

00-632-CD
COMMONWEALTH OF PENNSYLVANIA -vs- FERDIN E. WALLACE et al

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

(1) COMMONWEALTH OF PENNSYLVANIA
ACTING BY ATTORNEY GENERAL
D. MICHAEL FISHER

CIVIL ACTION - EQUITY

PETITIONER

NO. 2000-632-CO

v.

(2) FERDIN E. WALLACE and SHERRY L.
SMITH, individually and d/b/a
(3) WALLACE AUTO SALES
1117 OLD TOWN ROAD
CLEARFIELD, PA 16830

**ASSURANCE OF
VOLUNTARY COMPLIANCE**

RESPONDENTS

FILED

MAY 30 2000

William A. Shaw
Prothonotary

COUNSEL FOR PETITIONER
MARGIE A. ANDERSON
DEPUTY ATTORNEY GENERAL
ATTORNEY I.D. NUMBER 79513
OFFICE OF ATTORNEY GENERAL
BUREAU OF CONSUMER PROTECTION
EBENSBURG REGIONAL OFFICE
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EBENSBURG, PA 15931
(814) 949-7900

COUNSEL FOR RESPONDENTS
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215 EAST LOCUST STREET
CLEARFIELD, PA 16830
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

COMMONWEALTH OF PENNSYLVANIA :
ACTING BY ATTORNEY GENERAL :
D. MICHAEL FISHER : CIVIL ACTION - EQUITY

PETITIONER :

NO. 2000 -

v. :

FERDIN E. WALLACE and SHERRY L. :
SMITH, individually and d/b/a :
WALLACE AUTO SALES :
1117 OLD TOWN ROAD :
CLEARFIELD, PA 16830 :

RESPONDENTS :

ASSURANCE OF VOLUNTARY COMPLIANCE

WHEREAS, the Commonwealth of Pennsylvania, acting by Attorney General D. Michael Fisher, through the Bureau of Consumer Protection (hereinafter "Commonwealth"), has caused an investigation to be made into the business practices of Ferdin E. Wallace and Sherry L. Smith, individually, and Ferdin E. Wallace and Sherry L. Smith, d/b/a Wallace Auto Sales (hereinafter "Respondents");

WHEREAS, the Respondents have engaged in trade and commerce within the Commonwealth of Pennsylvania through the advertisement for sale, sale and financing

of used motor vehicles to the general public from a principal place of business of 1117
Old Town Road, Clearfield, PA 16830;

WHEREAS, based upon its investigation the Commonwealth believes that the Respondents have engaged in conduct violative of the Unfair Trade Practices and Consumer Protection Law, 73 P.S. §201-1, *et seq.*, (hereinafter referred to as the "Consumer Protection Law") as follows:

1. By selling vehicles to consumers on an installment basis without first registering with the Department of Banking, as required by the "Motor Vehicle Sales Finance Act", 69 P.S. §601, *et seq.*
2. By failing to prepare and display on motor vehicles either the Buyers Guide disclosure form as required by the Buyers Guide Rule, 16 C.F.R. § 455, *et seq.* or the notice in compliance with the Auto Regulations, 37 Pa. Code §301.4, *et seq.*
3. By failing to include an itemized list of charges for documentary preparation which are not included in the purchase price, as required by the Auto Regulations, 37 Pa. Code §301.4(a)(2)(iv).
4. By misrepresenting to consumers the amount of notary fees permitted to be charged for notarization of title.

WHEREAS, the Commonwealth agrees to accept this Assurance of Voluntary Compliance pursuant to §201-5 of the Consumer Protection Law in lieu of commencing statutory proceedings pursuant to §201-4 thereof;

WHEREAS, under the Consumer Protection Law this Assurance of Voluntary

Compliance shall not be construed as an admission of a violation for any purpose;

NOW THEREFORE, while engaged in the offering for sale of motor vehicles or in any other way conducting the aforementioned business, or a similar business within the Commonwealth of Pennsylvania, Respondents agree from the date of the execution of this Assurance of Voluntary Compliance for themselves, their heirs, their administrators, successors, assigns, agents, employees and all persons acting on their behalf, directly or through any corporate or other business device as follows:

- I. Respondents shall be registered with the Department of Banking in accordance with the "Motor Vehicle Sales Finance Act", 69 P.S. §604, at all times while arranging financing for vehicles purchased.
- II. Respondents shall otherwise fully comply with the "Motor Vehicle Sales Finance Act", 69 P.S. §601, *et seq.*, while contracting to sell motor vehicles to consumers on an installment basis.
- III. Respondents shall prepare and display on motor vehicles either the Buyers Guide disclosure form, 16 C.F.R. §455.2(a) or the notice in compliance with the Auto Regulations, 37 Pa. Code §301.1, *et seq.*
- IV. Respondents shall provide to consumers the original Buyers Guide as required by the Buyers Guide Rule, 16 C.F.R. 455.3(a).
- V. Respondents shall itemize a list of all fees which are not included in the purchase price, as outlined in the Auto Regulations, 37 Pa. Code §301.4(a)(2)(iv).
- VI. Respondents shall otherwise fully comply with all applicable

provisions of the Auto Regulations, 37 Pa. Code §301.1, *et seq.*

- VII. Respondents shall not misrepresent the amount a notary public is authorized to charge for the execution of affidavits (57 P.S. §167).
- VIII. Respondents shall fully comply with all of the applicable provisions of the Consumer Protection Law and specifically shall not engage in acts or practices defined by §201-2(4)(ii), (iii), (v) and (xxi).
- IX. Respondents shall refund to the consumers listed in Appendix "A" all finance charges collected on their installment sales contracts during any period when Respondents were not registered with the Department of Banking.
- X. Respondents shall refund to all consumers the difference between the notary fee that they paid and six dollars (\$6.00) (the maximum notary fee that might be charged for the transfer of a used motor vehicle). Included in Appendix "B" is a listing of consumers known to the Commonwealth to have paid a notary fee in excess of six dollars (\$6.00).
- XI. Respondents shall issue a credit for the finance charges and notary fees to those consumers who currently have an account balance with Respondents. Those consumers who do not have an account balance with Respondents shall be issued a refund check. Within sixty (60) days from the date of the filing of this Assurance of Voluntary Compliance, the Respondents shall provide the

Commonwealth with a list identifying all those consumers who received restitution pursuant to this Assurance of Voluntary Compliance and the amount of refund or credit they received.

XII. Respondents shall pay to the Commonwealth the sum of one thousand five hundred dollars (\$1,500.00), which shall be allocated as follows:

- (i) A civil penalty in the amount of one thousand dollars (\$1,000.00); and,
- (ii) Costs of investigation and/or public protection purposes, in the amount of five hundred dollars (\$500.00).

XIII. Simultaneous with the execution and return of this Assurance of Voluntary Compliance, Respondents shall transmit to the Commonwealth the sum of five hundred dollars (\$500.00). The balance of one thousand dollars (\$1,000.00) shall be paid in installments of five hundred dollars (\$500.00), the first installment due thirty (30) days from the signing of this Assurance of Voluntary Compliance and the second installment due sixty (60) days from the signing of this Assurance of Voluntary Compliance. All payments shall be by certified check, cashiers check or money order made payable to the Commonwealth of Pennsylvania, Office of Attorney General, Bureau of Consumer Protection.

XIV. Simultaneous with the execution and return of this Assurance of Voluntary Compliance, Respondents shall transmit a certified check, cashiers check or money order in the amount of eighty dollars (\$80.00) payable to the Commonwealth of Pennsylvania, which represents reimbursement to the Office of Attorney General for the costs of filing this Assurance of Voluntary Compliance with the Court.

XV. This Court shall maintain jurisdiction over the subject matter of this Assurance of Voluntary Compliance in accordance with §201-8 of the Consumer Protection Law.

PROVIDED, that nothing contained herein shall be construed to waive any individual right of action by any consumer or any local, state, federal or other governmental entity.

NOW THEREFORE, Respondents agree by the signing of this Assurance of Voluntary Compliance that Respondents shall henceforth abide by each and every one of the aforementioned provisions contained herein. Respondents further agree that upon breach of any or all of the terms of this Assurance of Voluntary Compliance, the Commonwealth may enforce this Assurance of Voluntary Compliance pursuant to §§201-8, 201-9 and 201-9.1 of the Consumer Protection Law by petitioning the Court of Common Pleas of Clearfield County, or any other court of competent jurisdiction, to order any equitable relief which may be deemed necessary and appropriate as provided herein.

WITNESS, the following signatures this 17th day of ^{May} April, 2000.

FOR THE PETITIONER

D. MICHAEL FISHER
ATTORNEY GENERAL

FRANK T. DONAGHUE
CHIEF DEPUTY ATTORNEY GENERAL
BUREAU OF CONSUMER PROTECTION

E. Barry Creary
E. BARRY CREARY
SENIOR DEPUTY ATTORNEY GENERAL

Margie A. Anderson
MARGIE A. ANDERSON
DEPUTY ATTORNEY GENERAL

FOR THE RESPONDENTS

Ferdin E. Wallace
FERDIN E. WALLACE, INDIVIDUALLY
AND D/B/A WALLACE AUTO SALES

Sherry L. Smith
SHERRY L. SMITH, INDIVIDUALLY
AND D/B/A WALLACE AUTO SALES

R. Denning Gearhart
R. DENNING GEARHART, ESQUIRE
COUNSEL FOR RESPONDENTS

APPENDIX "A"
FINANCE CHARGES

<u>CONSUMER</u>	<u>FINANCE CHARGES</u>
1. Jennifer Bell	\$250.00
2. Kenneth Bloom	\$150.00
3. Ica Mae Carlson	\$250.00
4. Annie Concel	\$250.00
5. Nichole Dixon	\$250.00
6. Rodney Dixon	\$250.00
7. Barb Gearhart	\$250.00
8. Suzanne Gauding	\$300.00
9. Scott Hanes	\$250.00
10. Ruby Hockenberry	\$250.00
11. Terry Huston	\$250.00
12. Norma Lewis	\$250.00
13. Debra Lyon	\$ 50.00
14. Robert Neeper	\$250.00
15. Jennie Rowles	\$250.00
16. Richard Sedgwick	\$100.00
17. Scott Stiner	\$250.00
18. Edward Stonebraker	\$250.00
19. Buffie Umpleby	\$500.00
20. Regina Waite	\$250.00

APPENDIX "B"

NOTARY FEES

<u>CONSUMER</u>	<u>NOTARY FEES</u>
1. Jennifer Bell	\$25.00
2. Kenneth Bloom	\$25.00
3. Ica Mae Carlson	\$25.00
4. Annie Concel	\$25.00
5. Nichole Dixon	\$25.00
6. Rodney Dixon	\$20.00
7. Barb Gearhart	\$25.00
8. Suzanne Gauding	\$50.00 (two vehicles)
9. Scott Hanes	\$25.00
10. Ruby Hockenberry	\$25.00
11. Terry Huston	\$25.00
12. Norma Lewis	\$15.00
13. Debra Lyon	\$20.00
14. Robert Neeper	\$ 6.50
15. Jennie Rowles	\$25.00
16. Richard Sedgwick	\$25.00
17. Scott Stiner	\$20.00
18. Edward Stonebraker	\$25.00
19. Buffie Umpleby	\$50.00 (two vehicles)
20. Regina Waite	\$25.00

RECEIVED
FILED

MAY 30 2000

IN 3:00

**William A. Shaw
Prothonotary
at the Anderson**

PD \$0.00