by Sam's Car were not the form contract that had been approved as an industry standard by the Florida Independent Auto Dealer Association.

18. There was a period of time during the examination period when Sam's Car was utilizing a sales contract that it had essentially created from scratch.

19. The examiners determined that the sales contracts in question did not have several of the items required by chapter 520.

20. On September 5, 2015, OFR issued an Administrative Complaint alleging that Sam's Car violated four provisions within chapter 520. In Count I, OFR alleged that Sam's Car violated section 520.07, Florida Statutes, by failing to ensure that all motor vehicle retail installment contracts executed by Sam's Car during the examination period satisfied all of the requirements of section 520.07. The contracts reviewed by OFR allegedly failed to contain the "Notice to Buyer," the "total amount of payments," and a specific statement that liability coverage is not included. OFR further alleged in Count I that several of the contracts failed to ensure that the contract had been signed by the buyer and the seller. Finally, OFR also alleged in Count I that there were two instances in which Sam's Car failed to ensure that the contract was completed before it was signed.

21. OFR alleged in Count II that several of the reviewed contracts violated section 520.07(6) by enabling Sam's Car to

collect delinquency/collection charges or late fees in excess of five percent of the installment payment due.

22. In Count III, OFR alleged that Sam's Car violated section 520.07(3), and Florida Administrative Code Rules 69V-50.001 and 69V-50.002 because there were instances in which Sam's Car had failed to document that it refunded or credited title charges collected from the buyer that exceeded the actual charges.

23. Finally, OFR alleged in Count IV that Sam's Car violated section 520.03(1) by selling motor vehicles on installment payments between January 1, 2011, and March 16, 2011, without an active license.

24. The following findings are based on the documentary evidence and testimony received at the final hearing conducted on March 11, 2016.

25. OFR proved by clear and convincing evidence that the retail installment sales contracts in OFR Exhibits 1 through 20 do not have the notice to buyer required by section 520.07(1)(b).

26. OFR proved by clear and convincing evidence that the retail installment sales contracts in OFR Exhibits 1 through 20 do not have the specific statement about liability insurance coverage required by section 520.07(1)(b).



27. OFR proved by clear and convincing evidence that the retail installment sales contracts in OFR Exhibits 1 through 20 do not set forth the "total of payments" as required by section 520.07(2)(c).

28. OFR proved by clear and convincing evidence that the retail installment sales contracts in OFR Exhibits 6 through 8, 11, and 14 through 18 were not signed by the seller as required by section 520.07(1)(a).

29. OFR proved by clear and convincing evidence that the retail installment sales contracts in OFR Exhibits 18 and 20 were not complete prior to being signed as required by section 520.07(1)(a).

30. In sum, OFR proved all of the allegations in Count I of its Administrative Complaint by clear and convincing evidence.

31. With regard to Count II, OFR proved by the clear and convincing evidence set forth in OFR Exhibits 6, 7, and 21 that Sam's Car violated section 520.07(6) by collecting a delinquency/collection charge in excess of five percent of each installment.

32. As for Count III, OFR proved by the clear and convincing evidence set forth in OFR Exhibits 1 and 14 that there were two occasions during the examination period when Sam's Car did not refund the overcharges on the estimated title,

tag, and registration fees. Accordingly, OFR proved that Sam's Car violated rule 69V-50.

33. With regard to Count IV, OFR proved by the clear and convincing evidence set forth in OFR Exhibits 22, through 25 that Sam's Car violated section 520.03(1), by entering into retail installment contracts with four separate buyers during the period when Sam's Car did not have a motor vehicle retail installment seller's license (i.e., January 1, 2011, through March 15, 2011).

34. Even though OFR proved the allegations in its Administrative Complaint by clear and convincing evidence, there was no indication that those responsible for Sam's Car's operations intentionally committed the aforementioned violations.

35. Instead, the testimony presented at the final hearing demonstrated that the violations resulted from inadvertence and/or an incomplete understanding of chapter 520's requirements.

#### CONCLUSIONS OF LAW

36. DOAH has jurisdiction over the subject matter and the parties to this action in accordance with sections 120.569 and 120.57(1), Florida Statutes (2015).

37. In this case, OFR is seeking to impose a fine. Accordingly, OFR bears the burden of proof and must establish its case by clear and convincing evidence.

Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932, 935 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 291 (Fla. 1987).

38. Clear and convincing evidence "requires more proof than a 'preponderance of the evidence' but less than 'beyond and to the exclusion of a reasonable doubt.'" In re Graziano, 696 So. 2d 744, 753 (Fla. 1997). As stated by the Florida Supreme Court:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the facts in issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)). "Although this standard of proof may be met where the evidence is in conflict, it seems to preclude evidence that is ambiguous." Westinghouse Electric Corp. v. Shuler Bros., 590 So. 2d 986, 989 (Fla. 1991).

39. Section 520.996 provides that OFR may,  
at intermittent periods, make such  
investigations and examinations of any

licensee or other person as it deems necessary to determine compliance with this chapter. For such purposes, it may examine the books, accounts, records, and other documents or matters of any licensee or other person. It shall have the power to compel the production of all relevant books, records, and other documents and materials relative to an examination or investigation.

40. Section 520.02(17) defines "retail installment contract" or "contract" to mean:

an agreement, entered into in this state, pursuant to which the title to, or a lien upon the motor vehicle, which is the subject matter of a retail installment transaction, is retained or taken by a seller from a retail buyer as security, in whole or in part, for the buyer's obligation.

41. Section 520.995(1)(a) provides that failure to comply with any provision of chapter 520 constitutes grounds for disciplinary action. Such action includes (but is not limited to) licensure suspension, licensure revocation, or an administrative fine not to exceed \$1,000 per violation.

42. With regard to the instant case, section 520.07 provides in pertinent part that:

(1)(a) A retail installment contract shall be in writing, shall be signed by both the buyer and the seller, and shall be completed as to all essential provisions prior to the signing of the contract by the buyer.

(b) The printed portion of the contract, other than instructions for completion, shall be in at least 6-point type. The contract shall contain:

1. A specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included, if that is the case; and
2. The following notice in substantially this form:

Notice to the Buyer

- a. Do not sign this contract before you read it or if it contains any blank spaces.
- b. You are entitled to an exact copy of the contract you sign. Keep it to protect your legal rights.

\* \* \*

(2) The contract shall contain the following:

\* \* \*

(c) Total of payments. - The "total of payments," using that term, and a descriptive explanation such as "the amount you will have paid when you have made all scheduled payments."

\* \* \*

(7) No retail installment contract shall be signed by any party thereto when it contains blank spaces to be filled in after it has been signed.

43. OFR proved the allegations under Count I by clear and convincing evidence.

44. With regard to Count II, section 520.07(6) provides that the holder of a retail installment contract "may, if the contract or refinancing agreement so provides, collect a delinquency and collection charge on each installment in default

for a period not less than 10 days in an amount not in excess of 5 percent of each installment.”

45. OFR proved by clear and convincing evidence that Sam’s Car violated section 520.07(6).

46. With regard to Count III, rule 69V-50.001 provides that:

Other than the items and charges properly included as part of the cash price as defined in Section 520.02(2), F.S., the following are the only charges permitted to be made by the retail installment seller. All authorized charges are permitted only to the extent they are actually paid, used, or disbursed for the purposes stated.

(1) Charges for taxes, prescribed by law, to the extent same are not included as part of the cash price.

(2) Charges for official fees as defined in Section 520.02(9), F.S., and charges for licenses and other fees prescribed by law.

47. OFR proved by clear and convincing evidence that Sam’s Car violated rule 69V-50.001.

48. As for Count IV, section 520.03(1) provides that “[a] person may not engage in the business of a motor vehicle retail installment seller or operate a branch of such business without a license as provided in this section . . . .”

49. OFR proved by clear and convincing evidence that Sam’s Car violated section 520.03(1).

50. Sam's Car raised various arguments in the course of its defense, and those arguments will be addressed below.

51. For example, with regard to Count I, Sam's Car asserts that the pertinent records were stolen by a former employee in November of 2014. However, this argument is meritless because OFR's review occurred in March of 2014.

52. Because OFR scanned Sam's Car's records during the examination conducted in March of 2014, Sam's Car argues that OFR violated provisions within the federal and state constitutions providing that people shall be secure in their papers and protected from unreasonable searches and seizures. However, section 520.996(1)(a) gives OFR the authority to examine a licensee's records to verify compliance with chapter 520. See § 520.996(1)(a), Fla. Stat. (providing that "[t]he office or its agent may, at intermittent periods, make such investigations and examinations of any licensee or other person as it deems necessary to determine compliance with this chapter. For such purposes, it may examine the books, accounts, records, and other documents or matters of any licensee or other person. It shall have the power to compel the production of all relevant books, records, and other documents and materials relative to an examination or investigation.").

53. Also, to the extent that Sam's Car is arguing that section 520.996 is unconstitutional; the undersigned lacks the

authority to declare a statute unconstitutional. See generally Key Haven Associated Enters. v. Bd. of Trs., 427 So. 2d 153, 157 (Fla. 1982) (noting that the facial constitutionality of a statute may not be decided in an administrative proceeding).

54. With regard to Counts II and III, Sam's Car asserted that it never retained any late fees that it collected, any title transfer charges, or registration charges. Rather than absolving Sam's Car of the violations at issue, those assertions pertain to mitigating any disciplinary action based on those violations.

55. As for Count IV, Sam's Car asserts that motor vehicle retail installment seller license number MV0902721 held by Mirza Aftab Ahmad, d/b/a Sam's Car, between January 7, 2009, and December 31, 2010, never expired because a timely application was made for a new license. In support of this argument, Sam's Car cites 5 U.S.C.S. § 558. However, that federal statute is inapplicable to this proceeding which involves the enforcement of state law.

56. Finally, Sam's Car argues that the charges should be dismissed because OFR offers no training (or inadequate training) as to how licensees can comply with the requirements of chapter 520. However, the statutory requirements at issue in this proceeding are clear, and it is well-established that ignorance of the law is no excuse. See generally Hall v. Human Hosp. Daytona Beach, 686 So. 2d 653, 657 (Fla. 5th DCA 1996) (noting



that "[e]very man is supposed to know the law, and if he voluntarily makes a payment which the law would not compel him to make, he cannot afterwards assign his ignorance of the law as a reason why the state should furnish him with legal remedies to recover it.").

57. With regard to the penalty to be imposed for Sam's Car's violations, rule 69V-85.111 is the relevant disciplinary guidelines rule and provides that the minimum penalty for violating various provisions within chapter 520 "is a reprimand and/or a fine up to \$1,000 per act or separate offense."

58. OFR is seeking to impose a \$3,500 fine which is far below the maximum fine that could be imposed. Nevertheless, certain factors justify a lower fine. Those factors include the lack of any intent on the part of Sam's Car to commit the violations at issue, the lack of any evidence of consumer harm, and the lack of any evidence that Sam's Car has a prior disciplinary history.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Office of Financial Regulation enter a final order imposing a \$1,000 administrative fine on Sohail Enterprises, Inc., d/b/a Sam's Car.

DONE AND ENTERED this 16th day of May, 2016, in  
Tallahassee, Leon County, Florida.

*Garnett Chisenhall*

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G. W. CHISENHALL  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 16th day of May, 2016.

ENDNOTE

<sup>1/</sup> Unless indicated otherwise, all statutory references are to  
the 2010 version of the Florida Statutes.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.