

IN THE COURT OF COMMON PLEAS, DELAWARE COUNTY, OHIO

STATE OF OHIO EX REL,

Plaintiff,

vs.

TOMMY'S AUTO AND  
PERFORMANCE LLC, et al.,

Defendants.

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Case No. 18 CV H 08 0471

JAMES P. SCHUCK, JUDGE

**MAGISTRATE'S DECISION**  
**ON DAMAGES**

CLERK OF COURTS  
DELAWARE COUNTY, OHIO  
COMMON PLEAS COURT  
FILED  
2020 OCT 28 AM 9:04

On October 20, 2020, the Court's Magistrate conducted a damages hearing in this matter. Participating were counsel for Plaintiff State of Ohio, counsel representing both Defendant Tommy's Auto & Performance, LLC ("Tommy's") and Defendant Thomas A. Divito ("Divito"), and Defendant Donald A. Woda ("Woda"), who appeared pro se.

The hearing followed an October 14, 2020 judgment entry that granted Plaintiff's motion for summary judgment against Tommy's and Woda, but denied summary judgment as to Divito. The Court also granted default judgment in favor of Tommy's and Divito against Woda. On October 16, 2020, the State voluntarily dismissed its claims against Divito without prejudice. The State additionally asked the Court to determine its damages claim based on its briefing. As a result, the scheduled bench trial

was substituted with a hearing that focused on evidence of damages incurred by Tommy's and Divito in connection with their default judgment against Woda.

## **I. DAMAGES CLAIMED BY THE STATE OF OHIO**

Based on this Court's decision granting summary judgment in favor of the State against Tommy's and Woda, on October 16, 2020, the State filed a memorandum in support of damages that asserted the following:

### **A. Reimbursement to the Title Defect Recision ("TDR") Fund**

The State explained that R.C. 4505.181 allows a retail purchaser to seek reimbursement for the purchase price of the vehicle if the dealer fails to obtain a title in the name of the purchaser. Further, R.C. 1345.42 allows the Attorney General to recover from the dealer the funds used for that reimbursement.

The State presented as Exhibit 1 an affidavit of Christopher Ellison, its TDR administrator. Mr. Ellison averred that the TDR Fund paid \$47,247.58 in regards to Tommy's failure to provide titles to purchasers within the time prescribed by R.C. 4505.181. The Magistrate finds the State is entitled to an award of \$47,247.58 in damages related to its reimbursement of the TDR Fund.

### **B. Civil Penalties Pursuant to R.C. 1345.07(D)**

The State also seeks damages as a civil penalty under R.C. 1345.07(D). That statute allows the Court to impose a civil penalty of not more than \$25,000.00 against a supplier who was found to have violated the Consumer Sales Practices Act ("CSPA").

The State specifically asserts that Tommy's and Woda violated R.C. 1345.02(A) by failing to file applications for certificates of title within 30 days after the assignment of delivery, an act that Ohio courts have previously found to be an unfair or deceptive act or practice in violation of the CSPA. In support, the State cites, and provides as Exhibit 2, *State of Ohio v. Glory Auto Sales*, Franklin County C.P. No. 11 CV 8256 (June 22, 2012). In that matter, the Franklin County Common Pleas Court adopted an agreed order that awarded the State \$50,000.00 as a civil penalty for the two defendants' violation of R.C. 1345.02(A).

With regard to the conduct of Tommy's and Woda, the State argues that at least two distinct violations of the CSPA occurred. First, the State asserts both Tommy's and Woda ignored consumer protection laws, causing significant injury to Ohio consumers and requiring the State to pay out claims from the TDR Fund. Second, the State emphasizes that Woda stole from Tommy's and Divito, which resulted in money not being available to get the titles transferred. The State thus requests that this Court award a civil penalty in the amount of \$50,000.00 against both Tommy's and Woda.

In granting summary judgment in favor of the State against Tommy's, the Court found a lack of any genuine issue of material fact that Tommy's sold vehicles to the purchasers identified by the State, that the purchasers did not receive the titles, and that the acts complained of violated the CSPA and the Certificate of Motor Vehicle Title Act. Therefore, Tommy's liability for these violations has been established.

The Magistrate finds that the conduct complained of merits a civil penalty award. Although the State does not break down what portion of the \$50,000.00 should be assigned to Tommy's and Woda respectively, the Magistrate finds that each of these two Defendants should be responsible for half of the \$50,000.00 total. Therefore, the imposition of a civil penalty of \$25,000.00 on Tommy's, and \$25,000.00 on Woda is justified.

### **C. Declaratory Relief**

The State seeks an order declaring that Tommy's and Woda have engaged in acts and practices in violation of the CSPA and the Certificate of Motor Vehicle Title Act. Based on the Court's decision to grant summary judgment in favor of the State against Tommy's and Woda, the Magistrate finds that the State has proven it is entitled to an order declaring that Tommy's and Woda violated the CSPA by committing unfair and deceptive acts and practices in violation of R.C. 1345.02. Specifically, Tommy's and Woda failed to file applications for certificates of title within 30 days after the assignment of delivery of motor vehicles as required by R.C. 4505.06(A)(5)(b), and sold motor vehicles to consumers in the ordinary course of business, but failed to obtain certificates of title on or before the 40th day of sale as required by R.C. 4505.181(B)(1).

### **D. Injunctive Relief**

The State also seeks an injunction pursuant to R.C. 1345.07(A)(2), which allows the Attorney General to obtain an injunction to restrain an act or practice that violates

the CSPA. Specifically, the State asks this Court to enjoin Tommy's and Woda from engaging in the acts and practices described in the State's complaint, and to enjoin Woda from engaging in any business in Ohio as an auto dealer or salesperson until this judgment is satisfied in its entirety.

The Magistrate finds the State has proven its entitlement to injunctive relief as to Tommy's and Woda.

First, the State's request as to Tommy's is reasonable, given that at least ten of Tommy's customers did not receive their car titles and were reimbursed by the TDR Fund. Second, the request reasonably seeks an injunction as to Woda, given that Woda was indicted and pled guilty to criminal charges in connection with his role in these and other actions as a Tommy's employee.

The Magistrate finds there is ample evidence to support granting the State the relief prayed for in its complaint in the form of an injunction against Woda engaging in consumer transactions as a supplier until he has satisfied all restitution, civil penalties, and any court costs ordered, and that he be prohibited from maintaining, applying for or being granted a salesperson or auto dealer license under Chapter 4517 of the Revised Code.

### E. Other Appropriate Relief

The State also requests additional relief pursuant to R.C. 1345.07(B), which lists other relief the Court may order for violations of the CSPA.<sup>1</sup> As in its plea for injunctive relief, the State requests that Woda be prohibited from applying for a salesperson or auto dealer license under R.C. Chapter 4517. As support, the State points to evidence in the record that Woda failed to deliver titles to purchasers, causing injury to consumers and requiring the State to use the TDR Fund to make the purchasers whole. The State also emphasizes that Woda admitted to selling cars without transferring the titles, and that he pled guilty to a criminal charge of grand theft in connection with his actions. In addition, the State references its case against Woda alleging similar acts during the time Woda was operating his own car dealership in Union County.<sup>2</sup>

Based on the Court's decision granting summary judgment in favor of the State on its claims against Woda, the Magistrate finds the State has proven Woda should be

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<sup>1</sup> R.C. 1345.07(B) provides:

(B) On motion of the attorney general and without bond, in the attorney general's action under this section, the court may make appropriate orders, including appointment of a referee or a receiver, for sequestration of assets, to reimburse consumers found to have been damaged, to carry out a transaction in accordance with a consumer's reasonable expectations, to strike or limit the application of unconscionable clauses of contracts so as to avoid an unconscionable result, or to grant other appropriate relief. The court may assess the expenses of a referee or receiver against the supplier.

<sup>2</sup> *State ex rel. v. Woda LLC*, Union Common Pleas No. 14CV0297, was filed in 2014, stayed due to bankruptcy, and reactivated on January 29, 2019. The case is currently pending.

prohibited from applying for a salesperson or auto dealer license, and so the State is entitled to this additional relief.

## **II. DAMAGES CLAIMED BY TOMMY'S AND DIVITO AGAINST WODA**

### **A. Evidence Presented at the Hearing**

At the October 20, 2020 hearing, counsel for Tommy's and Divito presented evidence regarding their cross-claim against Woda for damages incurred by Tommy's and Divito as a result of Woda's actions.

Divito testified under oath that he is the sole member of Tommy's LLC. He said he hired Woda to work at Tommy's based on their long acquaintance from previous jobs at other dealerships. Divito testified that Woda's job responsibilities focused on sales, while Divito primarily operated the auto mechanic side of the business.

The situation changed in June of 2016 when Divito began to have health problems. He said he suffers from a spinal condition that caused paralysis and required spinal cord surgery in January 2017. He said throughout the relevant period he was confined to a wheelchair and had to rely on Woda to run the business. Divito said although he was doing some work tasks, such as paying bills from home using his laptop computer, he was not physically able to go back to the office until June 2017.

Divito testified that when he finally returned to work, he discovered the business was struggling financially. He said the floorplans – the business loan system used by a car dealer to provide inventory for the sales lot – were “out of control” because “Don

had maxed them out.” He said Woda arranged for Tommy’s to borrow from floorplan lender Nextgear Capital without Divito’s knowledge.

Divito testified he gave Woda permission to hire his daughter Lexie Woda to help run the financial side of the business, but that Woda and Lexie were changing records and moving money in ways that made Divito suspect they were tampering with Tommy’s financial records. When Divito asked for a meeting to discuss his concerns, he said Woda “blew up,” and refused to talk about it. At that point, Divito said he contacted law enforcement and an investigation began that resulted in an indictment for felony theft and records tampering. He said Woda ultimately pled guilty and was ordered to serve 14 days in jail and pay \$87,000.00 restitution. Divito said Woda has been paying a minimal amount of the ordered restitution ever since.

Divito then identified exhibits documenting his damages claim. Exhibit I is a dealer floorplan agreement between Tommy’s and Vehicle Acceptance Corporation that requests \$100,000.00 as a line of credit. Divito said he did not apply for this loan, and that the signature at the bottom of the document “was an attempt at my signature, but it’s not.” For comparison purposes, Divito identified Exhibit J as a receipt for a withdrawal from a money market account that does feature his signature. The Magistrate finds that the two signatures, in fact, do not match.

Exhibit K is a Power of Attorney form that also features a signature that Divito did not recognize as his own. Divito testified the form was notarized by Tanja Woda,



who is Woda's wife. He said Tanja Woda ordinarily notarized documents for Tommy's. Divito said he assumed that Tanja Woda notarized the power of attorney despite the fact that Divito did not sign it.

Divito identified Exhibit L as evidence that the payroll account used by Tommy's had been appropriated by Woda. He said he was "locked out of my own payroll" and that he could not do anything about it. He said Woda and Lexie cashed out his 401K in the amounts of \$666.31 and \$3,102.69. He said he never gave Woda authority to do anything relating to the 401K, and that Woda had no ownership interest in the LLC.

Divito stated that Exhibit M is a 2018 past-due notice from Ally Auto, a company that Tommy's used to provide service contracts for car purchasers. The notice indicates \$12,269.30 is overdue. Divito stated he ordinarily would have paid for Ally's services every month, but that he was unable to pay because Woda took the money that would have been used to satisfy that account.

Divito testified that Exhibit N documents a sale of a vehicle for which Divito paid more than Woda sold it for. He said "I don't have a habit of selling for a loss." Divito said Woda deposited checks to his own personal account that were made out to Tommy's, and that Woda "sold cars for cash and kept the cash."

Divito identified Exhibit H as being a 2018 default judgment in an Indiana lawsuit by Nextgear Capital against him for the debt incurred in relation to the

floorplan.<sup>3</sup> That judgment awarded Nextgear Capital actual damages in the amount of \$216,706.50, along with an award of interest at the Indiana statutory rate of 8% per annum until paid, post-judgment attorney fees, and post-judgment court costs incurred in the collection of the judgment.

Divito testified he paid off some of Tommy's debts with a second mortgage he took out on his house. He said Woda stole a total of \$350,000.00 from him, including costs relating to the debt he incurred.

Finally, Divito identified Exhibits B and C as relating to his attorney fees and costs in relation to this case. Exhibit B is an hourly retainer agreement in which Divito agreed to pay Attorney E. Ray Critchett LLC a \$1,500.00 retainer along with a fee of \$200.00 per hour for legal services. Exhibit C is an invoice from E. Ray Critchett LLC for \$13,356.75, including the filing fee on Divito's cross-claim against Divito.

Woda did not cross-examine Divito regarding the damages claim, focusing instead on his position that his acts were undertaken with Divito's knowledge and approval.

Divito's counsel then called Woda as a witness. Woda testified that he only pleaded guilty in the criminal case on the advice of his attorney, and was motivated by the fact that could not afford the \$400.00 per hour legal fee his attorney was charging

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<sup>3</sup> *Nextgear Capital, Inc. v. Thomas A. Divito d/b/a Tommy's Auto & Performance*, Hamilton County Indiana Superior Court No. 29D04-1803-CC-002490, Entry of Default Judgment (May 7, 2018).

him. He said he agreed to pay \$87,000.00 in restitution, despite that the judgment entry on sentencing stated he owes \$82,642.20 in restitution. He said his criminal conviction has not yet had an effect on his sales license, which he currently uses as a salesperson at Mark Wahlberg Chevrolet in Columbus. He testified he wrote checks to himself, signed documents, and had his wife notarize documents, all with Divito's permission. With regard to the Nextgear Capital floorplan, he said "If I signed, it was with [Divito]'s permission." Regarding the Power of Attorney form, he said he was "not 100% certain I signed this, but if I did it was with his permission." Woda said he "only did what I was told to do."

#### **B. Damages Sought on the Cross-claim**

On their cross-claim, Tommy's and Divito are seeking a damage award against Woda consisting of \$216,706.50 in compensatory damages, \$50,000.00 in punitive damages, and \$13,356.75 in attorney fees and costs.

##### **1. Compensatory Damages**

Tommy's and Divito are claiming \$216,706.50 in compensatory damages from Woda. In their June 19, 2020 cross-claim against Woda, Tommy's and Divito alleged that Woda is liable for conversion and embezzlement in relation to his depositing company checks into his own personal account, with the result that Tommy's and Divito sustained loss in excess of \$150,000.00. The cross-claim alleged Woda committed fraud when he knowingly misrepresented the sales of vehicles, misrepresented his

authority to act on behalf of Tommy's, forged checks and loan applications, and hid sales of vehicles from Divito. Finally, the cross-claim asserts that Tommy's and Divito should be indemnified for any liabilities they are found to have incurred as a result of Woda's actions.

The claim for \$216,706.50 matches the amount described in Exhibit H, which is the 2018 entry of default judgment by the Indiana court in the Nextgear Capital case against Tommy's and Divito. Therefore, the Magistrate finds that Tommy's and Divito have proven their compensatory damages in the amount of \$216,706.50.

## **2. Punitive Damages**

Tommy's and Divito assert \$50,000.00 in punitive damages against Woda. As described above, in addition to asserting fraud, the cross-claim also raised causes of action for conversion and embezzlement.

To justify an award of punitive damages based on a fraud claim, it is not enough to merely establish fraud; instead, the plaintiff must establish that the fraud was aggravated by the existence of malice or ill will, or must demonstrate that the wrongdoing is particularly gross or egregious. *McEnteer v. Moss*, 9th Dist. Summit No. Civ.A. 22201, Civ.A. 22220, 2005-Ohio-2679, 2005 WL 1283707, ¶ 9, citing *Charles R. Combs Trucking, Inc. v. Internatl. Harvester Co.*, 12 Ohio St.3d 241, 466 N.E.2d 883, paragraph three of the syllabus. Malice may be inferred from reckless, wanton, willful or gross behavior, and may rest on a theft claim even where a fraud or fiduciary-duty

claim is unsupported. *Li Cheng v. Haney*, 5th Dist. Delaware No. 18 CAE 06 0041, 2019-Ohio-2144, 2019 WL 2323824, ¶ 41-43, citing *Villella v. Waikem Motors, Inc.*, 45 Ohio St.3d 36, 37, 543 N.E.2d 464 (1989).

The Court's granting of default judgment against Woda on Tommy's and Divito's establishes Woda's liability for conversion, embezzlement, and fraud. Therefore, the Magistrate finds there is support for an award of punitive damages against Woda on the cross-claim. Further, Woda's conduct, which included taking advantage of Divito's inability to personally manage the operations at the dealership due to his serious medical issue, Woda's forging of Divito's signature and his wife's abuse of her notary license to affirm the forgery, his appropriation of dealership profits, and his plea of guilty to grand theft in connection with his activities at Tommy's, all support an inference that Woda's conduct was "reckless, wanton, willful, or gross," and justify an award of punitive damages.

Therefore, the Magistrate finds that Tommy's and Divito have proven their punitive damages in the amount of \$50,000.00.

### **C. Attorney Fees and Costs**

Tommy's and Divito assert a claim for \$13,356.75 in attorney fees and costs.

Under the "American rule," a prevailing party in a civil action may not recover attorney fees as a part of the costs of litigation. *Wilborn v. Bank One Corp.*, 121 Ohio St.3d 546, 2009-Ohio-306, 906 N.E.2d 396, ¶ 7. However, if punitive damages are

awarded in a case involving fraud, insult, or malice, an award of attorney fees may be justified. *Columbus Fin., Inc. v. Howard*, 42 Ohio St.2d 178, 183, 327 N.E.2d 654, (1975), citations omitted. If punitive damages are proper, reasonable attorney fees may be awarded as an element of compensatory damages. *Galmish v. Cicchini*, 90 Ohio St.3d 22, 35, 734 N.E.2d 782 (2000). While an award of attorney fees may derive from a punitive damage award, the attorney-fee award itself is not an element of the punitive damages award. *Neal-Pettit v. Lahman*, 125 Ohio St.3d 327, 2010-Ohio-1829, 928 N.E.2d 421, ¶ 16.

Calculating the amount of attorney fees involves a two-step determination in which the Court first arrives at the “lodestar” by multiplying the number of hours reasonably expended by a reasonable hourly rate, and then decides whether to adjust that amount based on the reasonableness factors listed in Prof.Cond.R. 1.5(a). *Bittner v. Tri-Cty. Toyota, Inc.*, 58 Ohio St.3d 143, 569 N.E.2d 464 (1991), syllabus. That rule provides the following factors to be considered in determining the reasonableness of a fee:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;

- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

A contractual agreement to pay attorney fees is enforceable. *Hilb, Rogal & Hamilton Agency of Dayton, Inc. v. Reynolds*, 81 Ohio App.3d 330, 338, 610 N.E.2d 1102 (2d Dist. 1992). However, the fees must be "fair, just and reasonable as determined by the trial court upon full consideration of all the circumstances of the case." *Wilborn v. Bank One Corp.*, 121 Ohio St.3d 546, 549, 2009-Ohio-306, 906 N.E.2d 396, citing *Nottingdale Homeowners' Assn., Inc. v. Darby*, 33 Ohio St.3d 32, 514 N.E.2d 702 (1987), syllabus.

Exhibits B and C document the fees charged and expenses incurred by Attorney E. Ray Critchett in representing Tommy's and Divito. In considering all the circumstances of the case, the Magistrate finds an award of attorney fees and costs in the amount of \$13,356.75 to be "fair, just, and reasonable."

### **III. CONCLUSION**

The Magistrate finds a damage award is merited as follows:

#### **In favor of the State against Tommy's:**

Civil Penalty: Tommy's shall pay a civil penalty of \$25,000.00 pursuant to R.C.

1345.07(D).

Declaratory Relief: Tommy's engaged in acts and practices in violation of the CSPA.

Injunctive Relief: Tommy's is enjoined from failing to file applications for certificates of title within 30 days after the assignment of delivery of motor vehicles as required by R.C. 4505.06(A)(5)(b), and from selling motor vehicles to consumers in the ordinary course of business, but failing to obtain certificates of title on or before the 40th day of sale as required by R.C. 4505.181(B)(1).

**In favor of the State against Woda:**

Reimbursement of the TDR Fund: Woda shall pay \$47,247.58 as reimbursement to the TDR Fund.

Civil Penalty: Woda shall pay a civil penalty of \$25,000.00 pursuant to R.C. 1345.07(D).

Declaratory Relief: Woda engaged in acts and practices in violation of the CSPA.

Injunctive Relief: Woda is enjoined from failing to file applications for certificates of title within 30 days after the assignment of delivery of motor vehicles as required by R.C. 4505.06(A)(5)(b), and from selling motor vehicles to consumers in the ordinary course of business, but failing to obtain certificates of title on or before the 40th day of sale as required by R.C. 4505.181(B)(1). Further, Woda is enjoined from engaging in any business in Ohio as an auto dealer or salesperson, and is enjoined from maintaining,



applying for, or being granted a salesperson or auto dealer license under Chapter 4517 of the Revised Code.

Additional Relief Pursuant to R.C. 1345.07(B): Woda is prohibited from applying for a salesperson or auto dealer license under R.C. Chapter 4517.

**In favor of Tommy's and Divito against Woda:**

Compensatory Damages: Woda shall pay Divito compensatory damages in the amount of \$216,706.50.

Punitive Damages: Woda shall pay Divito punitive damages in the amount of \$50,000.00.

Attorney Fees and Costs: Woda shall pay E. Ray Critchett LLC attorney fees and costs in the amount of \$13,356.75.

**A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b).**

  
SHARI WINGET O'NEILL, MAGISTRATE

The Clerk of this Court is hereby Ordered to serve a copy of this Judgment Entry upon the following by <input checked="" type="checkbox"/> Regular Mail, <input type="checkbox"/> Mailbox at the Delaware County Courthouse, <input type="checkbox"/> Facsimile Transmission, <input type="checkbox"/> Email
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ROSEMARY E RUPERT, OHIO ATTORNEY GENERAL'S OFFICE, 30 E. BROAD STREET  
14TH FLOOR, COLUMBUS, OH 43215

RAY E CRITCHETT, 1071 S HIGH STREET, COLUMBUS, OH 43206

DONALD WODA, 484 CHARIOT WAY, MARYSVILLE, OH 43040

OHIO BUREAU OF MOTOR VEHICLES, 1970 W BROAD ST, COLUMBUS, OH 43223

COURT OF COMMON PLEAS, DELAWARE COUNTY, OHIO

CASE NO. 18 CV H 08 0471

STATE OF OHIO EX REL  
PLAINTIFF

VS.

TOMMYS AUTO AND PERFORMANCE LLC  
DEFENDANT

TO: STATE OF OHIO  
C/O ROSEMARY E RUPERT  
OHIO ATTORNEY GENERAL'S OFFICE  
30 E. BROAD STREET 14TH FLOOR  
COLUMBUS, OH 43215

NOTICE OF FINAL APPEALABLE COURT ORDER

PURSUANT TO OHIO CIVIL RULES OF PROCEDURE 58(B), YOU ARE HEREBY  
NOTIFIED THAT A FINAL APPEALABLE COURT ORDER WAS FILED WITH THE  
CLERK AND JOURNALIZED ON OCTOBER 28 2020

NATALIE FRAVEL, CLERK OF COURTS  
DELAWARE COUNTY COMMON PLEAS COURT  
117 NORTH UNION STREET  
DELAWARE, OH 43015

  
\_\_\_\_\_, DEPUTY CLERK



IN THE COURT OF COMMON PLEAS, DELAWARE COUNTY, OHIO

STATE OF OHIO EX REL,

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vs.

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Case No. 18 CV H 08 0471

JAMES P. SCHUCK, JUDGE

CLERK OF COURTS  
DELAWARE COUNTY, OHIO  
COMMON PLEAS COURT  
FILED  
2020 OCT 28 AM 9:04

**JUDGMENT ENTRY**  
**ADOPTING THE MAGISTRATE'S DECISION**

On October 14, 2020, the Court granted in part and denied in part Plaintiff State of Ohio's motion for summary judgment against Defendants Tommy's Auto and Performance LLC ("Tommy's"), Tommy A. Divito ("Divito"), and Donald A. Woda ("Woda"). The Court also granted default judgment in favor of Tommy's and Divito against Woda.

After an October 20, 2020 damages hearing, on October 28, 2020 the Court's Magistrate issued a decision ruling as follows on damages:

**In favor of the State against Tommy's:**

Civil Penalty: Tommy's shall pay a civil penalty of \$25,000.00 pursuant to R.C. 1345.07(D).

Declaratory Relief: Tommy's engaged in acts and practices in violation of the CSPA.

Injunctive Relief: Tommy's is enjoined from failing to file applications for certificates of title within 30 days after the assignment of delivery of motor vehicles as required by R.C. 4505.06(A)(5)(b), and from selling motor vehicles to consumers in the ordinary course of business, but failing to obtain certificates of title on or before the 40th day of sale as required by R.C. 4505.181(B)(1).

**In favor of the State against Woda:**

Reimbursement of the TDR Fund: Woda shall pay \$47,247.58 as reimbursement to the TDR Fund.

Civil Penalty: Woda shall pay a civil penalty of \$25,000.00 pursuant to R.C. 1345.07(D).

Declaratory Relief: Woda engaged in acts and practices in violation of the CSPA.

Injunctive Relief: Woda is enjoined from failing to file applications for certificates of title within 30 days after the assignment of delivery of motor vehicles as required by R.C. 4505.06(A)(5)(b), and from selling motor vehicles to consumers in the ordinary course of business, but failing to obtain certificates of title on or before the 40th day of sale as required by R.C. 4505.181(B)(1). Further, Woda is enjoined from engaging in any business in Ohio as an auto dealer or salesperson, and is enjoined from maintaining, applying for, or being granted a salesperson or auto dealer license under Chapter 4517 of the Revised Code.

Additional Relief Pursuant to R.C. 1345.07(B): Woda is prohibited from applying for a salesperson or auto dealer license under R.C. Chapter 4517.

**In favor of Tommy's and Divito against Woda:**

Compensatory Damages: Woda shall pay Divito compensatory damages in the amount of \$216,706.50.

Punitive Damages: Woda shall pay Divito punitive damages in the amount of \$50,000.00.

Attorney Fees and Costs: Woda shall pay E. Ray Critchett LLC attorney fees and costs in the amount of \$13,356.75.

The Court hereby adopts and approves the Magistrate's Decision issued October 23, 2020 and enters the Magistrate's Decision as a matter of record and includes the same as the Court's findings and judgments herein. The Court further finds that there is no error of law or other defect on the face of the Magistrate's Decision and the Court incorporates, by reference, the Magistrate's Decision and makes the same the judgment of this Court.

It is ordered, adjudged, and decreed that the State of Ohio is granted judgment against Defendant Tommy's in the amount of \$25,000.00 as a civil penalty pursuant to R.C. 1345.07(D), as well as declaratory and injunctive relief as indicated in the Magistrate's Decision.

It is ordered, adjudged, and decreed that the State of Ohio is granted judgment against Defendant Woda in the amount of \$47,247.58 as reimbursement for the State's TDR Fund, and in the amount of \$25,000.00 as a civil penalty pursuant to R.C. 1345.07(D), for a total monetary award of \$72,247.58, as well as declaratory, injunctive, and additional relief as indicated in the Magistrate's Decision.

It is ordered, adjudged, and decreed that Defendants Tommy's and Divito are granted judgment against Defendant Woda in the amount of \$216,706.50 in compensatory damages, \$50,000.00 in punitive damages, and \$13,356.75 in attorney fees and costs, for a total monetary award of \$280,063.25.

Costs awarded to Plaintiff State of Ohio.

THIS IS A FINAL APPEALABLE ORDER. THERE IS NO JUST CAUSE FOR  
DELAY.

IT IS SO ORDERED.

THIS IS A FINAL APPEALABLE ORDER.  
THERE IS NO JUST CAUSE FOR DELAY

  
JAMES P. SCHUCK, JUDGE

The Clerk of this Court is hereby Ordered to serve a copy of this Judgment Entry upon the following by  
☒ Regular Mail, ☐ Mailbox at the Delaware County Courthouse, ☐ Facsimile Transmission, ☐ Email

ROSEMARY E RUPERT, OHIO ATTORNEY GENERAL'S OFFICE, 30 E. BROAD STREET  
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DONALD WODA, 484 CHARIOT WAY, MARYSVILLE, OH 43040

OHIO BUREAU OF MOTOR VEHICLES, 1970 W BROAD ST, COLUMBUS, OH 43223

The Clerk is ordered to serve upon  
all parties not in default to appear,  
notice of the judgment and date of entry  
upon the journal within three days of  
journalization.