

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,
OFFICE OF ATTORNEY GENERAL,
ACTING BY ATTORNEY GENERAL JOSH
SHAPIRO,

Petitioner,

v.

NORTHWEST BANK,

Respondent.

: CIVIL ACTION- EQUITY

: No. G.D. 20-008784

: Code 020-No Real Estate

: ASSURANCE OF
: VOLUNTARY COMPLIANCE

Filed on Behalf of Petitioner:

COMMONWEALTH OF
PENNSYLVANIA,
OFFICE OF ATTORNEY
GENERAL

Counsel of Record for this Party:

Jesse F. Harvey
Chief Deputy Attorney General
PA Id. No. 63435

Office of Attorney General
Bureau of Consumer Protection
1251 Waterfront Place
Mezzanine Level
Pittsburgh, PA 15222
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ALLEGHENY COUNTY PA

**IN THE COURT OF COMMON PLEAS FOR ALLEGHENY COUNTY,
PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA,	:	CIVIL ACTION
OFFICE OF ATTORNEY GENERAL,	:	
ACTING BY ATTORNEY GENERAL JOSH SHAPIRO,	:	
	:	
Petitioner,	:	
	:	
v.	:	Case No. _____
	:	
NORTHWEST BANK,	:	
	:	
Respondent.	:	
	:	

ASSURANCE OF VOLUNTARY COMPLIANCE

AND NOW, comes the Commonwealth of Pennsylvania, Office of Attorney General, by Attorney General Josh Shapiro, through the Bureau of Consumer Protection (hereinafter “Commonwealth” or “Petitioner”), which has caused an investigation to be made into the business practices of Northwest Bank (“Respondent”) pursuant to the *Unfair Trade Practices and Consumer Protection Law*, 73 P.S. § 201-1, *et seq.* (“Consumer Protection Law”), and states the following:

WHEREAS, Petitioner is the Commonwealth of Pennsylvania, Office of Attorney General, through the Bureau of Consumer Protection, with offices located at 1251 Waterfront Place, Mezzanine Level, Pittsburgh, Pennsylvania 15222; and, 15th Floor, Strawberry Square, Harrisburg, Pennsylvania 17120;

WHEREAS, Respondent is a Pennsylvania chartered savings bank with a business address of 100 Liberty Street, Warren, Pennsylvania 16365;

BACKGROUND

WHEREAS, Respondent has engaged in trade or commerce within the Commonwealth by engaging in debt collection activities as an assignee of motor vehicle installment sales contracts;

WHEREAS, Respondent is a "Creditor" as defined by the *Pennsylvania Fair Credit Extension Uniformity Act*, 73 P.S. 2270.1 *et seq.* ("FCEUA")¹;

WHEREAS, as the assignee of motor vehicle installment sales contracts, Respondent, through its non-attorney agents, has initiated lawsuits against Pennsylvania consumers for the collection of deficiencies owed on such contracts in Magisterial District Court 37 - 2-10, located in Warren County, Pennsylvania;

WHEREAS, in most instances the consumer defendants in the aforementioned lawsuits were not residents of Warren County, Pennsylvania;

WHEREAS, under Rule 302A of the Rules of *Civil Procedure Governing Actions and Proceedings Before Magisterial District Justices*, Pa.R.C.P.M.D.J. No. 302A, an action against an individual may be brought in and only in a magisterial district where:

- (1) The individual may be served, or
- (2) The cause of action arose, or
- (3) A transaction or occurrence took place out of which the cause of action arose;

WHEREAS, under Section 6208 of the *Motor Vehicle Sales Finance Act*, 12 Pa.C.S.A. § 6208 ("MVFS"), an action on an installment sale contract shall be commenced in a county where any of the following occurred:

¹ Under section 2270.3 of FCEUA, a "Creditor" is defined as "a person, including agents, servants or employees conducting business under the name of a creditor and within this Commonwealth, to whom a debt is owed or alleged to be owed."

- (1) The buyer signed the contract;
- (2) The buyer resides at the commencement of the action;
- (3) The buyer resided when the contract was entered into;

WHEREAS, in most instances the consumer defendants in the aforementioned lawsuits did not appear to defend against the lawsuit and a default judgment was entered in favor of Respondent;

WHEREAS, in certain instances after a judgment was entered, Respondent sent correspondence, in the form attached hereto as redacted as appendix "A," to the consumer defendant indicating that the failure to enter into a repayment plan could result in a referral to an attorney for further legal action which could include a sheriff sale of the consumer defendant's real property;

WHEREAS, despite the aforementioned representations, Respondent did not refer the collection of any judgments to an attorney and further legal action was never initiated;

WHEREAS, based upon its investigation, the Commonwealth alleges that Respondent has engaged in conduct which violates the Consumer Protection Law, the MVSFA, Pa.R.C.P.M.D.J. No. 302A and the FCEUA, as more fully set forth below, by:

1. Allegedly initiating lawsuits against Pennsylvania consumers for the collection of deficiencies owed on motor vehicle installment sales contracts in a Warren County, Pennsylvania magisterial district, in instances where:
 - a. the consumer defendant was not subject to service in the relevant Warren County magisterial district and did not reside in the relevant Warren County magisterial district at the time the underlying contract was entered into or at the time the action was commenced;

- b. the consumer defendant did not sign the motor vehicle installment sales contract in the relevant Warren County magisterial district where the action was commenced;
 - c. the transaction out of which the cause of action arose -the purchase of the motor vehicle-did not arise in the relevant Warren County magisterial district where the action was commenced;
2. Allegedly making direct and implied representations that it could initiate a sheriff sale of the consumer defendant's real property when such was not the case in violation of FCEUA, which states it shall constitute an unfair or deceptive debt collection act or practice if a creditor uses any false, deceptive or misleading representation or means in connection with the collection of any debt;

WHEREAS, Section 2270.5(a) of FCEUA states that a violation of FCEUA is deemed a violation of the Consumer Protection Law, 73 P.S. § 2270.5(a);

WHEREAS, as a result of the aforesaid methods, acts, practices, the Commonwealth alleges that Respondent has engaged in "unfair methods of competition" and/or "unfair or deceptive acts or practices" which violated 201-3 of the Consumer Protection Law, as defined by Section 201-2(4)(ii),(v) and (xxi);

WHEREAS, Respondent denies that it has violated the Consumer Protection Law, the MVSFA, Pa.R.C.P.M.D.J. No. 302A and/or the FCEUA and/or has engaged in any unfair trade practices or deceptive conduct; however, given the risks, uncertainties, burden and expense of potential litigation with the Commonwealth, Respondent agrees to enter into this Assurance of Voluntary Compliance;

WHEREAS, without admitting any fault or to any alleged violation of the Consumer Protection Law, the MVSFA, Pa.R.C.P.M.D.J. No. 302A and/or the FCEUA, Respondent agrees to modify its practices related to the collection of deficiency balances owed on motor vehicle installment sales contracts so as to conform with the Commonwealth's interpretation of the Consumer Protection Law, the MVSFA, Pa.R.C.P.M.D.J. No. 302A and/or the FCEUA;

WHEREAS, pursuant to Section 201-5 of the Consumer Protection Law, this Assurance of Voluntary Compliance shall not be considered an admission by Respondent of any violation of the Consumer Protection Law for any purpose, 73 P.S. § 201-5; and

WHEREAS, this Assurance of Voluntary Compliance is accepted by the Commonwealth pursuant to Section 201-5 of the Consumer Protection Law, in lieu of commencing statutory proceedings provided under Section 201-4. *See* 73 P.S. §§ 201-4 and 201-5.

SETTLEMENT TERMS

NOW THEREFORE, having conducted trade and commerce within the Commonwealth, Respondent agrees for itself, its successors, assigns, officers, partners, agents, representatives (including but not limited to sales representatives), employees, and all other persons acting on its behalf, jointly or individually, directly or indirectly, or through any corporate or business device, as follows:

I. The above recitals are incorporated herein as though fully set forth.

II. Injunctive and Affirmative Relief²

A. Respondent shall comply with all provisions of the Consumer Protection Law and any amendments thereto; and is permanently enjoined from any violation thereof.

² Excluded from the affirmative relief provided for herein are any consumer defendants who released their claims pursuant to: (1) a written settlement agreement with Respondent; or (2) the agreement entered into in the litigation entitled *Meyer v. Northwest Savings Bank*, Case No. GD-13-024884 (Allegheny C.C.P.).

B. Respondent shall comply with all provisions of FCEUA and any amendments thereto; and is permanently enjoined from any violation thereof.

C. Respondent shall only initiate future collection actions against consumers for deficiencies owed on their motor vehicle installment sale contracts in a magisterial district court where the defendant currently resides, where the defendant resided at the time the motor vehicle was purchased or where the defendant purchased the vehicle.

D. Respondent shall strike all existing judgments entered between January 1, 2013 and the Effective Date against consumer defendants where the underlying lawsuit was initiated in a magisterial district court that:

- a. the consumer defendant did not reside in at the time that the action was commenced;
- b. the consumer defendant did not reside in at the time the motor vehicle was purchased; or
- c. was not located in the same magisterial district where the consumer defendant purchased the vehicle.

E. As to a consumer defendant who paid in excess of 50% of the deficiency balance owed after the judgment identified in paragraph "D," above, was entered, Respondent shall issue a credit to the deficiency balance owed by the consumer defendant equal to 100% of the amounts paid before the Effective Date and will refund any remaining amounts after the deficiency balance has been reduced to \$0.00. By way of example, if the consumer defendant had a \$1,500 judgment entered against her and paid \$1,000 to Respondent after the entry of the judgment, resulting in a remaining deficiency balance of \$500, Respondent will reduce the deficiency balance to \$0.00 and refund \$500 to the consumer defendant. As to a consumer defendant who

paid less than or equal to of 50% of the deficiency balance owed after the judgment identified in paragraph "D," above, was entered, Respondent shall issue a credit to the deficiency balance owed by the consumer defendant up to 125% of the amounts paid before the Effective Date until any remaining balance is reduced to \$0.00. Under no circumstances shall Respondent be required to issue a refund to any consumer defendant who paid less than or equal to 50% of the deficiency balance owed after the judgment identified in paragraph "D," above, was entered. By way of example, if the consumer defendant had a \$1,500 judgment entered against her and paid \$700 to Respondent after the entry of the judgment, resulting in a remaining deficiency balance of \$800, Respondent will reduce the deficiency balance owed by the consumer defendant to \$0.00.

F. To the extent that a consumer defendant has repaid the deficiency balance relating to a challenged judgment in its entirety, Respondent will refund any amounts paid by the consumer defendant toward the deficiency balance after the judgment was entered.

G. With regard to any restitution paid pursuant to paragraphs E and F, above, Respondent shall prepare an accompanying cover letter that will be subject to the Commonwealth's approval in advance of mailing.

H. Within one-hundred twenty (120) days of the Effective Date, Respondent shall provide a written report certifying to the Commonwealth compliance with paragraphs E and F, above. The report shall identify each stricken judgment, the name and address of the relevant consumer defendant and, if applicable, the amount refunded to each listed consumer defendant. Any refunded amounts not claimed within six months of issuance shall be reported to the Pennsylvania Treasury as Unclaimed Property.

III. Monetary Relief – Without any acknowledgment or admission of fault or liability, Respondent shall be responsible for and voluntarily agree to pay to the Commonwealth a total payment of FIFTEEN THOUSAND and 00/100 Dollars (\$15,000.00)(hereinafter “Voluntary Payment”) which shall be allocated as follows:

A. **Costs** in the amount of FIFTEEN THOUSAND and 00/100 Dollars (\$15,000.00), which shall be distributed to the Commonwealth of Pennsylvania, Office of Attorney General, to reimburse the costs incurred in pursuing this enforcement action, and which shall be deposited in an interest-bearing account from which both principal and interest shall be expended for public protection and education purposes.

B. **Payment Terms** – Upon execution of this Assurance of Voluntary Compliance, Respondent shall submit the Voluntary Payment by certified check, cashier’s check, or money order, and made payable to the “Commonwealth of Pennsylvania, Office of Attorney General,” and forwarded to the Bureau of Consumer Protection, 1251 Waterfront Place, Mezzanine Level, Pittsburgh, Pennsylvania 15222.

IV. Miscellaneous Terms

A. The Court of Common Pleas of Allegheny County, Pennsylvania shall maintain jurisdiction over the subject matter of this Assurance of Voluntary Compliance and over Respondent for the purpose of enforcing this Assurance of Voluntary Compliance.

B. Time shall be of the essence with regards to Respondent’s obligations hereunder.

C. The parties’ execution of this Assurance of Voluntary Compliance, along with the full and complete payment outlined above, finally and fully resolves the Petitioner’s investigation into Respondent’s initiation of lawsuits against Pennsylvania consumers for the

collection of deficiencies owed on motor vehicle installment sales contracts in a Warren County, Pennsylvania magisterial district.

D. Nothing in this Assurance of Voluntary Compliance shall be construed to waive or limit any right of action by any individual, person or entity, or by any local, state, federal or other governmental entity.

E. TK Creal, Executive Vice President, Chief Credit Officer, of Respondent, hereby states that he is authorized to enter into and execute this Assurance of Voluntary Compliance on its behalf; and, further agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Assurance of Voluntary Compliance.

F. Respondent further agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Assurance of Voluntary Compliance, whether required prior to, contemporaneous with, or subsequent to the Effective Date.

G. Any failure of the Commonwealth to exercise any of its rights under this Assurance of Voluntary Compliance shall not constitute a waiver of its rights hereunder.

H. This Assurance of Voluntary Compliance may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Assurance of Voluntary Compliance may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart hereof.

I. This Assurance of Voluntary Compliance sets forth all of the promises, covenants, agreements, conditions and understandings between the parties, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied. There are no representations, arrangements, or understandings, oral or written, between the Parties relating to the subject matter of this Assurance that are not fully expressed herein or attached hereto. Each party specifically warrants that this Assurance is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

J. Respondent understands and agrees that if any false statement in or related to this Assurance of Voluntary Compliance was made on its behalf, such statement is made pursuant to and under penalty of 18 Pa.C.S. § 4904 relating to unsworn falsifications to authorities.

K. Respondent agrees by the signing of this Assurance of Voluntary Compliance that it shall abide by each of the aforementioned provisions and that the breach of any one of these terms shall be sufficient warrant for the Commonwealth of Pennsylvania to petition the Court of Common Pleas of Allegheny County, or any court of competent jurisdiction, to seek the penalties provided for under Section 201-8(a) of the Consumer Protection Law, 73 P.S. § 201-8(a), and to seek any other equitable relief which the Court deems necessary or proper, up to and including forfeiture of the right to engage in trade or commerce within the Commonwealth of Pennsylvania.

L. The "Effective Date" of this Assurance of Voluntary Compliance shall be the day it is filed with the Court.

M. If any clause, provision or section of this Assurance of Voluntary Compliance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance of

Voluntary Compliance and the Assurance of Voluntary Compliance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

N. Nothing herein shall preclude Respondent from doing business in the Commonwealth pursuant to any subsequently enacted, promulgated, modified, or interpreted federal or state statute, including modifications to, or interpretations of, existing statutes. In the event that any statute, rule, or regulation pertaining to the subject matter of this Assurance of Voluntary Compliance is subsequently enacted, promulgated, modified, or interpreted by a federal or state court, or any federal or state government, or any federal or state agency, or a court of competent jurisdiction having binding authority holds that such statute, rule, or regulation is in conflict with any provision of this Assurance of Voluntary Compliance, Respondent's compliance with such statute, rule, or regulation and such action shall not constitute a violation of this Assurance of Voluntary Compliance.


O. Neither the Commonwealth nor Respondent shall be considered the drafter of this Assurance of Voluntary Compliance or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Assurance of Voluntary Compliance.

P. Respondent shall not represent or imply that the Commonwealth acquiesces in, or approves of, Respondent's past or current business practices, efforts to improve their practices, or any future practices that Respondent may adopt or consider adopting.

(SIGNATURES ON FOLLOWING PAGES)

COPY

March 24, 2017

RE: Loan Dear ;

This letter is to notify you that we have now filed our judgment originally filed against you in District Magistrate's office in the Clarion County Prothonotary's Office. We have also arranged to have this judgment reflected on any credit report that may be run on your Social Security number when you apply for any future credit. It will show as an open charged off loan.

We have notified you several times concerning the seriousness of establishing a repayment arrangement for the balance due on the above loan. You have continued to ignore our request or have not bothered to make the promised payments.

Our next step is to turn your file over to our attorney for further legal action, which may or may not include a Sheriff Sale of any real property you may own.

IF YOU WISH TO STOP ANY FURTHER ACTION YOU MAY CONTACT US AT NORTHWEST SAVINGS BANK, PO BOX 337, WARREN, PA 16365 OR AT 1-877-300-3460 OR IN WARREN 728-7572.

Sincerely,


Loss Mitigation

Appendix "A"

WHEREFORE, intending to be legally bound, the parties have hereto set their hands and seals.

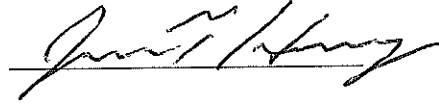
FOR THE PETITIONER:

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

Date: 8/18/20

By:



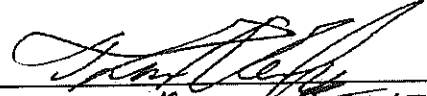
Jesse F. Harvey
Chief Deputy Attorney General
PA Attorney I.D. No. 63435
Bureau of Consumer Protection
1251 Waterfront Place, Mezzanine Level
Pittsburgh, PA, 15222
Telephone: 412-565-2883
Facsimile: 412-880-0196

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FOR THE RESPONDENT:

NORTHWEST BANK

Date: August 14th 2020



TK Creal, Executive Vice President, Chief
Credit Officer

Date: _____

Justin J. Kontul
Reed Smith LLP
Attorney for Respondent

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FOR THE RESPONDENT:

NORTHWEST BANK

Date: _____

TK Creal, Executive Vice President, Chief
Credit Officer

Date: August 14, 2020

/s/ Justin K. Kontul

Justin J. Kontul
Reed Smith LLP
Attorney for Respondent

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CERTIFICATE OF COMPLIANCE

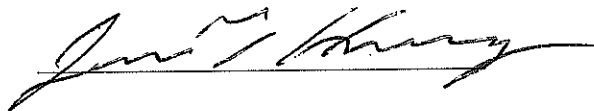
I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents, differently than non-confidential information and documents.

Submitted by:

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
Attorney General

Date: 8/18/2020

By: 

Jesse F. Harvey
Chief Deputy Attorney General
PA Attorney ID. No. 63435

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