Dep't of Consumer Affairs v. Major World, et al.

OATH Index No. 1897/17, mem. dec. (Jan. 24, 2019)

In license proceeding, violations related to deceptive sales practices by affiliated car dealers and their used car dealership licenses sustained in part and dismissed in part. $3,164,875 civil fine imposed.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS
Petitioner
- against -
MAJOR WORLD CHEVROLET, L.L.C., MAJOR WORLD CDJR, L.L.C. d/b/a MAJOR WORLD CHRYSLER DODGE JEEP RAM, MAJOR MOTORS OF LONG ISLAND CITY, INC. d/b/a MAJOR KIA OF LONG ISLAND CITY, MAJOR CHEVROLET, INC., MAJOR CHRYSLER PLYMOUTH JEEP, INC., MAJOR CHRYSLER PLYMOUTH JEEP DODGE, INC., BRUCE BENDELL, & ADAM COHEN
Respondents

MEMORANDUM DECISION

ALESSANDRA F. ZORGNIOTTI, *Administrative Law Judge*

On April 4, 2017, petitioner, the City of New York Department of Consumer Affairs ("DCA" or "petitioner"), commenced this license revocation proceeding by filing a petition at the Office of Administrative Trials and Hearings ("OATH"). DCA's action is brought pursuant to Title 20 of the City of New York Administrative Code ("Admin. Code" or "Code"), Title 6 of the Rules of the City of New York ("RCNY" or "DCA Rules"), and Chapter 64 of the New York City Charter ("Charter") (collectively "Consumer Laws") against respondents, Major World Chevrolet, L.L.C. ("MWC"), Major World CDJR, L.L.C. ("MWCDJR"), Major Motors of Long Island City, Inc. ("MMLIC"), Major Chrysler Plymouth Jeep, Inc./Major Chrysler Plymouth Jeep, Dodge Inc. ("MCJD"), Major Chevrolet, Inc. ("MC"), Bruce Bendell, and Adam Cohen (collectively "Major World" or "respondents").

DCA is responsible for licensing businesses in the City of New York ("City"), including second-hand automobile dealerships, protecting consumers from unfair business practices, and enforcing the Consumer Laws against both licensed and unlicensed businesses. Charter § 2203(h); Admin Code § 20-104.

Respondents are affiliated new and second-hand automobile dealerships and their principals operating in the City.

OATH is an independent tribunal that conducts administrative trials and hearings for various City agencies, including DCA. Charter § 1048(1) (Lexis 2018); 6 RCNY § 6-01. Notices of Violations ("NOVs") issued by DCA are heard at the OATH Hearings Division by *per diem* Hearing Officers. Petitions filed by DCA that address more complex matters such as this license revocation proceeding are heard at the OATH Trials Division by Administrative Law Judges ("ALJs") who are appointed to five-year terms to ensure independence and impartiality in the judicial decision-making process. *See* https://www1.nyc.gov/site/oath/about/message-from-chief-judge-commissioner.page.

The third amended petition dated December 8, 2018, alleged 14 counts with count one containing multiple specifications. Petitioner charged that between 2011 and 2017: Major World engaged in a pattern of deceptive and illegal practices designed to profit from vulnerable, low-income, and non-English speaking consumers, including 37 identified consumers, while saddling them with overpriced loans and defective automobiles; and that MC, MWC, MCJD, MWCDJR, and MMLIC engaged in violations related to their DCA licenses and license applications. Petitioner requested revocation of the existing DCA licenses, a finding that Adam Cohen and Bruce Bendell are unfit to hold any DCA licenses in the future, a finding that respondents are jointly and severally liable, fines over $30 million, and other relief authorized by law.

Respondents denied the charges and argued that, to the extent there were any violations, they were minor and did not warrant the penalties sought by petitioner. Respondents further argued that many of the charges were duplicative or stale, going back 17 years and that DCA attempted to make out a case of "knowing" violations by combining allegations with separate corporate entities with different ownerships and previous violations.

Before trial, the parties took depositions of the majority of consumers and various Major World employees to reduce the number of witnesses for trial. Prior to and during trial, settlement conferences were held at OATH.

A 21-day trial was held between January 9 and November 14, 2018. The parties reached a partial settlement regarding restitution for individual consumers. MWC also agreed to be responsible for any fines imposed on respondents and petitioner withdrew the claim that respondents were jointly and severally liable. On June 27, 2018, petitioner reduced the number of alleged violations and withdrew count 12. The parties also filed pre- and post-trial briefs. The record closed on November 27, 2018.

At trial, petitioner called 12 consumers, most of whom testified through Spanish translators. Petitioner also submitted individual binders for each consumer transaction that included non-testifying consumers' deposition testimony and/or affidavits (many of which were in Spanish) and paperwork related to their vehicle purchases ("deal jackets"). Petitioner submitted additional binders that related to the charges and the penalties sought.

Respondents called eight witnesses: Adam Cohen and Bruce Bendell; three Major World employees including a service manager, an operations manager, and a buyer of used cars; and three outside consultants including an account manager for print advertising, a digital service consultant for web-based activities, and a compliance consultant. Respondents also submitted binders of documentary evidence.

Due to the numerous charges, consumer-complainants, respondent-entities, and voluminous documentation, counsel for both parties prepared summaries and Excel spreadsheets of the charges that identified disputed and undisputed facts. These summaries and spreadsheets were included in the record as ALJ exhibits, along with the pleadings, briefs and other submissions, the parties' exhibit lists, and the partial settlement stipulation.

For the reasons below, the charges are sustained in part and dismissed in part. Respondents are fined a total civil penalty of $3,164,875.

The decision is organized as follows. The "Background" discusses respondents and the typical sales transaction, the common consumer complaints, and respondents' defenses. The "Analysis" discusses the standard of review with credibility findings and the 13 counts in two parts: the consumer charges and the licensing/application charges. Where appropriate, the charges are analyzed with related charges and the civil fines permitted. The "Findings and Conclusions" summarize the analysis. The "Relief" discusses additional remedies sought by petitioner. The last section contains the "Final Order." Attached are "Appendix A" listing the consumers violations and "Appendix B" summarizing the sustained advertising violations.

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BACKGROUND

Respondents

Major World is the largest automobile dealer in the metro New York area currently employing approximately 340 people and generating about $300 million in gross revenue. Between 2012 and 2017, Major World advertised on its websites, in print, on television, and on the radio, in both English and Spanish.

MWC is a new and used car dealership located at 43-40 Northern Boulevard, Queens, N.Y. and has operated under DCA license number 2003442, since February 11, 2014. MWC registered as a limited liability company under the name Major World Chevrolet, L.L.C. on May 30, 2013, and operates under the trade name, Major World.

MC operated as a new and used car dealership at 43-40 Northern Boulevard under DCA license number 0851824 from 1989 to 2015. In 1997 MC adopted the trade name, Major Automotive Group, and in 1999 began operating under the trade name, Major World. MC no longer operates as a dealership but maintains its executive office at the same location.

MWCDJR is a new and used car dealership located at 50-30 Northern Boulevard and has operated under DCA license number 2012157, since 2014. MWCDJR registered as a limited liability company under the name Major World Chrysler Dodge Jeep Ram, L.L.C. in 2013. It changed its name to Major World CDJR, L.L.C. but continues to do business as Major World Chrysler Dodge Jeep Ram (MWCDJR).

Major Chrysler Plymouth Jeep, Inc. operated as a new and used car dealership at 44-11 Northern Boulevard under DCA license number 0900497, from 1993 to 2015. Major Chrysler Plymouth Jeep, Inc. changed its name to Major Chrysler Jeep Dodge, Inc. (MCJD) in 2003. MCJD no longer operates as a dealership but maintains its executive office at 43-40 Northern Boulevard.

MMLIC is a new and used car dealership located at 44-11 Northern Boulevard and has operated under DCA license number 2009122, since 2014. It was previously licensed at the same location, under DCA license number 1295159, from 2009 to 2013. Since 2015 MMLIC has not sold any vehicles and has not operated as a dealership.

Bruce Bendell has been in the vehicle dealership business since 1972 and has been buying and selling new and used vehicles in the metro New York area since 1985. His brother, Harold Bendell, has also been involved in the management of and has been a part-owner of a number of these dealerships.

Bruce Bendell was the sole owner of MC and MCJD until 1997, when Major Automotive Group, Inc., the parent company of MCJD, MC, and other related dealerships became a public company called The Major Automotive Companies, Inc. ("TMAC"). Bruce Bendell later repurchased MC, MCJD, and MMLIC and is the president and sole owner of these dealerships.

In 2013 and 2014, Bruce Bendell transferred the assets from MC and MCJD ("OldCos") for 12 and three million dollars respectively to MWC and MWCDJR ("NewCos"). The NewCos are owned by a parent company, Major World Acquisition, LLC, which was also created in 2013. As part of the same plan, two trusts now owning 85 percent of Major World Acquisition were created for the Bendell brothers' children. Mr. Cohen purchased the remaining 15 percent. Mr. Cohen is married to Harold Bendell's daughter, a trust beneficiary. The trusts receive distributions from the NewCos to pay the taxes owed by those companies.

After the sale of the OldCos, Bruce Bendell and Harold Bendell became paid consultants to the NewCos. Harold Bendell buys vehicles and Bruce Bendell consults with regard to the vehicle manufacturers. Neither is involved in the day-to-day operations of the NewCos. For the first five years after the sale of the OldCos, the Bendell brothers received monthly payments from the NewCos that consisted of their fees for their work and the buyouts for the OldCos. The NewCos owe the OldCos more than $10 million in payments.

Mr. Cohen was hired by Harold Bendell in 2006 to work at MC and learn the used car sales business. In 2010, Mr. Cohen became the general manager of the Major Automotive Companies, Inc. that included MC, MCJD, and MMLIC.

Since the creation of the NewCos in 2014, Mr. Cohen has been the general manager, the "Dealer Principal/Manager" and "Operator" of MWC and MWCDJR. Mr. Cohen's day-to-day duties have included purchasing used cars at auctions and pricing them, and supervising the service department and sales and finance managers. His involvement in advertising and the website has changed over time.

Petitioner commenced its investigation of Major World in 2014 following various local news stories about the subprime loan market for used cars buyers in general and one investigative report that featured a consumer from Major World.

Typical Sales Transaction, Consumer Complaints, and Defenses

The majority of consumers testified that they are of Hispanic origin, they do not speak, read, or write English beyond a basic level, they have limited educations, they are low income

earners, they went to Major World because of Spanish advertisements promising good inexpensive cars for people with no or bad credit, they were first-time car buyers, and they spoke with Spanish salespeople whom they trusted to help with the purchase of good used cars. For some, buying a used car represented the single largest purchase of their lives. Most consumers testified that the atmosphere at Major World was hectic and rushed but that they spent hours waiting before they quickly signed the necessary paperwork and left with their vehicles.

Between 2014 and 2017, Major World spent approximately $8 to $11.5 million a year on advertising. Respondents admitted that they marketed to Spanish-speaking consumers, that their dealerships were busy, and that purchasing a used vehicle on credit took time. Respondents maintained that Major World's goal was to put consumers into the best possible vehicles within their budgets so that they would become repeat customers and tell others to buy there. Respondents also alleged that they strived to provide good customer service, including having Spanish-speaking employees, and to move the purchase process as efficiently as possible.

The complaining consumers testified that they initially met with a salesperson to discuss their budgets and the types of vehicles they wanted. They filled out and signed a basic credit application that requested their name, address, phone number, date of birth, social security number, and financial information about their income and expenses. Some consumers testified that, except for the basic pedigree information, their applications were filled out by someone else and that their listed salaries were increased and their rents were decreased from what they reported even when they provided proof of income and expenses.

Mr. Cohen admitted that some consumers needed help filling out applications but denied that employees inflated incomes, decreased expenses, or failed to show consumers the completed applications before they signed them. Respondents further alleged that consumers sometimes lied to qualify for loans, some consumers were savvier than they claimed to be, and that Major World cannot be responsible for false information provided by consumers.

After the credit applications were completed, Major World ran credit reports to determine whether the consumers could obtain financing and the parameters for such financing. Consumers were shown potential vehicles by salespeople. Some consumers claimed that prices were not posted on the cars but that the salespeople verbally quoted them a price. Some consumers also alleged that they were not allowed to test drive the vehicles. Respondents asserted that prices were always posted on vehicles and that consumers could test drive them.

The salespeople prepared a "Vehicle Summary with NADA Values" with, *inter alia,* the model, the make, the vehicle identification number, the mileage, the stock number, the accessories included, and the value of the selected vehicles.

Consumers met with finance managers, some who spoke Spanish, to obtain financing. Finance managers submitted the consumers' financing applications through an online "Dealertrack" program. The applications included information from the handwritten credit applications, the estimated down payments, the estimated terms and loan amounts, and the information about the vehicles selected so that lenders, including banks, finance companies, and credit unions, could assess whether the loans sought were secured by sufficient collateral.

Petitioner alleged that Major World routinely engaged in "power booking" by adding nonexistent accessories to inflate the value of the vehicles to secure loans. Respondents countered that to the extent accessories were improperly selected these were unintentional errors caused by clicking on the options buttons for multiple vehicles and that the additional items had no real impact on the financial aspect of the sales.

Once the applications were submitted, willing lenders responded within seconds with financing offers. If no acceptable loans were offered, respondents could finance the sales themselves. A number of consumers asserted that the financing terms were never explained to them. It was not until after they purchased their vehicles that they learned the total sales price including the interest which was much more than they agreed to pay.

After the financing was obtained, the vehicles, the prices and any additional items were agreed upon, and the down payments were received, the consumers executed the necessary paperwork. The consumers were sent to a trailer (the sign-out department) where administrative staff had them sign the paperwork. Many consumers alleged that during the sign-out process they were provided with a stack of papers in English without any explanation, even when the deals were negotiated in Spanish, and that they were told where to sign without being given a chance to read or discuss the documents. Some consumers were so exhausted or anxious about the whole experience that they signed quickly in order to leave the dealerships. Some also claimed that they never received copies of their signed documents.

The deal jackets in the record contained between nine and 23 documents, many of which the consumers signed. Among the documents were: various Major World disclosures, disclaimers, and acknowledgments; two bills of sale; and a retail installment contract ("installment contract"). The top of the installment contract contained the federally-required

Truth-in-Lending-Act disclosures that included the annual percentage rate and the total cost of the vehicle with financing charges. Most installment contracts in this case were 8.5 inches wide by about 24 inches long. Even though they were longer than any of the other documents signed, many consumers testified that they were presented in such a manner, including folding, rolling and clipping the top, so that the disclosures and total costs were not visible.

Respondents denied that employees hid the required terms from consumers. Respondents also asserted that finance managers always explained the terms and conditions of the loans, that no one was prevented from reading the documents, that in 2014 Major World started translating certain documents into Spanish and that copies of all relevant documents were provided to their customers. Mr. Cohen also testified that audits by lenders were routinely conducted and that they demonstrated good lending practices. Mr. Cohen explained that his relationship with lenders was of paramount concern and that they have complimented him on Major World's business practices.

Some consumers further asserted that no one at Major World told them about the condition or accident history of their vehicles. After their purchases, they learned that their cars had been used as rentals or had been in serious accidents. A number of consumers also claimed that they immediately had safety problems such as steering and transmission issues that Major World refused to repair. Some consumers lost their vehicles because their loans were too high, their cars were in accidents due to safety defects, or the cost of fixing them was too great. Overall, 37 consumers expressed dissatisfaction with Major World.

Mr. Cohen maintained that except for trade-ins, most of Major World's used cars were purchased at auction by seasoned purchasers and that they only purchased good vehicles. Prior to purchasing the vehicles, the buyers reviewed condition reports provided by the auction houses, inspected the cars in person and/or on-line through the extensive photographs and videos, and read the Carfax and the AutoCheck vehicle history reports that provide, *inter alia*, the number of prior owners, the reported accident history, and the available service records. When the vehicles arrived at Major World they were driven, given a thorough inspection, serviced, and repaired, if necessary. Seriously damaged vehicles were returned to the auction houses.

Major World also asserted that consumers were given a copy of the Carfax report and that respondents complied with all required warranties, provided warranties not required by law, and routinely made repairs after purchase at no charge when not required to do so. Mr. Cohen noted that some consumers had buyer's remorse and Major World stood behind all vehicles sold

and that some problems could not be fixed to a consumer's satisfaction, but that Major World worked with unhappy purchasers on price, the loan terms, or the vehicles. Respondents further contended that during the charged period they sold thousands of cars a year and that petitioner's tiny sampling of complaints, many of which were solicited from consumers whom DCA contacted and prompted to complain, was not indicative of its overall business practices.

However, in an effort to improve and address the allegations in DCA's petition, Mr. Cohen testified that he instituted various changes that are discussed throughout this decision. For example, Mr. Cohen spoke with two finance managers about DCA's charges and fired a finance director and a finance manager. He advised his staff that he would fire anyone who falsified a consumer's income and that Major World has begun auditing deal jackets. Major World also requires that consumers now complete the hand-written credit applications and sign all income-related entries in the credit and Dealertrack applications as well as new forms that verify their income and monthly housing expenses. In 2017, the sign-out process was transferred to the finance managers so that they can answer consumers' questions and explain the documents during signing. Major World further provides employees with quarterly training by an outside consultant who covers employment, finance, privacy, insurance, compliance, and best practices for consumer finance applications. To ensure code compliance, the consultant conducts random audits of each finance manager's deals. Also, Major World's advertising agency reviews new advertisements to ensure that they are accurate and code compliant.

ANALYSIS

Standard of Review

In this administrative proceeding, petitioner "has the burden of proving its case by a fair preponderance of the credible evidence . . . ." *Dep't of Correction v. Hall*, OATH Index No. 400/08 at 2 (Oct. 18, 2007), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 08-33-SA (May 30, 2008) (citations omitted). Preponderance has been defined as "the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence." Richardson on Evidence § 3-206 (Lexis 2008) (citations omitted); s*ee also Dep't of Sanitation v. Figueroa*, OATH Index No. 940/10 at 11 (Apr. 26, 2010), *aff'd*, NYC Civ. Serv. Comm'n, Item No. CD 11-47-A (July 12, 2011) (citations omitted).

Hearsay is admissible in administrative proceedings and may form the basis for an administrative determination. *See Gray v. Adduci*, 73 N.Y.2d 741, 742 (1988). The hearsay,

however, must be probative of a material fact and carefully evaluated before it is relied upon. *See Comm'n on Human Rights ex rel. Lissade v. Baron*, OATH Index No. 188/16 at 15-16 (Aug. 25, 2017), *adopted*, Comm'n Dec. and Order (Aug. 8, 2018). Relevant factors considered in assessing the reliability and probative value of hearsay include the identity of the hearsay declarant, the availability of the declarant to testify, declarant's personal knowledge of the facts, the independence or bias of the declarant, the detail and range of the hearsay, the degree to which it is corroborated, the centrality of the hearsay to the party's case, and the magnitude of the administrative burden should it be excluded. *Dep't of Environmental Protection v. Barnwell*, OATH Index No. 177/07 at 7-8 (Sept. 18, 2006).

Credibility Findings

When evaluating witness credibility, this tribunal has looked to witness demeanor, the consistency of a witness's testimony, supporting or corroborating evidence, witness motivation, bias or prejudice, and the degree to which a witness's testimony comports with common sense and human experience. *Dep't of Sanitation v. Menzies*, OATH Index No. 678/98 at 2 (Feb. 5, 1998), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 98-101-A (Sept. 9, 1998).

Moreover, when a portion of witness's testimony is shown to be false, all of the testimony may be rejected when it was the only evidence offered in support of a charge. *See Dep't of Education v. Brust*, OATH Index No. 2280/07 at 10 (Sept. 29, 2008), *adopted*, Chancellor's Dec. (Oct. 22, 2008) (if a witness is found to have been false in one instance, trier-of-fact may reject all of the witness's testimony); *see also People v. Barrett*, 14 A.D.3d 369 (1st Dep't 2005) (the maxim *falsus in uno falsus in omnibus*, false in one thing, false in everything, may be applied to witness testimony, it is permissive, not mandatory).

The consumers who testified at trial and/or who were deposed were generally found to be credible. While they had a motive to assert fraud to obtain restitution from respondents, the majority of the consumers' statements seemed genuine. Much of their trial testimony and depositions comported with common sense and human experience and was consistent and corroborated by respondents' witnesses and documentary evidence. To the extent there were inconsistencies in the consumers' statements, they were generally minor and attributable to lapses in memory and not fabrication. The fact that consumers were solicited by DCA did not automatically undermine their credibility. DCA's mission is to protect consumers from predatory business practices. *See* https://www1.nyc.gov/site/dca/about/overview.page.

However, portions of the consumers' testimony were less reliable. Many filed complaints with DCA and testified years after they had purchased their cars. Their recollections seemed, at times, inaccurate and unusually alike. This was especially true about the consumers' affidavits that were drafted by DCA using similar language, altering only a few personal and vehicle details. For example, more than half of the consumers complained that Major World failed to disclose that their cars were not roadworthy and that their complaints to Major World were ignored. Most of these assertions were contradicted by respondents' contemporaneous service records. These records, the most reliable evidence offered, showed that the consumers often came in after their purchases for non-safety/routine repairs, they were not charged, and that the safety-related issues were raised long after they had purchased their vehicles or driven them considerable distances. Following respondents' case, DCA withdrew the majority of the roadworthiness claims, including the unlikely assertion that Major World sold a consumer a Jeep with nails in all four tires that were not discovered for four days even though the consumer drove the vehicle daily. *See* Appendix A.

Several consumers, when deposed by respondents' counsel, were untruthful. Two of these consumers merit discussion here.

Mr. Woods claimed that respondents forged his credit application and sold him an unauthorized service contract without his knowledge. Mr. Woods has an associate college degree, he speaks English fluently, and, at the time of his vehicle purchase, he was an eligibility specialist who verified income for Medicaid benefits. He admitted that he had previously purchased a car on credit, that he wanted a newer car with fewer miles, and that he developed buyer's remorse after he changed jobs and could no longer afford the car payments. Mr. Woods' assertion that he did not sign any of the Major World documents was incredible. The signature on his DCA affidavit is remarkably similar to those found in his deal jacket. *See Thomas v. Coughlin*, 145 A.D.2d 695, 696 (3d Dep't 1988) ("The trier of fact may make comparisons of handwriting samples . . . in the absence of expert testimony"); *Orix Credit Alliance, Inc. v. Pasta Tree Cafe, Inc.*, 2008 N.Y. Misc. LEXIS 8266 (Sup. Ct. N.Y. Co., 2008) (same). It seems that Mr. Woods joined this action to re-coop some of the $16,847 he still owed on the car that was repossessed and that his allegations against Major World were embellished.

In the same way, Mr. Rentas claimed that respondents failed to explain the financial terms of his purchase, sold him an unauthorized service contract, and failed to post the car's selling price. Mr. Rentas drives disabled persons for a living, he previously ran and owned a tire

business for five years, and he was a truck driver. He speaks fluent English and has purchased at least six used cars. At his deposition Mr. Rentas claimed that he took a friend who wanted to buy a car to Major World and that he was not there for himself. However, when he arrived he decided he wanted a Jeep but bought a Ford Taurus instead because he did not have good credit. He also claimed that the salesperson told him the Taurus had only 37,000 miles but that it really had 67,000 miles, that he was never given an opportunity to read the paperwork he signed, and that he was told his monthly payments were going to be $250 a month but they were $267. None of this testimony was credible. Mr. Rentas admitted that he inspected the Taurus inside and out, he chose not to take it for a test drive, and that the documents he signed had the correct mileage. It seems highly unlikely that someone who drives cars for a living and has owned multiple used cars would buy a car on a whim without asking any questions and without understanding the terms of the purchase. Mr. Rentas' testimony about the amount owed on the Taurus was also inconsistent with what he included in his affidavit.

Respondents argued that charges relating to the six consumers who failed to appear for their depositions, despite being served with subpoenas, should be dismissed. The unexplained failure of these consumers to appear for their depositions is a factor in deciding the reliability and probative value of their affidavits. However, this goes to the weight of the hearsay and the corroborating evidence. As the depositions of Mr. Woods and Mr. Rentas revealed, the affidavits drafted by DCA were not entirely reliable. Thus, absent corroborating proof, affidavits of non-appearing consumers were deemed insufficient to support their claims. Conversely, if an affidavit was corroborated by independent reliable evidence it was generally credited.

Turning to respondents' witnesses, they also had a financial motive to lie: the principals - to avoid large fines and loss of their DCA licenses; the Major World employees - to keep their jobs; and the service providers - to maintain their contracts with Major World. Like the consumers' testimony, some of respondents' witnesses were more credible than others and parts of their testimony were more credible than other parts.

Overall Mr. Cohen, respondents' main witness, seemed reliable. His testimony was generally reasonable and was corroborated by documentary evidence. However, some of his statements were incredible. For example, Mr. Cohen claimed that between 2014 and 2017 Major World spent over $14 million on consumer repairs. In fact, this amount included not only consumer repairs but also repairs for cars in Major World's inventory pre-sale, repairs paid for by consumers, repairs made under various warranties, and repairs made to employees' cars.

Bruce Bendell presented himself as a successful businessman with strong ties to the community. While he was generally a credible witness, his testimony was not particularly useful because it did not relate to the charges. Although Mr. Bendell has financial ties to the various respondent-entities, it did not appear that he had any day-to-day involvement in the running of the operations during the charged period.

Thus, disputed facts and hearsay will be evaluated using the above-discussed factors including whether they comport with common sense and/or are corroborated by reliable, independent evidence.

PART I – CONSUMER RELATED CHARGES (Counts 1-4, and 13)

Petitioner alleged that Major World engaged in over 90,000 instances of deceptive trade practice in violation of various Consumer Laws including: false advertising and internet pricing, falsifying consumers' finances and vehicle accessories in credit applications, misrepresenting the condition and prior uses of used vehicles, charging for unauthorized service contracts, and other improprieties. Respondents denied the charges. Because the consumers' credibility was the most critical factor in resolution of some of the consumer charges, charges that related to the individual consumers are addressed first, followed by charges that related to respondents' general business practices.

The Consumer Protection Laws

Code section 20-700 prohibits any person from engaging in "any deceptive . . . trade practice in the sale . . . or in the offering for sale . . . of any consumer goods or services. . . ." Admin. Code § 20-700. Deceptive trade practices are: "any false, falsely disparaging, or misleading oral or written statement, visual description or other representation of any kind made in connection with the sale . . . or in connection with the offering for sale . . . of consumer goods or services, or in the extension of consumer credit . . . which has the capacity, tendency or effect of deceiving or misleading consumers." Admin. Code § 20-701(a).

Deceptive trade practices include:

> (1) representations that goods or services have . . . accessories, characteristics, . . . uses, benefits, or quantities that they do not have; the supplier has a[n] . . . approval [or a] status . . . that he or she does not have; . . . or, goods or services are of a particular standard, quality, grade, style or model, if they are of another;

> (2) the use, in any oral or written representation, of exaggeration, innuendo or ambiguity as to a material fact or failure to state a material fact if such use deceives or tends to deceive; . . .
>
> (4) offering goods or services with intent not to sell them as offered; . . .

Admin. Code § 20-701(a).

DCA Rule 5-09 states in relevant part that:

> sellers offering consumer goods or services in print advertising and promotional literature **must disclose clearly and conspicuously all material exclusions, reservations, limitations, modifications or conditions**. A disclosure made in print at least one-third as large as the largest print used in the advertisement or promotional literature satisfies this section.

6 RCNY § 5-09(a) (emphasis added). DCA Rule 5-01 defines "consumer goods and services" as "goods or services (including credit) that are primarily for personal, household, or family purposes." 6 RCNY § 5-01.

Respondents' unsupported argument that charges related to consumers who purchased new cars should be dismissed because DCA lacks jurisdiction over such sales is without merit. The Charter authorizes DCA to enforce laws related to the advertising and sale of "*all* commodities, goods, wares, and services" Charter § 2203(d) (emphasis added). The Code creates no distinction between licensed and unlicensed businesses, or new and used goods. *See Aponte v. Raychuk*, 160 A.D.2d 636 (1st Dep't 1990) (delegation of authority to regulate conduct of attorneys to the Appellate Division did not preclude DCA from proscribing deceptive advertising by attorneys).

To establish a Code violation, DCA need not prove actual deception or injury. Admin. Code §§ 20-701, 20-703(e). Moreover, the Code is to be construed broadly to protect the public from deceptive trade practices. *See Maldonado v. Collectibles Int'l*, 969 F. Supp. 7, 8 (S.D.N.Y. 1997); *see also Polonetsky v. Better Homes Depot, Inc.*, 185 Misc.2d 282, 286 (Sup. Ct. N.Y. Co. 2000), *modified*, 279 A.D.2d 418 (1st Dep't 2001), *reversed on other grds*, 97 N.Y.2d 46 (2001) (Legislature sought to confer broad jurisdiction on DCA over unfair trade practices).

In *Gaidon v. Guardian Life Ins. Co. of America*, 94 N.Y.2d 330, 344 (1999), the Court of Appeals stated that a "deceptive act or practice" is a representation or omission "likely to

mislead a reasonable consumer acting reasonably under the circumstances." *See also City Line Auto Mall, Inc. v Mintz*, 42 A.D.3d 407, 408 (1st Dep't 2007) (no reasonable consumer would have been deceived by the sticker into believing that the vehicle was a Jeep and not a Honda). However, in *Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 273 (1977), the Court stated that in weighing an advertisement's capacity to deceive or mislead consumers, one should "not look to the average customer but to the vast multitude which the statutes were enacted to safeguard -- including the ignorant, the unthinking and the credulous who, in making purchases, do not stop to analyze but are governed by appearances and general impressions." When the Court issued *Gaidon,* it did not overrule the standard in *Guggenheimer* and both cases are cited with regularity in a variety of deceptive trade practice cases. It was unnecessary to determine which standard to apply because resolution of the charges here did not vary depending on the standard used.

Furthermore, the presumption under New York State law that a party to a contract knows its contents and assents to them does not apply when a counter-party engages in fraud or other wrongful conduct in connection with the execution of the contract. *See, e.g., Pimpinello v. Swift & Co.*, 253 N.Y. 159 (1930). Thus, consumer fraud claims that are contrary to the disclaimers and paperwork that they signed are not necessarily a basis for dismissing them. *People ex rel. Schneiderman v. One Source Networking, Inc.*, 125 A.D.3d 1354, 1357 (4th Dep't 2015) (signed disclosures by consumers did not "dispel the deceptiveness of the sales practice").

Finally, when faced with a question of statutory interpretation, deference must be given to DCA's construction where it is not irrational or unreasonable. *See 23 Realty Assocs. v. Teigman*, 213 A.D.2d 306, 308 (1st Dep't 1995).

Application of Civil Fines

Code section 20-275(b) states that except as otherwise provided, violations of this subchapter or rule promulgated thereunder "shall be subject to a civil penalty of not more than $500 for each violation." Admin. Code § 20-275(b). Specifically, Code section 20-703(a) provides that violations "*shall be* punishable . . . by the payment of a civil penalty *in the sum of fifty dollars to three hundred and fifty dollars* . . . . " Admin. Code § 20-703(a) (emphasis added). Moreover, knowing violations "*shall be* punishable . . . by the payment of a civil penalty *in the sum of five hundred dollars*. . . ." Admin. Code § 20-703(b) (emphasis added).

Petitioner requested knowing penalty violations only for charges related to falsifying consumer applications and false advertising. To establish a knowing violation, petitioner must

show that respondents were aware their conduct was unlawful. *e.g.*, *People v. Coe*, 71 N.Y.2d 852, 855 (1988); *see also* N.Y. Penal Law § 15.05(2) (Lexis 2018) ("A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such circumstance exists."). It may do so by reference to the facts and circumstances surrounding the case that prove respondents knew their conduct was unlawful. *People by Vacco v. Alamo Rent a Car*, 174 Misc. 2d 501, 504-05 (Sup. Ct. N.Y. Co. 1997).

In 2016, DCA promulgated Rule 6-47 that provided a fixed penalty schedule for Code section 20-700 violations with a minimum fine for a first violation of $260 and a maximum $350 fine for third and subsequent violations. 6 RCNY § 6-47.

During a June 13, 2018 telephone conference, petitioner's counsel advised that the penalty schedule was created to promote uniformity in the imposition of penalties for NOVs adjudicated at the OATH Hearings Division and that, in this case, it was seeking penalties under Code section 20-703, as pled in the petition. Petitioner later argued that the Rule 6-47 penalty schedule must be applied here retroactively. The only exception was a "knowing" violation that should be treated under Code section 20-703(b) because it was not listed in the penalty schedule. Respondents argued that DCA Rule 6-47 is inconsistent with Code section 20-703 and *ultra vires* and that the rule cannot be applied retroactively.

While the DCA penalty schedule is within the range mandated by the Code, it increased the $50 minimum and reduced the $500 maximum to $260 and $350 respectively despite the statute's wording that the penalty "shall be" between $50 and $350 and $500 if it is a knowing violation. Admin. Code §§ 20-703(a), (b). Petitioner also failed to explain why a knowing violation should be assessed at $500 under Code section 20-703(b) when a "third or subsequent violation" is presumably "knowing" under DCA Rule 6-47 and penalized at $350.

An administrative agency may not promulgate a regulatory rule contrary to the plain meaning of the statutory language. *See Lower Manhattan Loft Tenants v. New York City Loft Bd.*, 157 A.D.2d 611, 612 (1st Dep't 1990) ("the powers of an administrative agency may not be implied, but are created by language of clear import, admitting of no other reasonable construction"); *Shubert v. New York City Conciliation and Appeals Bd.*, 127 Misc. 2d 494, 495 (Sup. Ct. N.Y. Co. 1984) ("where statutory language is clear and unambiguous, the statute must be given literal effect"); *see also Boreali v. Axelrod*, 71 N.Y.2d 1 (1987) (striking an *ultra vires*

rule by the Department of Heath prohibiting smoking in certain public locations under the basis that the agency unlawfully acted as a legislative body).

It is unnecessary to rule on whether DCA's mandatory penalty schedule is *ultra vires*. Petitioner never pled DCA Rule 6-47 in the four petitions filed, but instead pled the imposition of penalties under Code section 20-703. Respondents were only on notice that petitioner was seeking civil penalties under Code section 20-703. *See* Charter § 1046(a) (Lexis 2018) (requiring, as a matter of due process, notice of charges to be adjudicated, with reference to sections of law and rules involved, and an opportunity to be heard on matters in the notice).

Petitioner's submission of a new petition dated July 3, 2018, adding references to DCA Rule 6-47 was rejected because it was done unfairly and without authority. Based on petitioner's representation on June 27, 2017, that it was only reducing the number of violations, petitioner was given permission to submit a fourth amended petition and was told no "sneaking anything in." Because petitioner went beyond this directive and added a DCA Rule 6-47 penalty allegation without adequate notice to respondents or by seeking leave to do so, the third amended petition is controlling. *See* 48 RCNY § 1-25.

In its closing reply brief, petitioner provided a chart that identified, *inter alia*, the charge, the number of violations alleged, whether it was seeking a knowing violation under Code section 20-703(b) or a violation under DCA Rule 6-47, and the total amount requested. Since the DCA penalty schedule cannot be applied, sustained violations of Code section 20-700 will be assessed under the appropriate subsection of Code section 20-703. Where required, other violations will be penalized as provided by the Code or the DCA Rules.

Roadworthiness (Count 1)

Petitioner alleged that Major World violated Code section 20-700 by misrepresenting that seven used vehicles sold to consumers were roadworthy and by failing to disclose material defects that they knew or should have known rendered those vehicles unfit for ordinary use. Petitioner requested a $1,820 fine. Respondents denied the allegations and argued that DCA does not have jurisdiction over these claims, and even if it did, petitioner failed to provide expert testimony or otherwise show that the vehicles were not roadworthy at time of delivery. These charges are sustained as to six vehicles and dismissed as to one vehicle.

Misrepresenting the condition, uses, or quality of a second-hand automobile is a deceptive business practice. *See* Code § 20-701(a)(1) (deceptive business practices include

representations that goods have "characteristics" or "uses" that they do not have or that goods are of a particular "quality" if they are of another); *see also Comer v. Person Auto Sales, Inc.*, 368 F. Supp. 2d 478, 488 (M.D.N.C. 2005) (deceptive trade practice to falsely represent to a customer that a vehicle is in good mechanical and serviceable condition).

To the extent the New York State Department of Motor Vehicles has jurisdiction to hear roadworthiness claims under Vehicle and Traffic Law ("VTL") section 417, it does not preclude DCA from enforcing its own Consumer Laws as they relate to deceptive trade practices. *City Line Auto Mall, Inc.*, 42 A.D.3d at 408-09 (rejecting argument that DCA's authority to regulate used dealerships is preempted by State law because the State has not assumed full regulatory responsibility for their licensing).

Turning to the merits, Major World's short-form bill of sale in use throughout the relevant period stated that a sold vehicle is "in condition and repair to render, under normal use, satisfactory and adequate service upon the public highway at the time of delivery" and that it was "received in good condition." Such a statement would be false if the vehicle had a defect at the time of delivery. *See, e.g., Rhody v. Empson*, 46 Misc. 3d 1227(A) at 14 (Ithaca City Ct. 2015) (defective condition of vehicle on date of sale and continuing defects rendered it unfit for satisfactory and adequate service.). Courts will infer a defect existed "at the time of delivery" if a malfunction occured shortly thereafter. *See, e.g., Rice v. R.M. Burritt Motors, Inc.*, 124 Misc. 2d 712 (Oswego City Ct. 1984) (defect existed at time of sale even though consumer did not discover it until two months later); *McCormack v. Lynn Imports, Inc.*, 114 Misc. 2d 905, 907-08 (Dist. Ct. Nassau Co. 1982) (unsafe condition existed at time of sale when consumer reported difficulty in steering the car to the dealer in first several weeks after purchase but used it without incident for eight months); *Tulley v. Nemet Motors Inc.*, 35 Misc. 3d 1226(A) at 7 (Civ. Ct. N.Y. Co. 2012) (emission system not operating on day of sale as shown by repair five days later).

Petitioner alleged that MWC sold Mr. Paredes two cars in 2014 that were not roadworthy, a Nissan and a Honda. The charges are sustained as to the Nissan but not the Honda.

Mr. Paredes testified that he went to MWC on March 4, 2014, to purchase a Honda Accord. Since he did not have sufficient credit, he purchased a 2007 Nissan Altima with the hope of improving his credit. The next day he started having transmission problems, namely, the Nissan would jerk when he put the car in forward and in reverse. MWC's service records dated March 18, and 21, and April 8, and 15, 2014, demonstrate that Mr. Paredes reported on-going transmission problems. The claim that the Nissan was not roadworthy is sustained.

Mr. Paredes testified that on April 29, 2014, he brought the Nissan to Major World, threw the car keys at them, and asked for his money back because the car was not working. After fighting with Major World, a supervisor convinced him to replace it with a Honda Accord so that he could keep his credit in good standing. Since he wanted a Honda, he purchased it even though it was $1,000 more than the Nissan. He drove it home that night.

Mr. Paredes asserted that the next day the brakes on the Honda stopped working and that, as a result, he had an accident. He stated that he was on the right side and a truck was coming from the left when another car came out and he tried to avoid hitting it. Mr. Paredes claimed that he pumped the brakes but that they did not respond causing him to hit the truck. He testified that he took the Honda to an independent repair shop and that it was there for a month. During this period he reported the brake failure to Major World and brought the car to one of their mechanics. Several days after getting the car from the shop, Mr. Paredes totaled the Honda in a second accident. The insurance paid off only part of the loan, leaving him with a loan balance that he has refused to pay since he no longer has the car.

Mr. Paredes' testimony about the first accident did not ring true. No repair records of the independent repair shop were provided. When asked whether the shop repaired the brakes, Mr. Paredes claimed that only the body was repaired. It seems highly unlikely that if brake failure caused the first accident it would not have been repaired. It also seems unlikely that he brought the Honda to MWC for brake repairs as claimed, because there are no service records to support this assertion. Given that Mr. Paredes still owes $3,316 on the Honda, it seems likely that when he was contacted by DCA, he blamed the second accident on Major World by claiming that it had deficient brakes at the time of sale that caused the first accident. The claim that the Honda was not roadworthy is dismissed. Since Mr. Paredes' credibility was in issue, absent corroborating proof, the rest of his testimony was not credited.

Petitioner alleged that on September 5, 2014, MWC sold Ms. Espinal a 2007 Chevrolet Impala that had nine defects that manifested themselves within 30 days of purchase including a heating/air condition system that fogged up her windows and impaired her visibility starting on the first day that she owned it.

Ms. Espinal's affidavit was corroborated by service records showing that between September 9 and October 6, 2014, she went to MWC six times to complain about loud noises and rattles coming from the engine and steering wheel and that the air conditioning was not blowing from the vents. During this period, MWC performed repairs that required replacing the:

blend door actuator, tire sensor, alternator, battery, rack and pinion assembly, two front axles, a headlight bulb, and a "P/S motor mount." According to Ms. Espinal, despite these repairs, the Impala continued to have problems. She filed a complaint with the Attorney General on April 2, 2015, reiterated her grievances, and also alleged that she was having problems with the transmission but that Major World refused to fix it because the guarantee had expired. On May 26, 2015, Ms. Espinal replaced the transmission for $3,895.

This proof was sufficient to sustain Ms. Espinal's claim. *Rice*, 124 Misc. 2d at 713 (car not roadworthy because heater-defroster not functioning, *citing* 15 N.Y.C.R.R. § 78.13(c)(9) "vehicles must be equipped with a front windshield defrosting device in good working order."); *Natale v. Martin Volkswagen, Inc.*, 96 Misc. 2d 1046,1050 (Utica City Ct. 1978) (car not roadworthy where within a few days of purchase plaintiff had to install or repair the points, battery, alternator, electric system, and light bulbs and car had to be towed off the road).

Petitioner alleged that MWC sold Mr. Jessurum a 2013 Jetta on July 19, 2016, that had a passenger-side door that would not lock and a horn that did not work.

Mr. Jessurum's testimony that both defects were intermittent and started within two or three weeks after he bought the car was credible and corroborated by service records. It was undisputed that the rear door lock was fixed after MWC ordered the parts but that the horn was never properly repaired. Respondents' assertion that the horn problem was intermittent casted doubt on whether the condition existed at the time of sale was without merit. Respondents' service manager testified that Jettas are known to have defective horns. Mr. Jessurum eventually brought the car someplace else and the horn was repaired. It is reasonable to conclude that a door that does not lock and a horn that does not sound could render a vehicle unsafe for passengers and other people using the roadway. *See* 15 N.Y.C.R.R. § 78.13(c)(10) ("All motor vehicles must be equipped with a horn in good working order . . . .").

Petitioner alleged that MWC sold Mr. Gonzalez a 2011 Chevy Traverse on January 16, 2017, with a faulty air conditioning/heating system starting on the first day of ownership, eventually flooding his car and causing further damage. Mr. Gonzalez's claims were credible and supported by photographs, text messages with MWC, and service records.

Petitioner alleged that MWC and MMLIC sold Ms. Devine a 2008 Hyundai Elantra on September 10, 2014, that had a defective air bag system and brake stop lamp switch, defects which were both confirmed by the manufacturer.

In 2011, Hyundai recalled 2007-2009 Elantras including Ms. Devine's vehicle. Specifically, the front passenger seats contained a weight sensor designed to deactivate the airbag for occupants under a certain weight. The weight sensor could malfunction causing the airbag to deploy regardless of the occupant's weight. Improper airbag deployment increases the risk of injury for the occupant and renders a vehicle unsafe for ordinary use at the time of delivery. *See Kearney v. Hyundai Motor Am.*, 2010 U.S. Dist. LEXIS 144148 at 27 (C.D. Cal. 2010) (consumer stated a claim for breach of implied warranty of merchantability based on assertion that Hyundai Sonata had a defective sensors in front seats that control the vehicle's air bags). Hyundai also recalled 2008 Elantras in 2013 because of a defective brake system. Hyundai announced that the malfunction could cause the brake lights not to illuminate or fail to deactivate the cruise control when depressing the brake pedal.

The 2008 and 2011 recalls of Ms. Devine's car show that the two defects were still subject to recall at the time of 2014 sale. Thus, respondents' knew or should have known that the airbag and brake lights had not been repaired. The fact that Ms. Devine signed the open recall document did not negate respondents' responsibility to have these items repaired prior to sale. Respondents' assertions that there was no requirement that dealerships disclose open recalls and that such recalls can take years for the manufacturer to repair were without merit. Respondents' service manager admitted that an airbag system and brake lights are necessary to operate a vehicle safely and that Ms. Devine's Elantra could have been sent to an affiliated Hyundai dealer, to have the defects repaired before offering the car for sale.

Finally, petitioner alleged that Major World sold Mr. Hernandez a 2012 Honda Pilot that had a defective airbag system on April 20, 2014. Prior to the sale, Honda had issued a "Stop Sale order and Safety Recall" for over 700,000 Honda vehicles, including the 2012 Pilot. The recall stated that during manufacturing, one or more rivets that attached the airbag cover to the driver's airbag may not have been installed which could alter the performance of the airbag during deployment and increase the risk of injury during a crash. This violation is sustained.

Petitioner did not seek knowing violations for these claims and the penalties will be assessed under Code section 20-703(a). Selling cars to consumers that are not in condition to render them for normal use is egregious. Since respondents failed to put forward any mitigating circumstances, the maximum $350 penalty for each of the six sustained violations is appropriate. Accordingly, a $2,100 penalty is imposed.

Service Contracts (Count 1)

Petitioner alleged that Major World violated Code section 20-700 by charging 12 consumers for vehicle service contracts that the consumers did not authorize and by failing to honor one of those agreements. Petitioner requested a $3,120 fine. Respondents denied the allegations and argued that the cost of these items was displayed on the dealer documents that the consumers signed and that the one consumer refused service. This charge is sustained in part.

As discussed above, Mr. Woods' and Mr. Rentas' deposition testimony was not credible and their claims that they never discussed service contracts with their salespeople and did not sign the agreements that bear their signatures were not credited. The uncorroborated affidavit of Ms. Wade and the uncorroborated testimony of Mr. Paredes were also unreliable. Indeed, during his deposition Mr. Paredes acknowledged that he purchased a service contract at the time of sale, which undermined his trial testimony that he could not recall any discussions about it. These four consumer claims are dismissed. The remaining claims are sustained.

Mr. Jessurum's and Mr. Masih's testimony that they never discussed the service contracts they purchased and that they cancelled them when they learned about the extra charges was credible. Likewise, Mr. Aspiazu (two claims), Ms. Sutter, and Mr. Gonzalez provided credible and consistent testimony that they were never told about the service contracts and that they purchased these unauthorized items while they were signing a stack of papers without realizing what they were signing.

It was also undisputed that because Mr. Gonzalez's financing was rejected he returned to MWC on January 30, 2017, to execute new documents including a new service contract. Petitioner did not allege that the second agreement was sold without Mr. Gonzalez's consent, but rather that MWC refused to honor it when his shocks and transmission gave him problems within one month of the purchase of a Chevy Traverse. It was undisputed that on February 27, 2017, Mr. Gonzalez requested service for transmission and shock issues and that these items were covered by the service contract. MWC's service records indicate that the "customer refused to order parts." Mr. Gonzalez credibly testified that his refusal was because MWC tried to charge him instead of covering the parts under the service contract. It makes no sense that a consumer who purchased a service contract and had a covered mechanical problem would not order the necessary parts. A failure to perform a service promised by contract is a deceptive trade practice. Admin. Code § 20-701(a)(1). The fact that MWC made subsequent repairs under the service

contract and Mr. Gonzalez eventually chose to bring his car elsewhere for needed repairs was not a defense to this charge.

Finally, Ms. Wong's credible testimony that she did not want to purchase a service contract but was advised by a salesperson that she needed one in order to purchase a new car was never rebutted by respondents. A deceptive trade practice includes stating that services are needed when they are not. Admin. Code § 20-701(a)(8); *see also One Source Networking, Inc.*, 125 A.D.3d at 1357 (telling consumers that a warranty was essentially a precondition to obtaining a loan when in fact that was not the case was a deceptive business practice).

Contrary to respondents' assertions, the six consumers' signed paperwork agreeing to purchase these service contracts did not dispel Major World's deceptive sales practice of including these items without the consumers' authorization.

Petitioner did not seek knowing violations and the penalties will be assessed under Code section 20-703(a). Selling unauthorized service contracts to consumers is an egregious and predatory practice. The maximum $350 penalty for each of the eight sustained violations is appropriate. Thus, a $2,800 penalty is imposed.

Credit Applications (Count 1)

Petitioner alleged that Major World knowingly falsified consumers' credit applications in violation of Code section 20-700 by inflating the consumers' income or deflating their rent 32 times and by inflating 116 vehicle appraisals. Petitioner argued that the falsifications were done to make the consumers appear more credit worthy and to improve the loan to value ratio on the financed vehicles. Petitioner requested a finding of knowing violations and the imposition of $16,000 and $58,000 fines, respectively, for the two specifications. Respondents denied the allegations. These charges are sustained in part.

Respondents contended that the inaccurate amounts in the credit applications were more to the detriment of the lenders than the consumers. Contrary to respondents' argument, whether Major World directed these misrepresentations to the lenders and not to the consumers did not warrant dismissal of these claims. The Code is intended to be interpreted broadly and the phrase "in connection with the sale" in section 20-701 refers to the entirety of the transaction, and not simply statements made directly to the consumer. *Maldonado,* 969 F. Supp. at 10; *cf. Knapp v. Americredit Fin. Servs., Inc.*, 245 F. Supp. 2d 841, 851-52 (S.D.W.Va. 2003) (rejecting argument that finance company did not deal directly with consumers and allowing deceptive practice

claims to proceed where customers were dealt with by creation of false pay stubs, false down payments, and charging an acquisition fee hidden in the vehicle price); *Country Tweeds, Inc. v. F.T.C.*, 326 F.2d 144, 148 (2d Cir. 1964) (manufacturer violated 15 U.S.C. § 45(a)(1) by providing a false testing report to its distributors that had the effect of misleading the public).

Respondents also argued that DCA has the burden of showing that lenders would not have entered into the transactions but for the alleged misleading applications. There was no legal support provided for this contention. Under Code section 20-701 a deceptive trade practice is "any false . . . written statement . . . other representation of any kind . . . which has the capacity, tendency or effect of deceiving or misleading consumers." Falsifying consumers' credit applications without their knowledge and asking them to certify that the applications are true deceives consumers into believing that what was submitted to the lender was accurate and truthful. Moreover, falsifying consumers' income or adding false accessories misrepresented to the lenders the true financial status of the transaction and resulted in financing being extended to the consumers based on false data. Finally, consumers were provided paperwork stating that their vehicles had accessories that did not exist which also had the capacity to mislead them into believing that their cars were worth more than they were.

A. False Income

The consistent and credible testimony of the majority of the consumers demonstrated that they did not fill out the handwritten credit applications and that the income and rent Major World entered on their credit and Dealertrack applications were different from what the consumers reported. This testimony further established that this was done without the majority of consumers' knowledge or consent. In a number of cases, the consumers provided proof of their income and/or rent or mortgage expenses. In other cases, the handwritten applications were different from what was input into Dealertrack. Several consumers testified credibly that their occupations, employers, and secondary income sources listed on the applications were also fabricated without their knowledge.

It was undisputed that Major World salespeople routinely filled out the credit applications for Spanish-speaking consumers and that the consumers never saw the Dealertrack applications sent to the lenders. More than half of the affected consumers credibly testified that they spoke only Spanish and did not see what the salespeople included on their credit applications before they signed them. Notably, the same finance director and finance manager (who have since been

fired) participated in many of these transactions which suggested that the falsification of applications was a practice used by them to obtain loans and thereby increase their sales. Even though respondents argued that some of the consumers were savvy and lied to qualify for loans, Major World failed to present a single witness familiar with the specific transactions to rebut the consumers' testimony.

The following claims are sustained:

- The unrebutted claims of Ms. Dominguez (two claims), Mr. Paredes, Ms. Sutter (two claims), Mr. Dilion-Duran, Ms. Gonzalez, Mr. Masih, and Ms. Wong that Major World falsified their incomes were consistent and corroborated by their paystubs or Dealertrack applications.

- The unrebutted claims of Ms. Espinal and Ms. Devine that Major World employees decreased their monthly rent were consistent and were corroborated by credit applications and Dealertrack applications.

- The unrebutted claims of Ms. Guerrero, Ms. Vaughan, and Ms. Zollner, who were either elderly or disabled, that they advised the salespeople they did not have jobs or were on limited fixed incomes and that their occupations and incomes recorded on their credit applications by the salespeople were false were consistent and credible.

- The unrebutted claims of Mr. Tejada, Ms. Belliard, Mr. Hernandez, Mr. Figueroa, Ms. Arias, Mr. Rivera, Ms. Brown, and Ms. Castillo that they did not fill out the false information on their applications were consistent and credible.

- The unrebutted claim of Mr. Aspiazu that the finance manager lowered his rent from $1,900 a month to $700 without his knowledge was credible and corroborated by Ms. Sotomayor. To the extent petitioner charged a separate violation for Ms. Sotomayor, the charge is dismissed because she did not fill out a credit application.

The remaining claims are dismissed:

- The claims of Mr. Cintron and Ms. Fernandez are dismissed because the petition made no claim that their credit applications were falsified.

- The claims of Mr. Yene and Ms. Wade in their affidavits were uncorroborated and insufficient to support their claims that their applications were falsified by Major World.

- The claim of Mr. Woods that his $50,000 income was falsified by Major World is dismissed. As discussed above, Mr. Woods was not credible. It seems likely that the salesperson suggested to Mr. Woods, who brought

his pay stub to MCJD, that his $38,000 salary should be increased so that he could finance the car he wanted and that Mr. Woods agreed by initialing the false amount on the application. Since Mr. Woods likely participated in the scheme, he was not deceived by Major World.

- The two claims of Ms. Payne that her $15,656 annual salary was falsified by Major World are dismissed. Ms. Payne brought a copy of her W-2 statement to MC showing that her salary was $15,656 and admitted that she wrote that it was $30,600. Her claim that she was just doing what she was told by the salesperson because she only knew her hourly rate and not her annual salary was contradicted by her W-2 statement.

- The claim of Mr. Suarez that his $48,000 income was falsified by Major World is dismissed. Mr. Suarez testified that he advised the finance manager that in addition to his $44,000 plus annual salary as a doorman, he received a few thousand dollars in tips. Since he filled out his application listing his salary as $48,000, which was close to accurate, he was not deceived by Major World.

- The claim of Ms. Jefferson is dismissed because she gave inconsistent deposition testimony about the material fact in issue saying that there were no errors on her handwritten credit application showing her annual salary as $31,000 but that the $31,000 salary on her Dealertrack application was incorrect. Ms. Jefferson never articulated what she told the salespeople.

The record supports a finding that Major World knowingly and intentionally falsified consumers' income and/or expense information on 23 occasions. Thus, the maximum $500 fine under Code section 20-703(b) is appropriate. Accordingly, a $11,500 fine is imposed.

B. False Vehicle Accessories

Deceptive trade practices also include "representations that goods . . . have . . . accessories . . . that they do not have." Admin. Code § 20-701(a)(1). "Power booking" is stating that a vehicle has accessories that it does not have in order to increase the value of the vehicle and make the loan more appealing to the lender. Typically, because the consumers did not see what was input into Dealertrack, the falsified accessories were discovered when the vehicle was repossessed by the lender.

Petitioner presented proof that between 2006 and 2017 Major World engaged in power booking on 116 occasions. The proof consisted of testimony and documentary evidence from 15 consumers who stated that the vehicles they purchased did not have some of the accessories listed in their deal jackets. The remaining 101 occasions were derived from letters sent by

finance companies seeking reimbursement for missing equipment on repossessed vehicles and the payment checks sent by Major World.

Mr. Cohen testified that he has repeatedly told finance managers not to engage in power booking but that it is hard to identify patterns by managers. He noted the additional accessories were often so minimal that they did not change the loan to value ratio. He further stated that some of the incorrect accessories were inadvertently entered when the salesperson prepared the Dealertrack information on the computer. Major World now has a new program that confirms the options and avoids the problem. Moreover, since the filing of DCA's petition, Major World requires the salesperson and finance managers to verify all accessories. According to Mr. Cohen, power booking harms the dealership more than the customer because the dealer has to repay the banks for the nonexistent accessories years after paying salespeople commissions on the sales. There is little impact on consumers who get the benefit of a higher loan to value ratio thereby getting a lower interest loan or a loan when they may not have otherwise qualified. Mr. Cohen further testified that in the past when he got the missing equipment letters he repaid the lenders without verifying the accessories. He now investigates and pays only a fraction of them.

Since there was no dispute that Major World sold 116 vehicles with listed accessories which did not exist, these charges are sustained.

Petitioner argued that these violations were knowing and that a $500 fine for each occasion of power booking should be imposed. It is petitioner's burden to establish a knowing violation. As previously stated, a knowing violation requires awareness on respondents' part that the conduct complained of was proscribed. Even though Mr. Cohen was aware of the practice of power booking and repaid banks on 101 occasions for missing equipment, these facts alone are insufficient reason to impose the maximum penalty under the circumstances presented here.

The values of the accessories misrepresented ranged from $50 to $4,524.96 and were for items such as running boards, towing packages, sunroofs, navigation systems, stereos systems, and power seats. The average amount misrepresented was $732 and, of the 116 occasions, 80 were below the average.

It seems unlikely that a low cost, single item such as $50 running boards were added intentionally. Rather, it seems more plausible that these items were added by careless clicks on the computer. Although petitioner alleged that power booking impacted the amount financed, DCA never put forward any proof to show that the added accessories actually changed the loan-to-value ratios so as to alter the terms of the loan. While it seems likely that more expensive

accessories may have impacted the terms of the financing, there was no additional information provided about the value of the vehicles involved or the amounts financed in order to draw such a conclusion, let alone a methodology for doing so. While Mr. Cohen's claim that power booking harms the dealerships more than the consumers was not credible and the majority of the consumers lost their cars to repossession, there was no evidence that this was due to power booking. Finally, petitioner identified only 116 occasions over an 11-year period. Using petitioner's assumption that Major World sold an average of 8,000 cars a year means that about one-tenth of one percent (.00013) of all cars sold during this period were power booked. The proof was insufficient to show that these 116 occasions constituted intentional and knowing acts of power booking by Major World employees.

There is, however, some support for the contention that Major World was on notice that its staff was inflating vehicle values. In 2001, two finance companies sued MC alleging that MC falsified information on customer credit applications and misidentified vehicle features in other documents submitted for financing. In March 2009, TMAC (the parent company of MC, MCJD, and MMLIC that is owned by Bruce Bendell) and a subsidiary, Compass Dodge, Inc., executed a consent order with the New Jersey Attorney General Division of Consumer Affairs to resolve an investigation into their financing practices. TMAC agreed to pay a $142,500 fine and to not misrepresent consumer credit information to lending institutions for the purpose of securing financing for vehicle purchases.

Given that many of these claims are remote in time and there was insufficient evidence that these were intentional instances of power booking, a penalty in the lower range, such as $100 per violation is appropriate. Accordingly, a $11,600 penalty is imposed.

Acquainting Consumers with Finance Terms (Count 3)

Petitioner alleged that Major World committed 35 violations of DCA Rule 2-103(b) by failing to acquaint consumers with the terms that the recommended finance company could lawfully charge. In its closing submissions, petitioner reduced the number of violations to 34 and requested a $17,000 fine. Respondents denied the charges and alleged that the consumers' signed installment contracts with the financing terms and that Major World's employees answered all of the consumers' questions. These charges are sustained in part.

DCA Rule 2-103(b) states, "If financed by a finance company recommended by the dealer, the dealer must first acquaint the purchaser with the precise terms which such finance

company is entitled by law to charge, including nature of collateral, interest rate, and other charges, if any." 6 RCNY § 2-103(b).

Overall, the consumers gave credible, consistent, and unrebutted testimony that the financing terms were never fully explained by the finance managers. Many of the consumers purchased vehicles with interest rates that were close to the maximum allowed by law with the total interest to be paid being far greater than the value of the vehicles bought. Given that many of these consumers also had their credit applications falsified, it seems likely that these same Major World employees would be less than forthcoming about the terms of the sales.

As discussed above, the uncorroborated affidavits of Mr. Yene, Ms. Jefferson, Ms. Moreno, and Ms. Wade (two claims), and the uncorroborated testimony of Mr. Rentas were insufficient to support their claims. However, the credible, consistent, and unrebutted testimony of the remaining consumers that Major World employees failed to explain the finance terms of their loans was credible.

Most of the consumers testified that the top of the 24 inch long installment contract, that contained the federally required finance disclosures and the total cost of the car, was folded, rolled, or clipped so that the finance information was not visible when they were given the contract to sign. They also credibly claimed that they were handed a stack of documents that included the installment contract and that they were told where to sign without reading the documents. The consumers consistently maintained that that they were rushed through the sign-out process by the administrative staff, that the process lasted about 15 minutes, and that no one explained anything to them. A review of a typical deal jacket shows that it contained multiple documents some of which were multiple pages and single spaced and that it would take far more than 15 minutes to read them. This was especially true if English was not the consumers' first language and they had limited educations. Some also credibly asserted that they were so exhausted by the entire process that they signed quickly without asking questions because they wanted to get their vehicles and leave.

The consumers' testimony that had they understood the total cost of their vehicles, they would not have purchased them or co-signed for other people was credible. The fact that consumers signed paperwork agreeing to the finance terms, including a document stating that all the terms of the transactions have been explained to them, did not preclude a finding of deceptive sales practices. Thus, petitioner sustained 28 violations.

The penalty for violating DCA Rule 2-103(b) is $500 per violation. 6 RCNY § 6-19. Accordingly, a $14,000 fine is imposed.

Spanish Translations (Count 2)

Petitioner alleged that Major World violated DCA Rule 5-33 by failing to provide consumers with Spanish translations of 431 documents related to their vehicle purchases pursuant to an installment contract. Petitioner requested a $150,850 fine. Respondents denied the charges. These charges are sustained in part.

DCA Rule 5-33(a) states: "This section applies to the purchase or lease of consumer goods and services by means of an agreement to pay in installments." 6 RCNY § 5-33(a). DCA Rule 5-33(b) states: "When essential parts of a consumer agreement are negotiated in Spanish, the consumer must be given a Spanish translation of any documents related to the agreement." The list of documents to which the requirement applies includes:

> (1) any document which the consumer signs;
> (2) any document containing the merchant's policy on refunds, cancellations or exchanges;
> (3) any document containing terms and conditions of the agreement;
> (4) any guarantees or warranties given by the merchant;
> (5) any exclusion or modification of express or implied warranties.

6 RCNY § 5-33(b).

As a preliminary matter, respondents' claim that DCA never enforced this rule before is incorrect. Petitioner provided two NOVs issued to other dealerships for violations of DCA Rule 5-33. Even if respondents were singled out, a defense of selective prosecution is unavailable at an administrative trial. *Dep't of Environmental Protection v. Egonu*, OATH Index No. 1944/07 at 8 (July 24, 2007), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 08-15-SA (Mar. 17, 2008). In any event, DCA has a legitimate interest in reviewing the conduct of its licensees to protect consumers from unfair business practices and to enforce its own rules.

Turning to the merits, respondents admitted that the following documents should have been translated to Spanish: the installment contract, the bill of sale, the long form bill of sale, the rescission agreement, the down payment receipt, and the acknowledgment and privacy notice. Respondents further claimed that in 2016 Major World started using a Spanish installment contract. Respondents argued that the remaining documents did not need to be translated for

several reasons: they did not relate to the installment contract and included documents that were given to all purchasers regardless whether they financed the vehicle; one document was government-issued; and the other documents were provided to the lenders in English.

These arguments are without merit. With the exception of the assignment document, all the documents were signed by the consumers, even when there was no legal requirement for them to do so. Thus, they were all covered by DCA Rule 5-33(b)(1). The assignment, which is signed only by Major World, states that it is "attached to and expressly made part of" the installment contract. Thus, it should have been translated. In addition, a number of the disputed documents needed to be translated under DCA Rules 5-33(b)(3), (4), and (5) because they contained terms and conditions that related to the installment contract and/or warranties and guarantees made by Major World.

It should be noted that the AutoCheck and Carfax reports, which related to the condition of the vehicle, were available in Spanish from the applicable websites; the salesperson needed to only check a box to have them printed in Spanish. The fact that other documents were printed from a government website or were provided to the lender in English did not preclude Major World from providing Spanish translations so that the consumers could understand what they were signing and providing to the lender. Remarkably, the first Spanish document that Major World created was the "Confirmation of Information Form Provided" that protected respondents from liability by shifting responsibility to the consumers for any inaccuracies on their financial applications even when filled out by Major World employees. Thus, any claim that it was too onerous to translate all of the disputed documents into Spanish was without merit.

Consistent with proper business practices, DCA Rule 5-33 dictates that when someone negotiates a financed deal in Spanish they should be given the related documents they are required to sign in Spanish so that they understand the terms and conditions of the entire transaction. Accordingly, all the documents listed on the parties' Spanish language consumer chart needed to be translated if the essential parts of the agreements were negotiated in Spanish.

Thus, the next question is whether petitioner demonstrated that the essential parts of the installment contracts of the identified consumers were negotiated in Spanish.

Except for the uncorroborated affidavits of Mr. Yene and Ms. Moreno, the evidence was sufficient to establish a *prima facie* case that the essential parts of the remaining consumers' vehicle purchases were negotiated in Spanish. Respondents failed to present any direct testimony from a witness involved in the transactions to rebut the consumers' testimony.

It was undisputed that Major World marketed to Spanish-speaking consumers by having Spanish advertisements. Respondents' argument that some consumers had a working knowledge of English was unpersuasive. Basic English skills are not an exception to the requirement of DCA Rule 5-33(b) which protects people who are able to engage in basic spoken English but are unable to read in English, especially the complex documents in dispute. Except for Mr. Aspiazu, Mr. Cintron, and Mr. Suarez, the other consumers testified through Spanish translators and/or provided affidavits in Spanish. They gave credible and consistent testimony that they negotiated their deals in Spanish and have limited or no English language skills. Indeed, some of their documents have notations that discussions were held in Spanish or that they requested Spanish documents. Ms. Fernandez, who only speaks Spanish and co-signed a loan for her son, credibly testified that the salesperson spoke to her in Spanish. Thus, she had the right to see the documents she was signing in Spanish. Even though Mr. Aspiazu, Mr. Cintron, and Mr. Suarez spoke English, they credibly testified that they negotiated their deals in Spanish and were, therefore, entitled to Spanish documents under a plain reading of the rule. At a minimum, they should have been offered the choice of English or Spanish documents. Thus, petitioner demonstrated that 24 consumers negotiated their installment contracts in Spanish.

The Spanish-language consumer chart indicated that among the demonstrated consumers who negotiated their deals in Spanish, there were 399 documents that should have been translated, excluding Mr. Gonzalez's installment contract that was in Spanish. Petitioner's argument that this document should be included as a violation because he was not given a copy does not support a claim under DCA Rule 5-33(b).

Petitioner argued that since violations of DCA Rule 5-33 are not listed in DCA's penalty schedules, the fines should be imposed under Code section 20-703(a). Respondents' did not dispute this assertion. Since respondents were aware of the requirement to provide Spanish language documents and failed to do so in a timely manner and the first Spanish document they created was designed to protect them from liability, the maximum $350 penalty for each violation, as requested by petitioner, is appropriate.

Petitioner also argued that a violation should be counted on a per document basis. Petitioner asserted that DCA Rule 5-33 does not limit the translation requirement to financing related or installment related documents but includes other documents unrelated to the financing aspect of a deal and that each untranslated document is a separate violation. Respondents argued

that a violation should be counted on a per transaction basis because DCA Rule 5-33 applies only to transactions where a consumer agrees to pay in installments.

Petitioner's construction of its own rule is entitled to deference because it was rational and supported by case law. *See Van Cortlandt Park Dodge, Inc. v. Dep't of Consumer Affairs*, 178 A.D.2d 234 (1st Dep't 1991) (upholding Code penalties in a single advertisement on a deceptive per-statement basis); *see also City of New York v. Toby's Elecs., Inc.*, 110 Misc. 2d 848, 849, 857 (Civ. Ct. N.Y. Co. 1981) (granting summary judgment for DCA on six Code violations related to three products deceptively priced on two different days).

Thus, petitioner is entitled to a separate penalty for each of the 399 documents that should have been translated. Accordingly, a $139,650 penalty is imposed.

Posting Prices (Count 13)

Petitioner alleged that MWC violated Code section 20-271(b) eight times by failing to post the total selling price of seven second-hand automobiles and add-on products. In its closing submissions petitioner reduced the number of alleged violations to six and requested a $3,000 fine. Respondents denied the charges and alleged that the price was displayed in the window of the vehicle and the price of "add-on" services were posted in the finance managers' offices. These charges are sustained.

Code section 20-271(b)(1) requires that dealerships "clearly and conspicuously post [ ] the total selling price . . . of each second-hand automobile offered for sale at his or her place of business, by means of a sign on the dashboard of each such automobile or by means of a sign at the point of display of each such automobile . . . ." Admin. Code § 20-271(b)(1). Code section 20-271(b)(2) further requires that dealerships "clearly and conspicuously post . . . the total selling price of any add-on product offered for sale . . . ."

Ms. Williams' unrebutted testimony that the Jeeps she looked at had no prices on them was corroborated by a picture of the Jeep that she purchased with other nearby Jeeps, none of which had prices visible. The remaining five consumers' unrebutted testimony that, when they visited MWC between July 2016 and January 2017, they did not see add-on product prices posted anywhere was corroborated by MWC's finance director. He acknowledged that respondents did not post the prices of add-on in the finance managers' offices until February or March of 2017.

The penalty for a first time violation of Code section 20-271(b) is $500. Admin. Code § 20-271(d)(1)(a). Accordingly, a $3,000 fine is imposed.

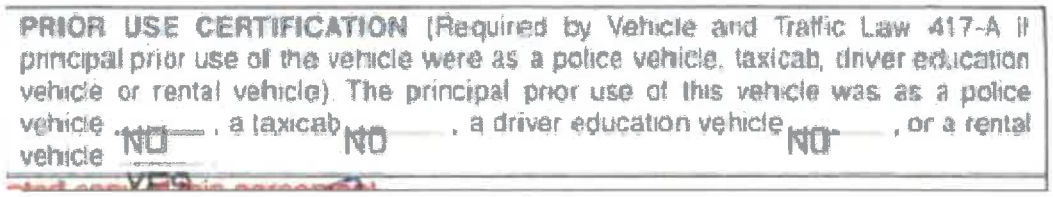
Certifying Rental Vehicles (Count 1)

Petitioner alleged that Major World violated Code section 20-700 by falsely certifying that six vehicles were not used as rental vehicles and requested a $1,560 fine. Respondents denied the allegations. Except for two charges, the charges are sustained.

VTL section 417-a(1)(a) requires that a dealership notify a consumer, in writing, of "the principal prior use of such vehicle when the dealer knows or has reason to know that such use was as a taxicab, rental vehicle, police vehicle." The statement must be "conspicuously printed, typed or stamped on the dealer's contract of sale, and the appropriate line checked, and given to the purchaser before the purchaser signs it." 15 N.Y.C.R.R. § 78.13(g)(1). The misrepresentation of a vehicle's principal prior use is a deceptive practice. *See Diaz v. Paragon Motors of Woodside, Inc.*, 2007 U.S. Dist. LEXIS 6237 at 21 (E.D.N.Y. Jan. 29, 2007).

Respondents admitted that MWC failed to notify Mr. Aspiazu that his vehicle had been previously used as a rental and alleged that this was a mistake. This charge is sustained.

With regard to the other five consumers, respondents alleged that the form used was a triplicate bill of sale and that the vehicle information was typed into the computer and then printed. Because the form was not aligned perfectly in the printer, the information was not printed exactly on the line. Petitioner argued that a faulty printer is not a valid excuse.
The following is an example of the disputed certification:


PRIOR USE CERTIFICATION (Required by Vehicle and Traffic Law 417-A if principal prior use of the vehicle were as a police vehicle, taxicab, driver education vehicle or rental vehicle) The principal prior use of this vehicle was as a police vehicle NO, a taxicab NO, a driver education vehicle NO, or a rental vehicle

(Bill of Sale for Ms. Gonzalez).

A review of the bills of sale for Ms. Payne and Ms. Brown show the word "YES" slightly below the section asking whether the vehicle was previously used as a rental. Since the required information was provided and was legible, these two charges are dismissed. The other three charges for Ms. Gonzalez, Ms. Arias, and Mr. Suero-Tejada are sustained because, due to the printer misalignment, the word "No" from one of the other use sections appeared in the space

asking whether the vehicle was previously used as a rental. The "Yes" was too far below the line and was too obscured to see.

Petitioner did not seek a knowing violation and the penalty will be assessed under Code section 20-703(a). Failing to properly notify consumers that their cars were previously used as rental vehicles is egregious and the maximum $350 fine for each of the four sustained violations is appropriate. Accordingly, a $1,400 fine is imposed.

Miscellaneous Consumer Complaints (Count 1)

Petitioner alleged that Major World engaged in four specific consumer transactions that violated Code section 20-700. Petitioner requested a $260 penalty for each violation under DCA Rule 6-47. Respondents denied the charges. Three of the charges are sustained.

Petitioner alleged that MWC misrepresented the year of Ms. Belliard's vehicle by telling her that she was purchasing a 2013 Nissan Quest but by delivering to her a 2012 Nissan Quest instead. Respondents denied the charge.

Ms. Belliard testified that she thought she was purchasing a 2013 Nissan Quest and that she did not find out it was a 2012 model until she went for an oil change on an unspecified date. While her testimony was credible, it was insufficient to prove that Major World misrepresented the year of the Nissan. Ms. Belliard admitted that she looked at approximately five vans and it was equally possible that she made a wrong assumption about the model year she selected. Every document Ms. Belliard signed identified the Nissan as a 2012 model, including her own insurance card. Where the evidence is equally balanced the charges must be dismissed. *Rinaldi & Sons, Inc. v. Wells Fargo Alarm Service, Inc.*, 39 N.Y.2d 191, 196 (1976).

Petitioner alleged that MWC gave Ms. Williams a price and financing terms for a brown 2015 Jeep Wrangler with an automatic transmission but subsequently claimed that those terms were for an inferior yellow Wrangler with a manual transmission. Respondents denied the allegations and alleged that Ms. Williams was not credible.

At her deposition, Ms. Williams testified in detail that in December 2016, she went to MWC with Ms. Richards, her colleague, to look for a Jeep Wrangler that cost no more than $30,000. Alfonso, the salesperson, showed them several Wranglers without any prices posted on them, including a blue, a red, and a brown one. Ms. Williams liked the red Jeep and Sergio, the finance manager, told her that he would price the vehicles and to call him in a few days. According to Ms. Williams, when they spoke, she told Sergio that the price of the red Jeep was

too high and he gave her the price for the less expensive brown one. Ms. Williams took contemporaneous notes that the brown Jeep was a 2015 model with 24,000 miles and that it cost $27,392 after taxes. She indicated that she wanted the brown Jeep. Ms. Richards testified at her deposition that Ms. Williams showed her the notes and that they discussed the purchase of the brown Jeep.

Ms. Williams and Ms. Richards testified that they returned to MWC on December 10, 2016, to purchase the brown Jeep. After Alfonso showed Ms. Williams the vehicle, they spoke to Sergio, who stated that the price quoted over the phone was actually for a yellow Jeep, not the brown one. After arguing with Sergio and eventually Mr. Cohen for more than five hours, Mr. Cohen agreed to sell Ms. Williams the brown Jeep for $27,392.

Respondents claimed that Ms. Williams was trying to get the brown Jeep, a more expensive vehicle, for the lower price of the yellow Jeep. However, respondents failed to put forward any testimony to rebut Ms. Williams' credible testimony as corroborated by Ms. Richards. Notably, Alfonso admitted in his deposition that he never showed Ms. Williams a yellow Jeep and both Ms. Williams and Ms. Richards testified that they never saw a yellow Jeep on the first day. The brown Jeep also had about 24,100 miles on it when Ms. Williams purchased it, which was consistent with the notes she made while she was speaking to Sergio. This tribunal has often found that contemporaneous written records are more reliable than subsequent recollections that may become tainted as a result of faulty recollection or deliberate misrepresentation. *See Dep't of Correction v. Boyce*, OATH Index No. 789/97 at 14 (July 9, 1997), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 99-75-SA (July 19, 1999) ("Contemporaneousness usually evinces reliability."). Thus, even though respondents eventually gave Ms. Williams the Jeep at the price she wrote down, it did not dispel petitioner's *prima facie* case that MWC tried to deceive her about the price of the brown Jeep.

Petitioner alleged that MWC relied on a forged and invalid power of attorney to transfer title of Ms. Valerio's 2011 Cadillac Escalade to MWC. Respondents denied the allegations and alleged that Ms. Valerio consented to the trade-in of her Cadillac.

Ms. Valerio testified that she is the manager of a check cashing store and knows how to scrutinize documents and to verify a person's identity. She credibly testified that on April 30, 2016, her boyfriend, Claudio, took the title for her 2011 Cadillac Escalade to MWC and traded it in for a Mercedes without her permission or knowledge. When she got home, Claudio told her that he had a surprise for her. She was upset to see that Claudio had replaced her big Cadillac for

a small Mercedes. After she reviewed the paperwork with Claudio, who does not speak English, she saw numerous problems and told him that she wanted her Cadillac back. When Claudio went to MWC the next day, he was advised that the Cadillac had been sold. Ms. Valerio was furious and filed a complaint with DCA after seeing a news story about Major World.

The deal jacket for the transaction included a copy of Ms. Valerio's license with the April 30, 2016, transaction date. Ms. Valerio credibly testified that she did not provide her license to either Claudio or Major World. Also included in the deal jacket was a Major World "Limited Power of Attorney" that authorized Claudio to trade in the 2011 Cadillac Escalade. The document was undated, it did not include Ms. Valerio's name as the person authorizing the trade-in, and it was not notarized. There was a handwritten notation that "sig matches license" but there was no testimony as to who wrote this or when. Ms. Valerio testified that the signature was not hers, thereby placing the validity of the power of attorney in question. It further raised the question whether MWC perpetrated or participated in the perpetration of a fraud.

The power of attorney was invalid because it was undated and incomplete and it had no notarization to verify that the person signing it was in fact Ms. Valerio as required by law. *See* Gen. Obligations Law 5-1501B(1)(b) (Lexis 2018). Ms. Valerio's testimony that she never signed the power of attorney was credible. A comparison of the signatures on Ms. Valerio's license and the power of attorney show that they are not similar and it seems unlikely that they were made by the same person. The date on the license image further suggested that the Major World power of attorney was executed on the date of the trade-in when Ms. Valerio was not present. Given Ms. Valerio's work as a manager of a check cashing operation and her clear anger about the transaction, it was unlikely that she signed the purported power of attorney. Rather, because a power of attorney was needed to complete the transaction, it seems likely that Claudio got an image of Ms. Valerio's license and either he or someone else executed the power of attorney so that he could surprise Ms. Valerio with the Mercedes. Whatever good intentions he may have had, Claudio with the assistance of MWC engaged in deceptive and fraudulent conduct. Since MWC accepted a facially invalid power of attorney to transfer the Cadillac Escalade, MWC misled Claudio into believing that this was a proper transaction to the detriment of Ms. Valerio.

Petitioner also alleged that MWC falsely told Mr. Aspiazu that if he paid his vehicle loan on time for the first six months, he would be able to renegotiate the terms and secure a lower rate

from the lender. Respondents denied the allegation and alleged that renegotiation of a loan is solely within the discretion of the lender.

Ms. Sotomayor credibly testified that when her husband, Mr. Aspiazu, traded in her Toyota Sienna and purchased a used Nissan Rogue from MWC she was unhappy because the Nissan was in poor condition, it was inferior to her Toyota, and it was too expensive. When she went back to MWC the next day with Mr. Aspiazu, they were initially told that they would have to pay $1,500 to get the Toyota back. Although they were angry, they agreed but then they were told that the Toyota had been sold. Since their request for a refund was denied they felt they had no choice but to look at other cars but had four options only because Mr. Aspiazu's credit was poor and they could not spend more than $21,000. They decided on a 2015 Nissan Quest. When they told the finance manager, that the price and interest rate were too high, he said not to worry because in six months they could refinance the loan. Six months later Mr. Aspiazu tried to refinance the loan but was rejected. Ms. Sotomayor's testimony was corroborated by Mr. Aspiazu, who testified at his deposition that the same finance manager told him that the interest rate would go down in six months.

Respondents failed to present evidence to rebut this credible testimony. It seems likely that the finance manager told Ms. Sotomayor and Mr. Aspiazu that they would be able to refinance the loan as an incentive for them to buy the Nissan and avoid further confrontation with them about the traded-in Toyota that had been allegedly sold by MWC.

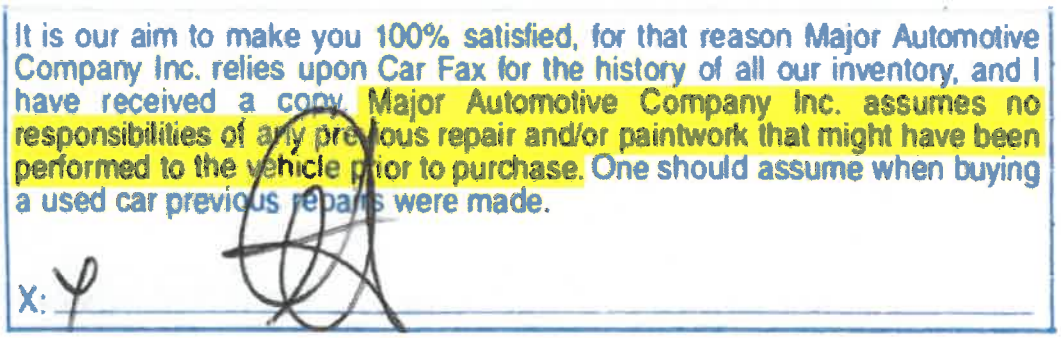
The respondents' conduct was egregious. Thus, the maximum penalty of $350 for each sustained violation is imposed under Code section 20-703(a), for a total of $1,050.

Notifying Consumers about Legal Rights and Vehicle Conditions (Counts 1 and 4)

Petitioner alleged that between 2012 and 2017 Major World violated Code section 20-700 and DCA Rule 2-103 each at least 40,000 times by misrepresenting the history, condition, and quality of the used vehicles it sold to consumers and by impermissibly purporting to limit its responsibility under VTL section 417. At issue were four documents that respondents required consumers to sign: the long-form bill of sale ("bill of sale"); the Carfax Disclosure form ("Carfax"), the "New York State Used Vehicle Limited Warranty" ("Limited Warranty"), and the Guarantee of Value form ("Guarantee"). Petitioner requested a $10,400,000 fine for the Code violations and a $15,000,000 fine for the DCA Rule violations. Respondents denied the allegations. These charges are sustained and a $1,683,050 fine is imposed.

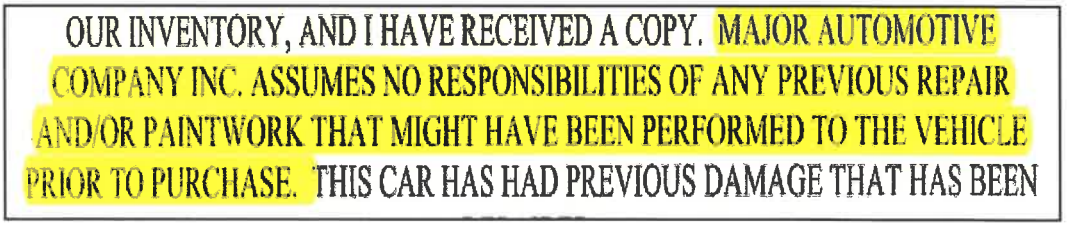
A. DCA Rule 2-103 (Count 4)

Petitioner alleged that Major World purported to limit its responsibility under VTL section 417 in violation of DCA Rule 2-103(g)(1)(iii) by requiring all consumers to sign a bill of sale and Carfax that contained the following highlighted language:


It is our aim to make you 100% satisfied, for that reason Major Automotive Company Inc. relies upon Car Fax for the history of all our inventory, and I have received a copy. Major Automotive Company Inc. assumes no responsibilities of any previous repair and/or paintwork that might have been performed to the vehicle prior to purchase. One should assume when buying a used car previous repairs were made.

X:

(Bill of sale, highlight added). The Carfax contained the same highlighted language:


OUR INVENTORY, AND I HAVE RECEIVED A COPY. MAJOR AUTOMOTIVE COMPANY INC. ASSUMES NO RESPONSIBILITIES OF ANY PREVIOUS REPAIR AND/OR PAINTWORK THAT MIGHT HAVE BEEN PERFORMED TO THE VEHICLE PRIOR TO PURCHASE. THIS CAR HAS HAD PREVIOUS DAMAGE THAT HAS BEEN

Respondents denied the allegations and argued that Major World certified and covered all vehicles as required by the VTL and that the purpose of this statement was to notify consumers that every used car has had some sort of paintwork or cosmetic repair.

VTL section 417 requires that when a dealership sells a used vehicle it must certify that the vehicle "is in condition and repair to render, under normal use, satisfactory and adequate service upon the public highway at the time of delivery." VTL § 417. Consumers cannot waive their VTL section 417 rights. *Rayhn v. Martin Nemer Volkswagen Corp.*, 77 A.D.2d 394, 396 (3d Dep't 1980); *Rhody v. Empson*, 46 Misc. 3d 1227(A) (Ithaca City Ct. 2015).

Consistent with this non-waiver principle, DCA Rule 2-103(g)(1)(iii) states:

> No dealer shall include terms in a contract for sale of a second hand automobile to a buyer other than another dealer which purport to limit the dealer's responsibility under § 417 of the Vehicle and Traffic Law or under this regulation. Impermissible limitations shall include, but not be limited to, sale of the automobile 'as is,' with a disclaimer of warranties, or with a term or terms limiting the dealer's duty to repair, or pay for the repair of, defects existing at the time of sale to a portion of the total cost of parts and labor.

6 RCNY § 2-103(g)(1)(iii).

Petitioner's charge is valid. Essentially, Major World required consumers to sign documents that included language that the used vehicles they were purchasing were sold as is and that Major World was not responsible for any repairs that happened prior to the consumers' purchase. In fact, under VTL section 417 Major World was responsible if the vehicle was unfit for service at the time of delivery. Major World argued that it covered all vehicles as required by the VTL, the vehicles sold were fit for adequate service at time of delivery but had minor paintwork or cosmetic repair, and that the disputed language was preceded by language telling consumers that Major World wanted them to be "100% satisfied." These arguments are without merit. The issue is whether Major World included terms in a contract of sale that purported to limit its responsibility under VTL section 417. Here, the identified language did so and therefore met one prong of DCA Rule 2-103(g)(1)(iii).

The second prong is whether the Carfax and/or the bill of sale, that contained the limiting language, qualified as "a contract for sale" as set forth in the rule.

The bill of sale was a contract of sale. The document referred to itself as an "Agreement," the cancellation statement referred to the document as a "Contract," it had a definitions section, it had numerous terms and conditions, and it listed the vehicle price along with any extra charges. The bill of sale also contained three notices required by City, State, and Federal law to be included in all contracts of sale as well as a choice of law provision, a standard legal clause in a contract. The document also had lines for the buyer and seller to sign and respondents acknowledged that for cash sales, it was the only contract, as there was no installment contract.

Though the bill of sale stated it was not binding unless signed by both parties and Major World did not sign it when there was an installment contract, that did not make the bill of sale an unenforceable contract. Major World could have signed it at any time and sought to enforce the terms and conditions therein. The fact that the bill of sale also contained the warranty of serviceability under VTL section 417 did not negate the ambiguity caused by the conflicting language included by Major World.

On the other hand petitioner failed to demonstrate that the Carfax was a contract of sale. The Carfax was merely a disclaimer statement with no indication that it was a contract. It had no place for the seller to sign and it had none of the legal language that was normally found in a contract including the required notices found in the bill of sale.

Thus, petitioner demonstrated that respondents violated DCA Rule 2-103(g)(1)(iii) by requiring consumers to sign the bill of sale, a contract, that purported to limit respondents' responsibilities under VTL section 417.

B. Code section 20-700 (Count 1)

Petitioner alleged that the four above-referenced documents violated Code section 20-700 because they either materially misled consumers about their legal rights or the history and the condition of the vehicles sold. Respondents denied the charges.

As discussed above, the bill of sale and the Carfax contained impermissible language that deceived consumers into believing that they were waiving their rights under VTL section 417. Accordingly, this written misrepresentation was also a deceptive practice under the broader terms of Code section 20-700.

Petitioner also alleged that Major World's Limited Warranty contained explicit language that attempted to limit its responsibilities under VTL section 417 and that was contrary to the General Business Law ("GBL") section 198-b ("Used Car Lemon Law").

GBL section 198-b requires dealerships to provide a written warranty ("lemon law warranty") that notifies consumers of a dealership's obligations and the consumers' rights when they buy covered cars that turn out to be lemons. Gen. Bus. Law § 198-b (Lexis 2018). The lemon law warranty is an additional warranty to the VTL section 417 warranty of serviceability.

Respondents' Limited Warranty stated:

> ***LIMITIONS***
> (A) **THIS LIMITED WARRANTY IS IN LIEU OF ANY OTHER EXPRESS WARRANTY. ALL IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE ARE HEREBY LIMITED TO THE SAME TERMS AS THIS WARRANTY. ANY WARRANTY, PROMISE OR GUARANTEE MADE BEFORE OR AFTER THE SIGNING OF THIS LIMITED WARRANTY IS VOID.**

This language was inconsistent with VTL section 417. It communicated to consumers that the lemon law warranty was in lieu of any other express warranty, including the warranty of serviceability. The final sentence also purported to void any warranty or guarantee made before or after the signing of the limited warranty even though the VTL section 417 warranty cannot be waived. Such language constituted a deceptive trade practice as alleged by petitioner. *See WorldHomeCenter.com, Inc. v. PLC Lighting, Inc.*, 851 F. Supp. 2d 494, 499-500 (S.D.N.Y. 2011) (disclaiming a warranty that was unwaivable under state law could deceive a "reasonable consumer" under GBL section 349); *see also* 16 C.F.R. § 455.1(a)(2) (deceptive practice for any

used vehicle dealer to misrepresent terms of warranty offered in connection with the sale of a used vehicle).

Petitioner also alleged that the Limited Warranty deceived consumers by stating:

> IMPORTANT PLEASE KEEP THIS WARRANTY IN A SAFE PLACE. IN THE EVENT YOUR VEHICLE SHOULD NEED SERVICE COVERED BY ITS TERMS, YOU MUST PRESENT THIS WARRANTY TO OUR SERVICE DEPARTMENT PRIOR TO REPAIR. THERE WILL BE NO CHARGE TO YOU FOR REPAIR ON COVERED PARTS IF THEY HAVE BEEN INSPECTED DURING THE LIMITED WARRANTY PERIOD.

(Highlight added).

However, there is no requirement in GBL section 198-b that a consumer present or cite the lemon law warranty to receive its protections. Indeed, consumers need not receive a notice to avail themselves of these rights. *State of New York Office of the Attorney General, New York's Used Car Lemon Law: A Guide for Consumers*, available at https://ag.ny.gov/sites/default/files/used_car_lemon_law_guide.pdf, at *5 ("If a dealer fails to give you the written lemon law warranty, the dealer is nevertheless considered to have given the warranty and you are entitled to all the protections under the law."). Telling consumers that they needed to present the Limited Warranty in order to receive services required by GBL section 198-b was a deceptive practice. *See* Admin. Code § 20-701(a)(2).

Petitioner further alleged that Major World violated the Code by misleading consumers into believing that they were fully and accurately apprised of the history and condition of their vehicles. Petitioner argued that Major World deceived consumers by providing them with a Carfax and a Guarantee that included the following:

> Guarantee of Value
>
> IT IS OUR AIM TO MAKE YOU 100% SATISFIED, FOR THAT REASON MAJOR AUTOMOTIVE COMPANY INC. RELIES UPON CARFAX FOR THE HISTORY OF ALL OF OUR INVENTORY AND I HAVE RECEIVED A COPY.

(Excerpt from Guarantee; *see supra* for same language in Carfax).

Respondents acknowledged that the Carfax can be inaccurate and incomplete and that they did not rely on it exclusively for a vehicle's history. In fact, when purchasing a used vehicle for re-sale, Major World also relied on auction materials, condition reports and photographs, information received from prior owners on trade-ins, its own on-line and in-person inspections, and an AutoCheck vehicle history report. Thus, even though Major World did not claim exclusive reliance on the Carfax, the identified language suggested that it did. By failing to inform consumers that Major World relied on multiple sources, this language tended to deceive consumers into believing that the Carfax was a complete and accurate picture of their vehicle's

history and condition when it was not. Therfore, it was a deceptive practice. *See* Admin. Code § 20-701(a)(2); *see also Brass v. Am. Film Techs., Inc.*, 987 F.2d 142, 150 (2d Cir. 1993) (once a party has mentioned a relevant fact to another party it cannot give only half of the truth).

The Carfax also stated: "This car has had previous damage that has been repaired." However, there was no information about the damage or repairs referred to in the disclaimer and it was given to all consumers even when there was no damage or repairs made to a vehicle. Major World argued that all used cars have had some minor paint or cosmetic work but this is not what is stated in the disclaimer. Thus, this statement was deceptive. Admin. Code § 20-701(a)(2).

In addition, the Guarantee stated:

> This vehicle has been subject to only a visual inspection at auction that has resulted in the auction 'announcing' a **possible unibody or frame repair** has taken place. Major has done a pre-auction inspection & New York State inspection on the vehicle and it has passed this complete (emissions, visual and on a lift) inspection. Major is so confident in the condition of this vehicle that we offer the following ***Guarantee***:

The first sentence of this statement was deceptive because Major World knew whether the auction houses had announced whether a vehicle had unibody or frame repair. The entire statement was also ambiguous because it raised many unanswered questions, such as: Who conducted the inspection? If conducted by the auction staff, how did Major World learn about it, and did it obtain details? If conducted by Major World staff, what sort of inspection was undertaken, given that some purchases were made online as opposed to in person? Why did Major World not disclose the actual announcement made at the auction regarding whether any unibody or frame damage or repairs had been done? Was the insertion of "possible" intended to induce consumers into believing that the vehicle had no pre-existing damage thereby making it more appealing to consumers? What did the phrase "possible unibody or frame repair" mean?

Frame or unibody damage is an industry term usually used to describe damage to the main structure or any component that provides structural integrity to the vehicle. A number of consumers reasonably asserted that the structural integrity of a vehicle was critical to their purchasing decision. *Cf. Tuttle Click Auto. Grp. v. Bank of Am. Auto Fin. Corp.*, No. G028606, 2002 WL 1397851, at **1-2 (Cal. Ct. App. 4th Dist. 2002) (frame damage is a material fact requiring disclosure); *Gregory v. Metro Auto Sales, Inc.*, 158 F. Supp. 3d 302, 308 (E.D. Pa. 2016) (the significance of damage to a vehicle frame presents issues of fact, in that such damage can indicate that a vehicle was previously involved in some form of meaningful impact).

Finally, Major World required consumers to sign the Guarantee that stated:

> I AM AWARE THAT THE HISTORY OF THIS VEHICLE AND AGREE THAT I HAVE BEEN FULLY APPRISED OF THE SAME.

This too was deceptive. Consumers were not in fact "fully apprised" of the vehicle's history because the Carfax was not always complete or accurate and Major World had additional information that was not disclosed.

Thus, petitioner established that respondents violated Code section 20-700 as alleged in count one by: including language in the bill of sale, the Guarantee, the Carfax, and the Limited Warranty that materially misled consumers about their legal rights or the history and the condition of the vehicles sold.

C. Number of Violations

The next question is whether respondents violated Code section 20-700 and DCA Rule 2-103(g)(1)(iii) each 40,000 times as alleged by petitioner. Petitioner requested fines for each count on a per transaction basis: one fine for each Code violation that included all four documents, and one fine for each DCA Rule violation that included a bill of sale.

The parties disputed when the Carfax and the Guarantee came into use. Respondents alleged that they started using these documents in 2014. However, petitioner pointed to deal jackets from 2012 and 2013 where these documents appeared as well as deposition testimony from Major World employees who stated that the Carfax and the Guarantee were in use prior to 2014. It seems likely that these documents were utilized in sales transactions since 2012.

Even if the Carfax and the Guarantee were not included in every used car sales transaction since 2012, it was undisputed that the bill of sale and the Limited Warranty were. Since the bill of sale is the common document to the sustained violations under DCA Rule 2-103 and Code section 20-703, the bill of sale will be used for calculating the number of violations. While petitioner need not provide 40,000 bills of sale, it must present reliable proof to support each transaction to obtain individual penalties.

In support of its claim that there were at least 40,000 used car sales transactions since 2012, petitioner relied on Mr. Cohen's trial testimony that on average Major World sold about 8,000 used cars a year. He testified that this was true for 2014, 2015, and 2016, and that this

may have been true for 2013 but he was not sure. He provided no testimony about 2012. Mr. Cohen also testified that 2017 Major World sold between 6,500 and 7,000 used cars.

Petitioner also pointed to deposition testimony of three respondent witnesses. Harold Bendell testified that Major World sold about 700 to 800 cars a month. Mr. Keltz, Major World's in-house counsel, testified that Major World sold about 12,000 cars per year. Mr. Cohen testified that Major World sold between 9,000 and 10,000 vehicles in 2017, down from approximately 13,000 vehicles in 2015. This deposition testimony was, however, of little use in determining the number of used cars sold each year because it included new cars in the totals and except for Mr. Cohen, the other witnesses did not provide any time frame for their claims.

Petitioner also identified the following documents to support the 40,000 figure:

- A spreadsheet of documents showing 282 used car sales transactions between 2012 and 2017, including 32 transactions for 2012.

- A TD Bank Dealer form bearing Mr. Cohen's name that stated MC sold 8,000 vehicles in 2013.

- A "2014 Dealer Operating Report" for MWC that showed it sold 7,387 used cars that year.

- Reports of credit applications submitted by MWC through its website that identified 5,850 used vehicles sold in 2015 and 5,892 used vehicles sold in 2016.

- Summaries showing that Major World sold 37,069 financed used and new vehicles between 2013 and 2016 including: 9,635 vehicles in 2013; 10,518 vehicles in 2014; 8,589 vehicles in 2015; and 8,327 vehicles in 2016.

Petitioner's request during trial to re-open discovery to obtain additional documentation to support its allegation that there were over 40,000 used cars sold to consumers between 2012 and 2017 was denied. Also, petitioner's post-trial request that OATH "should simply ask [Major World] to produce evidence establishing those numbers" was rejected because that would have been tantamount to a discovery demand. It was not OATH's responsibility to supplement any deficiencies in petitioner's proof.

As the manager of the NewCos and OldCos during the charged period, Mr. Cohen's knowledge of the total number of sales should be reliable and was not otherwise disputed by respondents. However, respondents' counsel's claim on the last day of trial that some of the

identified documents were insufficient to establish the number of used cars sold to consumers because they included used cars sold to other dealerships was insufficient to rebut petitioner's offered proof as to the number contained therein. Notably, Mr. Cohen never bothered to make this point even though he testified on multiple days including the last day of trial and he knew that the exact number of used cars sold was a contested issue.

Based on the record presented, the following findings of fact are made as to the number of used vehicles sold to consumers between 2012 and 2017:

- Mr. Cohen's testimony was sufficient to establish that Major World sold at least 6,500 used cars to consumers in 2017.

- The 2016 reports of credit applications submitted by MWC through its website, the 2016 summaries of Major World's new and used car sales, and Mr. Cohen's testimony were sufficient to establish that Major World sold at least 5,892 used vehicles in 2016.

- The 2015 reports of credit applications submitted by MWC through its website, the 2015 summaries of Major World's new and used car sales, and Mr. Cohen's testimony were sufficient to establish that Major World sold at least 5,850 used cars to consumers in 2015.

- The 2014 Dealer Operating Report, the 2014 summaries of Major World's new and used car sales, and Mr. Cohen's testimony were sufficient to establish that Major World sold at least 7,387 used cars to consumers in 2014.

- The 2013 bank form bearing Mr. Cohen's name as corroborated by Mr. Cohen's testimony was sufficient to establish that Major World sold at least 8,000 used cars to consumers in 2013.

- The spreadsheet of documents was sufficient to establish that Major World sold at least 32 used cars to consumers in 2012. Mr. Cohen's general testimony that Major World sold 8,000 cars on average a year was not sufficiently reliable to conclude that this was the case in 2012 since the proof only supported this assertion for one other year. While it is very likely that Major World sold far more than 32 vehicles in 2012, OATH could not speculate as to the exact number since petitioner requested two maximum penalties for each vehicle sold.

Petitioner's evidence established that between 2012 and 2017 Major World sold 33,661 used vehicles to consumers. Thus, petitioner established that Major World violated DCA Rule 2-103(g)(1)(iii) and Code section 20-700 33,661 times as alleged in counts one and four.

D. Civil Penalties

Since the same language in the bill of sale and the same rationale form the basis for finding violations of DCA Rule 2-103(g)(1)(iii) and Code section 20-700, the charges are duplicative. *Sitar v. Sitar*, 50 A.D. 3d 667, 670 (2d Dep't 2008) (charges are duplicative when based on the same set of facts). Thus, the two charges will be treated as one for purposes of penalty. *Dep't of Buildings v. Lamitola*, OATH Index No. 871/12 at 3 n.1 (Mar. 5, 2012).

Turning to the penalty calculation, the violations will be assessed under the Code because in addition to the bill of sale, the sustained Code charge covers the other three deceptive documents for some, if not all, of the charged time period, whereas the sustained DCA Rule charge only covers the bill of sale. Therefore, it makes more sense to apply the Code penalty provisions. Moreover, a $12,622,875 penalty under the DCA Rules requiring a $375 fine for each violation would be so disproportionate to the sustained conduct as to be shocking to one's sense of fairness. *See Pell v. Bd. of Education*, 34 N.Y.2d 222 (1974).

Since petitioner did not seek a knowing violation, the penalties will be assessed under Code section 20-703(a). Petitioner requested the maximum penalty. This request is also excessive for several reasons.

First, petitioner commenced this action by filing a petition that was subsequently amended two times. The three initial petitions focused primarily on the identified consumer-related complaints, the deceptive advertisements, the license filings, and other miscellaneous matters. On December 8, 2017, less than a month before the scheduled trial (which was subsequently adjourned), petitioner amended the petition a third time to add the 80,000 violations arising out of the four identified documents. *See* 48 RCNY § 1-25 (pleading may be amended without consent more than 25 days prior to trial). According to respondents, petitioner advised them that it was merely making minor changes to the petition, not that it was adding 80,000 violations valued at $25 million. The timing of this amendment and petitioner's failure to request related documentation during discovery was shocking. It also suggested that DCA either did not view this issue to be of particular concern or that it added these charges to force respondents to settle pre-trial.

Second, the charges covered a six-year time period. While there is no statute of limitations, no laches, and no need to show an actual injury under the Code, DCA only identified 37 out of the alleged 40,000 consumers who complained about deceptive trade practices. This represented less than one-tenth of one percent (.0925) of respondents' customers for the charged

period. Moreover, of the consumers that had issues with their vehicles, none were discouraged by the four identified documents to make complaints to Major World about needed repairs.

Under the circumstances, each violation will be penalized at $50 under Code section 20-703(a). Even though the penalty is at the low end of the range it penalizes each violation and it will not trivialize them to the level of an acceptable cost of doing business. Such a penalty should also impress upon respondents the need to provide all consumers with documents that are consistent with the Consumer Laws and should act as a deterrent to other dealerships considering similar deceptive trade practices. Accordingly, a $1,683,050 fine imposed.

Advertising (Count 1)

Petitioner alleged that Major World violated Code section 20-700 by knowingly making deceptive representations in print advertisements and on their websites 6,755 "times." Petitioner requested a $179,000 fine for the print advertisements and a $3,199,000 fine for the web advertisements. Petitioner also sought $532,220 for alleged false financing website offers that appeared on 2,000 vehicles and $484,900 for advertising 1,865 vehicles on MWC's Spanish-language website with different terms and conditions than it had on its English website. Respondents denied the charges. These charges are sustained in part.

In order for an advertisement to be deceptive it must pertain "to a material fact." Admin. Code § 20-701(a)(2); *see also McDonald v. North Shore Yacht Sales, Inc.*, 134 Misc. 2d 910, 914 (Sup. Ct. Nassau Co. 1987) (to be improper an advertisement must be misleading in a material respect). By contrast, Courts have recognized that statements that are "puffery" without being deceptive are not actionable. *Julie Research Laboratories, Inc. v. General Resistance, Inc.*, 25 A.D.2d 634 (1st Dep't 1966). Puffery includes generalized or exaggerated statements which a reasonable consumer would not interpret as a factual claim upon which he could rely. *See Pelman v. McDonald's Corp.*, 237 F. Supp. 2d 512, 528 n.14 (S.D.N.Y. 2003). Puffery can take the form of "an exaggeration or overstatement expressed in broad, vague, and commendatory language . . . [as distinguished] from misdescriptions or false representations of specific characteristics of a product." *Castrol, Inc. v. Pennzoil Co.*, 987 F.2d 939, 945 (3d Cir. 1993); *see also Lipton v. Nature Co.*, 71 F.3d 464, 474 (2d Cir. 1995) ("Subjective claims about products, which cannot be proven either true or false, are not actionable."). "Courts have found statements to be puffery as a matter of law when the statements do not provide any concrete representations." *Basquiat v. Sakura International,* 04 Civ. 1369, 2005 U.S. Dist. LEXIS 13989

at *15-16 (S.D.N.Y. 2005); *see also Nasik Breeding & Research Farm Ltd. v. Merck & Co., Inc.*, 165 F. Supp. 2d 514, 530 (S.D.N.Y. 2001) (terms like "very high productive traits," which do not set forth a concrete representation as to the company's future performance, are puffery); *Fink v. Time Warner Cable*, 810 F. Supp. 2d 633, 644 (S.D.N.Y. 2011) (terms like "blazing fast" and "fastest," and "easiest" are classic examples of generalized puffery).

The New York State Attorney General and the National Automobile Dealers Association issued guidelines that identified advertising practices that are considered deceptive so auto dealers can comply with state and federal consumer protection laws ("AG Guide" and "NADA Guide"). It was undisputed that respondents were aware of these guides. While these guides are not binding, they were considered when determining whether a specific advertisement was puffery or deceptive under the broad terms of the Code.

A. Alleged Deceptive Statements

Petitioner identified 20 Major World advertising statements that appeared in print advertisements and/or on respondents' websites that it alleged were deceptive. With the exception of a few phrases, respondents denied that their advertisements violated the Code and argued that some of the statements constituted mere "puffery" that were not actionable. While contesting the validity of DCA's claims, respondents represented that they have eliminated all the disputed advertisements from their websites and print advertisements.

The first group of alleged deceptive statements, some of which were in capital letters, concerned the quantity of vehicles available and included:

1. Over 3000 vehicles in-stock/Home of over 3000 cars
2. We have 3000 cars to choose from!/Choose from over 3000 vehicles
3. 3000 quality pre-owned cars ready to drive away
4. The world's largest pre-owned dealer/world's largest used car dealer!!!

The second category, also using some capital letters, related to the cost and financing of the vehicles and included:

5. $0 down financing available!
6. You can drive me for as little as $99 per month
7. 1% is all you pay to drive away!
8. Best chance to get approved is here
9. 20 banks available
10. Over 30 banks on location
11. Bad credit! No credit! No problem!
12. No credit? Bad credit? Everyone will be approved!

13. Easy approval, low payment. No matter your credit status!
14. Guaranteed approval @ MajorWorld.com
15. Cars starting as low as $2,995!
16. Purchase a vehicle between 9am-5pm from now until Monday and receive a gift on us of either an Ipod, navigation, car entertainment system or bluetooth kit . . . compliments of Major World!
17. Up to [$1000/$1500/$2000/$2500/$3000/$3500/$4000/$4500/$5000] toward the purchase of any vehicle

The third category included the following miscellaneous statements:

18. False DCA license numbers
19. False Better Business Bureau A+ Rating
20. False Inventory numbers for the vehicles.

The first three statements concerned Major World's claims about its inventory and that they had at least 3,000 cars in stock at any given time. In statement four Major World claimed that it was the largest dealership in the world. Under the AG Guide, advertisements about dealer size and inventory are generally considered deceptive, unless true, because they imply that the dealer can and does sell vehicles at a lower price than other dealers.

At trial, petitioner offered little proof to establish the precise size of Major World's inventory on given dates. Instead, petitioner identified a print ad that listed 2,100 cars under a banner of "3,000 cars in stock" and claimed that this statement was deceptive. The fact that respondents listed fewer than 3,000 vehicle inventory numbers on their websites did not mean that there were not 900 more vehicles available at the time that the statement appeared on the web. In fact, Mr. Cohen credibly testified that Major World purchased at least 800 used vehicles a month. Moreover, the dealerships sold new and used vehicles, not all of which were stored at the dealership. Given that several related dealerships and storage lots were in close proximity, additional stock was likely available at any given time. Thus, there was insufficient proof to establish that the Major World advertisements as to the 3,000 vehicles were not true.

Similarly, petitioner failed to show that Major World was not the largest used car dealership in the world when these ads were run. Indeed, in its brief at page 81, petitioner noted that Major World is "one of the largest used car dealers in the state, if not the world."

Even if statements one through four overstated inventory and dealership size, at most they were "puffery" because they were generalized or exaggerated statements. It seems unlikely that even the most ignorant purchaser would have believed that Major World had precisely 3,000 vehicles for sale or would have attached much importance to whether Major World had only

2,100 instead of 3,000 vehicles. Similarly, it is implausible that a purchaser relied in any way upon the assertion that Major World was the world's largest dealership. Thus, petitioner failed to show that statements one through four were deceptive as to any material fact. *Cf. Chevy's Int'l, Inc. v. Sal De Enterprises, Inc.*, 697 F. Supp. 110, 112 (E.D.N.Y. 1988) (description of restaurant as the "Original" Chevy's was standard industry puffing that did not rise to the level of consumer deception).

Statement nine advised that there were 20 banks available and statement ten stated that there were over 30 banks on location. These statements were also not shown to be deceptive. Petitioner failed to come forward with proof that on the days that these ads were run, Major World did not have access to 20 or 30 lenders. Mr. Cohen gave credible, unrebutted testimony that, in addition to its own financing company, Major World had access to at least 25 lenders through Dealertrack that responded with financing options within seconds of an application being filed and that there were other lenders available that were not utilized. While Mr. Cohen acknowledged that there may not always have been 30 lenders accessible at any given time, the number 30 was puffery, not deceptive, given that there were at least 25 lenders available to the customer on site. It seems unlikely that consumers would have been dissuaded from shopping at Major World because there were only 25 lenders, instead of 30 as stated in some advertisements. To the extent petitioner identified in closing submissions advertisements that stated Major World worked with over 40 lenders, these uncharged claims were not considered.

Statements five through seven addressed finance rates in connection with offers for the purchase of a vehicle. These statements were deceptive because they did not disclose the loan rate or the material exclusions or conditions to the financing. *Cf. Matter of Norristown Auto. Co., Inc.,* 2000 FTC LEXIS 31 at 4-5 (F.T.C. Feb. 7, 2000) (dealership violated federal disclosure laws by advertising purchase price of vehicles and stating down payment amount without disclosing additional terms pertaining to credit); *State v. Terry Buick, Inc.*, 137 Misc. 2d 290, 294-95 (Sup. Ct. Dutchess Co. 1987) (granting preliminary injunction enjoining dealership from displaying signs $99/month and no money down without disclosures). To the extent other fees for tax, title, and registration appeared elsewhere on the websites, they were insufficient to notify the consumer about the total fees associated with a particular vehicle advertised.

Statements 11 through 13 concerned approvals for financing regardless of the customer's credit. Like statements five through seven, these statements were deceptive because they did not disclose the loan rate, the material exclusions, or the conditions to the financing.

Respondents admitted that advertisements using the word "guaranteed" in statement 14 violated Code section 20-701. Statements 11 through 13 were also deceptive because they essentially guaranteed financing regardless of the purchaser's credit. Even though Major World had the option of financing the loan when no other lenders would, Mr. Cohen acknowledged that some consumers were not given financing when they were too high a risk.

Statement eight advised that a purchaser had the "best chance" to get approved for a loan at Major World. This was not deceptive for several reasons. First, Major World was not guaranteeing everyone will be approved. Second, petitioner failed to show that Major World did not have the highest loan approval rate of all the dealerships in the City. On the contrary, not only was such an assertion possible, it was plausible given that in addition to having over 25 lenders, Major World had its own financing company and regularly gave loans when no other lenders would. Petitioner also failed to provide any law to support its claim that the burden should be shifted to respondents to prove the statement was true. In any event, even if a purchaser had the same or a better chance to get approved at other dealerships, at most this statement was "puffery" because it was a vague and subjective statement that no consumer would likely be misled by.

As to statement 15, petitioner failed to show that respondents did not have cars for sale starting at $2,995 when the advertisements were run. Just because the advertisements did not display a $2,995 vehicle did not mean that there were no such vehicles in stock. Petitioner's claim that respondent did not have at least one car for the advertised price was unsupported.

Statements 16 and 17 that offered a free gift and a coupon towards the purchase of a car were deceptive. Advertisements that offer free goods are deceptive under the AG and NADA Guides because the price of a vehicle is typically negotiated and the offer is an illusory discount. The coupon was also meaningless because it did not provide any set value for negotiating on a specific vehicle and Major World did not sell below a certain assigned price.

It was undisputed that statements 18 and 20 consisted of advertisements that had the wrong DCA license numbers and internal inventory numbers listed. Mr. Cohen credibly testified that these were unintentional errors made by the ad agency.

The incorrect license numbers in the print advertisements were not deceptive but a typographical error. The advertisements contained respondents' New York State license numbers, legal names, and the address and phone numbers for the businesses. The advertisements also notified consumers that respondents were licensed by DCA but they

inadvertently included the wrong number. Given respondents' high profile, it seems highly unlikely that the incorrect license numbers would have prevented a consumer from identifying Major World or from filing a complaint with DCA. These charges are dismissed. *Dep't of Consumer Affairs v. Manfredi Motors Inc.*, DCA Violation No. LL 60350 (Aug. 10, 2004).

Similarly, the incorrect inventory numbers in the print advertisements were not deceptive but a typographical error. These were internal numbers used by Major World to track inventory. The numbers did not relate to a material fact and even the most ignorant consumer would not have been deceived by these errors.

Respondents admitted that Statement 19 claiming that they had a Better Business Bureau A+ Rating since 2017 was a violation. In fact, Major World did not have this rating since the start of this proceeding in 2017. Mr. Cohen's testimony that he did not realize that Major World's rating had been suspended was not credible. It appeared that Mr. Cohen took pride in his A+ rating and testified that it is an important indicator for consumers looking to buy cars.

Thus, petitioner demonstrated that statements 5-7, 11-14, and 16, 17, and 19 were deceptive. Petitioner failed to show the same for the remaining statements and these statements are dismissed.

B. Print Advertisements

Since Code section 20-701 defines a "deceptive trade practice" as any "misleading oral or written statement," each deceptive advertisement is a distinct violation and subject to a separate penalty for each day published. *See Van Cortlandt Park Dodge, Inc.*, 577 N.Y.S.2d at 275 (denying DCA authority to penalize each advertisement individually would trivialize a violation to the level of an acceptable cost of doing business, thus diluting the effectiveness of the Code as a deterrent to deceptive trade practices); *Aponte*, 160 A.D.2d at 636 (affirming individual penalties for attorney who falsely advertised his services in two newspapers four days a week over the span of a year). Even though petitioner can request a penalty on a per statement basis, the parties agreed that one deceptive statement in a print advertisement was sufficient to sustain a violation and, conversely, that multiple deceptive statements in one advertisement were only one violation.

According to the parties' stipulated print advertisement chart there were 357 print advertisements on separate days that petitioner claimed contained one or more of the alleged

deceptive statements. Out of the 357 charged violations, 272 advertisements contained one or more deceptive statements. *See* Appendix B. Thus, 272 print violations are sustained.

C. Web Advertisements

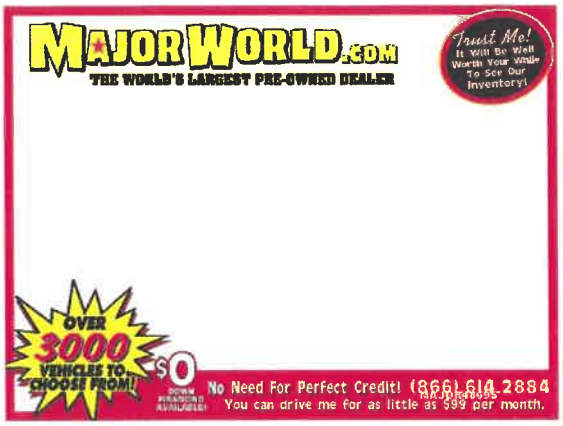
Petitioner alleged that: (1) from October 13, 2011 to December 8, 2017, MC and MWC made 2,247 misleading statements on their website, www.majorworld.com; (2) from December 8, 2011 to March 15, 2017, MC and MWC made 1,923 misleading statements on their Spanish website, www.majorworldespanol.com; and (3) from February 11, 2011 to March 20, 2017, MC made 2,228 misleading statements on the home page of the TMAC website, www.majorsuto.com. Petitioner requested daily penalties for each website that contained one or more deceptive statements on its various pages.

Below is a typical website ad:

(From Majorworld.com April 14, 2012, finance page).

In support of the charges, petitioner submitted, without respondents' objection, over 900 screen shots, some of which were duplicative, from the "Wayback Machine," a digital archive of the web. The screen shots were of the car, inventory, finance, and/or home pages from the three websites. The alleged deceptive statements included statements 1, 2, 4-7, 10, 13, 14, and 19. Some of the statements appeared on multiple pages. The interior inventory pages also had pre-set border frames, templates, and/or backgrounds that contained multiple deceptive finance statements with photos and information about the available cars or verbiage about current events that changed regularly.

These are two examples of the border frames:



Petitioner created an Excel spreadsheet listing the screen shots and respondents agreed to the following: the dates of the screen shot captures, the websites and pages from which the screen shots were taken, the alleged false statement(s) appearing on the pages and whether the existence of these statements was in dispute. It was also undisputed that in April 2014, Major World's website vendor changed and the websites were redesigned. There was no evidence how many days, if any, the websites were down for this redesign.

In addition to the screen shots, petitioner relied on the deposition testimony of Mr. Jasyk, Major World's director of advertising and marketing who had primary responsibility for the websites during the charged period. He testified that the sites did change a little.

Petitioner argued that, based on the circumstantial evidence from the Wayback Machine, it can be inferred that the alleged deceptive statements appeared on the website pages on each day during the entire six-year period charged, even though there were screen shots only for a small percentage of the days.

In reply, respondents argued that the Wayback Machine is notoriously unreliable and that the screen shots are incomplete depictions of how the entire websites appeared. Respondents also argued that petitioner failed to establish the false statements on each day and that on certain days the websites were not active due to the sites being down for changes and/or repairs. In support respondents relied on the trial testimony of Mr. Rouff, the digital marketing service provider who worked with Major World from 2008 to 2011 and from 2014 to 2017. He testified that the websites changed daily depending on whether there were special offers, holiday deals, dealer events, new inventory and photographs of available cars, and any particular verbiage. Mr.

Rouff also testified that the sites would go down for repairs, although no proof was offered as to when this occurred or for how long.

Because petitioner did not have daily screen shots of respondents' websites for every day of the six-year period charged, the proof as to the exact number of days each web page with deceptive statements appeared was inferential rather than direct. Circumstantial evidence, if sufficiently reliable and probative, may form the sole proof in an administrative proceeding. *Taxi & Limousine Comm'n v. Reza*, OATH Index No. 1648/16 at 8-9 (June 14, 2016). Circumstantial evidence is defined as "direct evidence of a collateral fact, that is, of a fact other than a fact in issue, from which, either alone or with other collateral facts, the fact in issue may be inferred." Prince, Richardson on Evidence § 4-301 (citing *Sherman v. Concourse Realty*, 47 A.D.2d 134 (2d Dep't 1975)). To establish a fact in issue by circumstantial evidence, the inference sought to be drawn must be based on proven facts. *See Sosa v. Joyce Beverages, Inc.*, 159 A.D.2d 335 (1st Dep't 1990); *Dep't of Sanitation v. Ivy*, OATH Index No. 2376/00 at 18 (May 3, 2001), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 02-07-SA (Mar. 22, 2002).

Petitioner identified case law showing how the courts have utilized screen shots from the Wayback Machine to draw inferences about how a website appeared on a particular date for which no screen shot could be produced. *See e.g. Toytrackerz LLC v. Koehler*, 2009 U.S. Dist. LEXIS 44869 at *20 (D. Kan. 2009) (relying on screen captures of defendant's website between July 6, 2008, and August 21, 2008, to infer how site appeared on June 30, 2008); *CruiseCompete, LLC v. Smolinski & Assocs., Inc.*, 859 F. Supp. 2d 999, 1009 (S.D. Iowa 2012) (plaintiff made a *prima facie* showing of personal jurisdiction where Wayback Machine showed defendant's terms and conditions were posted on its website as early as April 12, 2008, and remained posted until on May 14, 2008); *see also United States v. Gasperini*, 894 F.3d 482, 489-90 (2d Cir. 2018) (authenticated screen shots from Wayback Machine admissible); *United States v. Bansal*, 663 F.3d 634, 667-68 (3d Cir. 2011) (authenticated screen shots from Wayback Machine admissible to prove the contents of website on a certain date).

Petitioner offered no cases where the Wayback Machine was used to prove how a website appeared during extended periods. Petitioner also failed to provide testimony from anyone with personal knowledge about the Wayback Machine and how it works. Moreover, petitioner failed to provide testimony about how the screen shots were collected and whether they represented all or only a portion of the screen shots available. Finally, petitioner opted to the let the screen shots

and the spreadsheets speak for themselves and failed to offer any testimony on how to interpret or draw the requested inference from them.

On this record the charges related to MC's 2,228 alleged misleading statements on www.majorauto.com are dismissed. The only charged statements related to the size of the dealership and the number of vehicles available. As discussed above, these statements (one through four) were not deceptive under the circumstances presented here.

Turning to the other two websites, the circumstantial evidence was not sufficiently reliable to conclude by a preponderance of the evidence that the deceptive statements that appeared on days for existing screen shots also appeared on every other day of the charged six-year period for purposes of establishing a daily penalty. This was evident when the Excel spreadsheet was sorted by each website's pages. First, there were significant gaps between screen shots for specific pages. For example there were seven gaps that ranged between six and 23 months including an eight-month gap between April 2013 and December 2013, on MC's finance page, a nine-month gap between April 2016 and January 2017, on MWC's car page, a nine-and-a-half month gap between October 2011 through August 2012, on MC's car page, and a 23-month gap between June 2015 and March 2017, MWC's home page. Also, there were more than 60 gaps ranging from one to five months. Second, there was no regularity as to the quantity of screen shots per page. For example, between 2011 and 2013 there were 68 screen shots for MC's car page but only 13 screen shots for MC's finance page. Third, there was no uniformity as to the frequency of screen shots for each page. For example, for MC's inventory page, there were no screen shots for July 2012, five screen shots for August 2012, four screen shots for September 2012, 13 screen shots for October 2012, no screen shots for November 2012, and one screen shot for December 2012. Also, most of the websites changed during the charged period.

While a reasonable inference can be drawn that there were deceptive statements on some days for which no screen shots existed, there was insufficient proof to infer the exact number of days the websites were accessible with deceptive statements. Mr. Rouff's testimony that the websites were down periodically for maintenance and for content updates was credible given that the inventory and special deals were constantly changing and computer errors occurred, such as the internet pricing discussed below. Thus, while it is likely that the websites had deceptive statements on days for which no screen shots were available, petitioner must prove the daily violations by a preponderance of the evidence and not expect this tribunal to fill in gaps with speculation and sweeping inference that the webpages never changed. It is notable that

petitioner began investigating Major World in 2014, and as part of its investigation it could have checked the websites on a regular basis or captured pages from the websites, instead of relying years later upon random screen shots from the Wayback Machine for daily penalties. Thus, the exact number of violations and associated penalties were assessed based on the best available evidence, namely, the screen shots that contained the deceptive statements.

After removing duplicative screen shots, the record supports a finding that during the charged period, there were 427 screen shots with deceptive statements for www.majorworld.com and 154 screen shots with deceptive statements for www.majorworldespanol.com. Thus, petitioner established 581 violations of Code section 20-700 in relation to respondents' website advertisements. *See* Appendix B.

D. Civil Penalties

Petitioner seeks a finding that the web and print advertisements were knowing violations. The record supports a finding that the deceptive advertising statements were intentional and knowing violations which should be fined at $500 each under Code section 20-703(b). First, respondents were aware of the AG and NADA Guidelines and Mr. Cohen testified that he hired an advertising agency to make sure the ads were not deceptive. Also, in 2009 and 2010, MC settled two DCA NOVs for deceptive advertising.

For the 272 print advertisement violations, a $136,000 is imposed.

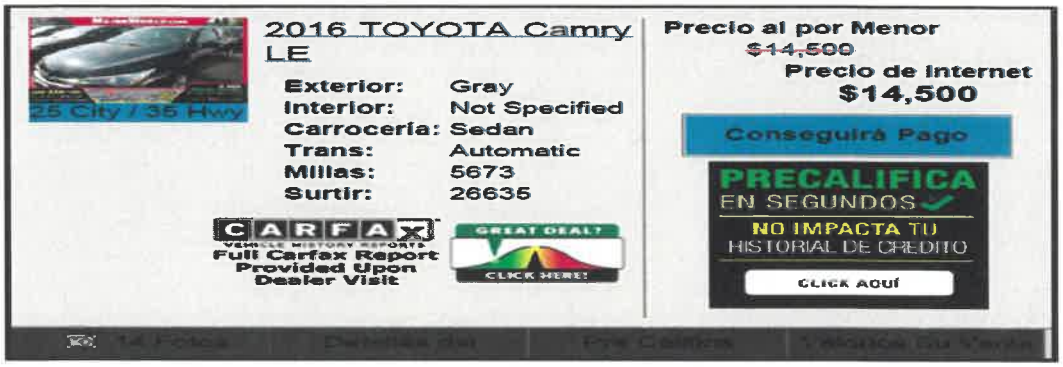
For the website violations, petitioner requested a penalty on a per-website/per-day basis. Under the circumstances, penalties will be imposed on a per screen shot basis. Thus, for www.majorworldespanol.com, a $77,000 penalty is imposed and for www.majorworld.com, a $213,500 penalty is imposed. *See* Appendix B.

E. Internet Pricing on March 9, 2017

Petitioner alleged that MWC violated Code section 20-700 1,865 times by advertising vehicles on its Spanish-language website with different terms and conditions than it had on its English website. Respondents' argued that this was an inadvertent error. In its closing submissions, petitioner reduced the number to 1,858. These charges are sustained.

It was undisputed that on March 9, 2017, MWC listed 1,858 vehicles on its English-language website. There were two prices for each automobile: a "Retail Price" that was crossed off and an "Internet Price" that was lower. The internet price was accompanied by an asterisk

with text at the bottom of each webpage reading: "Offer not available with trade. Must finance. With approved credit." On the same day, the Spanish-language website contained the same vehicles but the "Retail Price" was crossed off and was listed as the lower "Internet Price." Moreover there was no asterisk and no corresponding text at the bottom of each webpage explaining that the offer was not available with trade-ins and that the vehicle must be financed with approved credit. This is an example from the Spanish website:



Mr. Cohen testified that Spanish-language pages showing identical retail and internet prices was due to a website error and that MWC changed providers shortly thereafter. This testimony was credible and it seems likely that anyone seeing that the crossed-off "Retail Price" was the same as the "Internet Price" would know that there was a computer error. It also seems likely that due to the same computer error the asterisk and disclosure at the bottom of each webpage were unintentionally omitted from the Spanish website. However, this was deceptive because it pertained to a material fact.

Unlike the English website, the Spanish website failed to display the retail price and the necessary disclosure for the internet price at the bottom of each webpage. It is reasonable to expect that a purchaser on the Spanish website would face the same restrictions as those imposed on a purchaser on the English website. Thus, even though the error was unintentional, the Spanish-language site's unqualified "Precio de Internet" had the capacity to mislead consumers into believing that the internet price was available with a trade-in and without financing when it was not. Since there is no intent element under the Code, these charges are sustained.

Petitioner requested that each advertised vehicle be a separate violation for purposes of penalty. Respondents argued that if the charge is sustained it should be considered a single violation because the failure to include the disclosure pertained to all the vehicles. Both parties cited to *Van Cortlandt Park Dodge, Inc.*, 178 A.D.2d 234 to support their arguments.

Van Cortlandt concerned a single print advertisement in a newspaper that listed 15 vehicles. The First Department upheld separate penalties for the 12 vehicles that were advertised as "fully loaded" or "fully equipped" without describing the options on the 12 vehicles. The Court found only one violation for the undersized type face that appeared once and pertained to all the vehicles. This distinction is rational because a consumer looking at the advertisement for a particular car needed to know about the options for that car in order to purchase it whereas the undersized type face was a general issue that related to all of the advertised vehicles.

It should be noted that when the Code was enacted and many of the cases, like *Van Cortlandt*, were decided the internet did not exist. It is unclear whether the rationale for print advertisement cases should be automatically applied to website advertisement cases. Nevertheless, the rationale for finding separate violations pursuant to *Van Cortlandt* applies here because a consumer looking at the Spanish website for a particular vehicle needed to know about the limitations for that car in order to purchase it at the internet price.

Petitioner did not seek knowing violations and the penalties will be assessed under Code section 20-703(a). Since this was an isolated and unintentional error, the minimum $50 penalty for each of the 1,858 vehicles is warranted. Thus, a $92,900 penalty is imposed.

F. Internet Border Frames on February 8, 2017

Petitioner alleged that MWC violated Code section 20-700 by advertising on its website 2,000 vehicles within the same border frame that contained both the "$0 down" and the "$99 monthly payments" statements, without providing disclaimers about the financing. In its closing submissions, petitioner inexplicably asserted 2,047 violations against respondents. The inclusion of an additional 47 claims was improper.

The additional violations should have been properly pled prior to the trial so that respondents were on notice of all the violations alleged. Amendment of pleadings is denied where it would cause prejudice to respondents. *See Dep't of Correction v. Jenkins*, OATH Index No. 3070/09 at 13 (Dec. 16, 2009) ("Amendment of charges in administrative proceedings, where pleadings serve only a notice-giving function is freely granted absent irremediable prejudice."); *Human Resources Admin. v. Ali*, OATH Index No. 2380/09 at 18 (July 20, 2009) (amending charges where to do so created no prejudice to respondent). Here, amending the pleadings post-trial would call for an enhanced penalty and would be prejudicial to respondents.

It was undisputed that on February 8, 2017, MWC advertised 2,000 vehicles on its website each within the same border frame that contained both the "$0 down" and the "$99 monthly payments" statements without providing disclaimers about any material exclusions or conditions to the financing. *See supra* at p. 56. Accordingly, the 2,000 violations are sustained.

For the same reasons petitioner is entitled to separate penalties for the March 9, 2017 internet pricing violations, petitioner is entitled to separate penalties for each border frame violation on February 8, 2017. A consumer looking at a border frame with a particular car in it needed to know about the restrictions related to the purchase of that vehicle. That petitioner chose to highlight a single day did not require that one penalty for all the violations be imposed as argued by respondents. Notably, the website screen shots revealed that these deceptive border frames appeared on other days on multiple pages besides the date charged.

Petitioner did not seek knowing violations and the penalties will be assessed under Code section 20-703(a). Under the circumstances and because there was no evidence that these deceptive statements were caused by an inadvertent error, the maximum $350 penalty is appropriate. Accordingly, a $700,000 penalty is imposed.

PART II – LICENSING/APPLICATION RELATED CHARGES (Counts 5-11, and 14)

In support of the following licensing and application charges, petitioner relied upon documentary evidence, including the license applications filed by respondents. No witness from DCA was called to explain the licensing process or the consequences for a dealership's failure to follow DCA's Rules. Instead, petitioner raised these facts for the first time in its closing submissions. Factual information provided post-trial that went beyond what is contained in DCA's Rules or the submitted evidence will not be considered. Moreover, to the extent petitioner's closing submissions discussed additional alleged violations relating to respondents' license applications dating back to 1991, it would be a failure of due process to punish them for uncharged misconduct. Similarly, petitioner's post-trial request that OATH take official notice of a non-party's 1983 conviction for second degree bribery was also denied. DCA's claim that had it known of this conviction it may have denied one of the disputed DCA licenses was speculative and irrelevant.

License Applications (Count 5)

Petitioner alleged that MC, MWCDJR, and MWC violated DCA Rule 1-01.1 by failing to provide complete and truthful responses on 20 license renewal applications. Petitioner requested a $10,000 fine. Respondents admitted that they failed to notify DCA of the change in ownership in their post-1997 renewal applications but claimed that these omissions were inadvertent errors and due to the poorly worded DCA renewal application.

DCA Rule 1-01.1 states:

> (a) No applicant for a license or a renewal thereof shall fail to provide complete and truthful responses to all the information requested on an application . . . and any documents related thereto.
>
> (b) No applicant for a license or renewal thereof shall conceal any information, make a false statement or falsify or allow to be falsified any certificate, form, signed statement, application or report required to be filed with an application . . . .

6 RCNY § 1-01.1 (a) and (b).

It was undisputed that MC's renewal applications for 1997, 1999, 2001, 2003, 2005, 2007, 2009, 2011, and 2013 and MCJD's renewal applications for 1997, 1999, 2001, and 2003 failed to state that Bruce Bendell was no longer the 100% beneficial owner of the licensed entity. Contrary to respondents' claims, the renewal applications clearly asked whether "since your last license was issued, has . . . there been any changes in persons . . . of any person." The word "persons" is defined as "any individual, partner, stockholder, officer or director." Most of these forms were signed by Bruce Bendell and his failure to notify DCA that he was no longer the 100% beneficial owner of the licensed entities was never adequately explained.

Similarly, the renewal applications submitted in 2005, 2007, 2009, 2011, and 2013 on behalf of MCJD did not disclose that it had changed its official name with the New York State Department of State to "Major Chrysler Jeep Dodge, Inc." Finally, for the renewal applications submitted in 2015 and 2017 on behalf of MWC did not disclose that it does business under the trade name "Major World." Contrary to respondents' claims, the applications clearly asked whether "since your last license was issued, has . . . there been any changes in . . . the name . . . of the licensed premises."

Petitioner requested a $500 fine for each violation. Code section 20-104(e) provides that, "Except to the extent that dollar limits are otherwise specifically provided such fines or civil

penalties shall not exceed five hundred dollars for each violation." Violations of DCA Rule 1-01.1 are not specified. Thus, a penalty up to $500 may be imposed. Since respondents are experienced dealerships and no mitigating circumstances were presented, the maximum penalty for each of the 20 violations is appropriate. Accordingly, a $10,000 fine is imposed.

Trade Names (Count 6)

Petitioner alleged that MC, MWC, and MMLIC violated Code section 20-113 on five occasions by failing to notify DCA of a change in their trade names and by doing business under multiple trade names. Petitioner requested a $1,875 fine. Respondents admitted the charges and claimed that the omissions were unintentional and that Major World has never hidden the use of its tradename which has been emblazoned on all of its advertisements for many years.

Code section 20-113 states:

> A license issued [by DCA] shall be valid only for activities conducted under the name of the person or organization to whom such license was issued or under the trade name stated in the application . . . no licensed activity may be carried out under more than one trade name . . . Licensees shall notify [DCA] of any change of trade name . . . and no such change may take place without the prior written approval of [DCA].

Admin. Code § 20-113.

It was undisputed that MC operated under the trade names: "Major Automotive Group" from November 12, 1997, through 2014; and "Major World" from February 8, 1999, through 2014. MC operated under these trade names without stating such trade name on its license applications or otherwise notifying DCA.

Contrary to respondents' arguments, MC committed three violations of Code section 20-113: two for the failure to place each trade name on the renewal applications; and one violation for the actual usage of unauthorized trade names. Respondents' additional argument that MC registered the trade names with the New York State Department of State was insufficient to satisfy the requirement under the Code to operate as a DCA licensee under the trade names registered with DCA. *See B & L Auto Group, Inc. v. Zelig*, 188 Misc. 2d. 851, 858 (Civ. Ct. Bx Co. 2001) (registration as a dealer under State statute is entirely separate from, and cannot excuse or waive, the legal obligation to be licensed under New York City law).

It was also undisputed that MWC has been operating under the trade name "Major World" since January 2014, without stating such trade name on its license applications or otherwise notifying DCA. MMLIC also failed to notify DCA that it ceased using the trade name "Major Kia" in connection with its licensed activities. Respondents' argument that DCA needed to be notified only when a licensee is using a trade name or has changed its trade name was incorrect. Code section 20-113 states that a licensee "shall" notify DCA of "any change of trade name." Thus, MMLIC was obligated to notify DCA that it was no longer operating under the trade name "Major Kia."

The penalty for a first violation of Code section 20-113 is $375. 6 RCNY § 6-11. There are no prior violations. A $1,875 fine is imposed.

Unlicensed Activity (Count 7)

Petitioner alleged that MMLIC operated without a required DCA licensed for 307 days, from August 1, 2013, to June 3, 2014, in violation of Code section 20-265. Petitioner requested a $30,700 fine. Respondents admitted that MMLIC was unlicensed to sell second-hand automobiles but denied that it sold cars on all of the charged days and claimed that the dealership was closed for a certain period.

Code section 20-265(a) prohibits any person from acting as a dealer in second-hand articles without a license from DCA. Subsection b specifies that a dealership license is required to act as a second-hand dealer with respect to second-hand automobiles in the city. Admin. Code § 20-265(a), (b).

Based on the circumstantial evidence, it seems more likely than not that for the entire charged period MMLIC operated as an unlicensed dealership. MMLIC advertised in various publications and on its website that it was open for business seven days a week. Moreover, between October 23, 2013 and June 3, 2014, MMLIC sold at least 45 cars as shown by 45 bills of sales. Finally, Mr. Cohen testified that MMLIC did not stop doing business until late 2014 or early 2015, which was after this charged period. Respondents failed to offer any evidence that the dealership was closed on any days in 2013 or 2014 as claimed.

Petitioner requested a $100 per day penalty for the 307 days that MMLIC acted as a dealership without a DCA license. This is appropriate. Pursuant to Code section 20-105(b)(1) and DCA Rule 6-19, an entity is subject to penalties of $100 per violation for each day they operate without a license. Admin. Code § 20-105(b)(1); 6 RCNY § 6-19; *see also South Shore*

Auto Sales, Inc. v. Mintz, 2012 N.Y. Misc. LEXIS 2115 at 14 (Sup. Ct. King Co. 2012) ($91,400 penalty for unlicensed dealership activity, or $100/day for 914 days, was proper). A $30,700 fine is imposed.

Unlicensed Persons Selling Used Automobiles (Count 8)

Petitioner alleged that MWC violated DCA Rule 2-103(j) by allowing persons not licensed to sell second-hand automobiles to do so 45 times. Petitioner requested a $22,500 fine. MMLIC admitted the charges but claimed that the transactions were internal between MMLIC and MWC and ultimately benefited the consumers who purchased these vehicles.

DCA Rule 2-103(j) states: "No licensee shall allow or permit any person not licensed as a dealer in second-hand automobiles to sell or offer for sale at or from the licensee's place of business any second-hand automobile . . . ." 6 RCNY § 2-103(j).

It was undisputed that between August 1, 2013 and June 3, 2014, MMLIC did not possess a DCA license. It was also undisputed that MMLIC sold 45 second-hand automobiles from MC's or MWC's premises at 43-40 Northern Boulevard during this period. Indeed, several consumers testified that they visited MC or MWC but ultimately signed paperwork identifying MMLIC as the seller. The fact that MC and MWC regularly engaged in internal transactions to take advantage of MMLIC's financing relationships with lenders, even if it was for the benefit of the consumers, did not negate the requirement that MMLIC be licensed. A license is a privilege that confers benefits upon the licensee in exchange for the duty and obligation of abiding by DCA's Rules and regulations.

The penalty for a first violation of DCA Rule 2-103(j) is $375. 6 RCNY § 6-19. There are no prior violations. A $16,875 fine is imposed.

Unlicensed Locations (Count 9)

Petitioner alleged that MMLIC, MCJD, and MWCDJR violated Code section 20-268(a) three times by carrying on its business at places other than the one designated in its license. Petitioner requested a $1,125 fine. Respondents admitted the charges but claimed that they were merely technical violations.

Code section 20-268(a) states: "It shall be unlawful for any dealer in second-hand articles to carry on his or her business at any place other than the one designated in such license." Admin. Code § 20-268(a).

It was undisputed that MMLIC, MCJD, and MWCDJR operated out of 43-40 Northern Boulevard at various times since 2013, and that this location was not the location designated in their DCA licenses.

Respondents argued that these entities have operated related dealerships along Northern Boulevard for decades and that no one would have difficulty finding them. Under the DCA Rules that respondents' are obligated to follow, they may operate only out of the locations designated on their license. These charges are sustained.

The penalty for a first violation of Code section 20-268(a) is $375. 6 RCNY § 6-19. There are no prior violations. Accordingly, a $1,125 fine is imposed.

License Numbers (Count 10)

Petitioner alleged that MMLIC and MCJD violated DCA Rule 1-05 by failing to include their correct DCA license number in 39 print advertisements. In its closing submissions, petitioner attempted to unilaterally increase the number of violations to 41 and requested an enhanced penalty of $15,375. This was improper.

Respondents admitted the original charge but claimed that the incorrect license numbers were neither material nor intentional and that no consumer was misinformed or confused. Rather, the advertisement agency included the wrong DCA license numbers by mistake and the advertisements contained all the other necessary identifying information such as New York State license numbers, contact information, legal names and addresses for the businesses.

DCA Rule 1-05 states:

> Any advertisement, letterhead, receipt or other printed matter of a licensee must contain the license number assigned to the licensee by [DCA]. The license number must be clearly identified as a [DCA] license number and must be disclosed and disseminated in a lawful manner.

6 RCNY § 1-05.

It was undisputed that MMLIC wrote a DCA license number of 8518247 instead of the correct number of 2009122 in 19 New York Post print advertisements published between December 25, 2014 and March 6, 2015. It was also undisputed that MCJD included a DCA license number of 7061257 instead of its correct number of 0900497 in 20 print advertisements in the October 3 and 10, 2014 editions of the New York Daily News.

Though these publication errors did not rise to the level of a deceptive trade practice under Code section 20-700, they violated DCA Rule 1-05, which requires that all advertisements "must" include a licensee's license number. Thus, these charges are sustained. *Dep't of Consumer Affairs v. Victory Auto Group LLC*, DCA Violation No. LL005237515 (Nov. 19, 2010).

The penalty for a first violation of DCA Rule 1-05 is $375. 6 RCNY § 6-11. There are no prior violations by MMLIC or MCJD. Accordingly, a $14,625 fine is imposed.

Prior Settlements (Count 11)

Petitioner alleged that MC breached two settlement agreements with DCA in violation of DCA Rule 6-42. Petitioner requested a $1,000 fine. Respondents denied the charges.

Effective August 22, 2016, DCA Rule 6-04(a) states that, "any respondent entering into a settlement agreement with [DCA] must comply with the terms of the settlement agreement." 6 RCNY § 6-04(a). Failure to comply with the terms of a settlement agreement "will subject the respondent to a civil penalty of up to" $500. 6 RCNY § 6-04(b). Prior to August 22, 2016, DCA Rule 6-42(c) stated: "A settlement agreement has the force of a final order. Failure of a respondent to comply with the terms of a written settlement agreement, in whole or in part, may subject the respondent to additional sanctions, including, where appropriate, a fine and suspension or revocation of a license." 6 RCNY § 6-42(c).

On November 19, 2009, MC settled an NOV alleging that it had advertised a vehicle for less than the offered stock price by agreeing to pay a $350 fine. On October 28, 2010, MC settled an NOV alleging that it had failed to include its DCA license number in a print advertisement by agreeing to pay a $100 fine. Both settlements included language that stated in sum and substance that MC would agree to comply with the Consumer Laws.

Petitioner alleged that MC breached these settlements by engaging in violations of the Consumer Laws as alleged in the third amended petition in contravention of these stipulations. The record supports a finding that MC engaged in violations of the Consumer Laws after entering into the stipulations as found in this decision and the charges that MC breached the 2009 and 2010 settlement agreements are sustained.

The finding that MC violated the DCA Rules requiring compliance with the settlements is based on different facts from the underlying violations of the Consumer Laws. Thus, this charge is not duplicative and merits its own penalty. *See Hong Leong Finance Ltd. (Singapore)*

v. Morgan Stanley, 131 A.D.3d 418, 419 (1st Dep't 2015) (claim of breach of the implied covenant of good faith and fair dealing was not duplicative of the breach of contract claim, since it arose out of different facts).

Given the number of sustained violations MC committed after 2010, the maximum $500 penalty as requested is appropriate. *See* Admin. Code § 20-104(e)(1); 6 RCNY § 6-04(b). Accordingly, a $1,000 penalty is imposed.

Subpoenas (Count 14)

Petitioner alleged that MWC, MWCDJR, and MMLIC, DCA licensees, failed to respond to three DCA subpoenas *duces tecum* in violation of DCA Rule 1-14. Petitioner requested a $1,125 fine. Respondents denied the charges and alleged that they provided responsive documents in their possession.

DCA Rule 1-14 requires licensees to "appear in person at [DCA] to answer a subpoena *duces tecum* served upon that licensee." 6 RCNY § 1-14.

On November 2, 2016, DCA served MWC, MWCDJR, and MMLIC with subpoenas *duces tecum*. It was undisputed that respondents failed to appear in person, or make records available for inspection, or otherwise respond to the subpoenas by December 2, 2016, as directed and that there are still outstanding documents related to respondents' advertisements.

Respondents argued that they gave all of the records they had and that they did not maintain copies of advertisements from their websites. They also claimed that the new website provider was going to produce information responsive to the subpoenas, but after petitioner filed the instant proceeding, nothing further was done.

These charges are sustained. Once respondents received the subpoenas, they had a duty to preserve existing and future website advertisements either by printing them, making screen shots, or keeping them in some other digital format. *VOOM HD Holdings, LLC v. EchoStar Satellite LLC*, 93 A.D.3d 33, 36 (1st Dep't 2012) (once a party reasonably anticipates litigation, it must suspend its routine document retention/destruction policy and put in place a 'litigation hold' to ensure the preservation of relevant documents). To the extent respondents had vendors who were running digital advertisements, respondents were required to obtain from those vendors copies that could be produced in discovery. Petitioner's filing of the petition at OATH made it even more incumbent on respondents to comply with DCA's subpoenas.

The penalty for a first violation of DCA Rule 1-14 is $375. 6 RCNY § 6-11. There are no prior violations. A $1,125 fine is imposed.

FINDINGS AND CONCLUSIONS

1. Petitioner demonstrated that between 2012 and 2017 Major World violated Code section 20-700 33,661 times by misleading consumers about their rights and by misrepresenting the history, condition, and quality of the second-hand automobiles it sells as alleged in count one. $1,683,050 fine imposed.

2. Petitioner demonstrated that Major World violated Code section 20-700 by knowingly making 272 deceptive statements in print advertisements as alleged in count one. $136,000 fine imposed.

3. Petitioner demonstrated that between October 13, 2011, and December 8, 2017, MC and MWC violated Code section 20-700 427 times by knowingly making deceptive statements on www.majorworld.com. $213,500 penalty is imposed.

4. Petitioner demonstrated that between December 8, 2011, and March 15, 2017, MC and MWC violated Code section 20-700 154 times by knowingly making deceptive statements on www.majorworldespanol.com. $77,000 penalty is imposed.

5. Petitioner failed to demonstrate that MC made deceptive statements on www.majorauto.com in violation of Code section 20-700 as alleged in count one.

6. Petitioner demonstrated that MWC violated Code section 20-700 on March 9, 2017, by advertising 1,858 vehicles on its Spanish-language website without disclosing the terms and conditions of their sale as alleged in count one. $92,900 fine imposed.

7. Petitioner demonstrated that MWC violated Code section 20-700 on February 8, 2017, by advertising 2,000 vehicles without disclosing the financial terms of the sale as alleged in count one. $700,000 fine imposed.

8. Petitioner demonstrated that Major World violated Code section 20-700 23 times by knowingly falsifying the credit applications of consumers as alleged in count one. $11,500 fine imposed.

9. Petitioner demonstrated that Major World violated Code section 20-700 116 times by misrepresenting vehicle accessories as alleged in count one. $11,600 fine imposed.

10. Petitioner demonstrated that MWC violated Code section 20-700 four times by failing to certify that a vehicle was previously a rental as alleged in count one. $1,400 fine imposed.

11. Petitioner demonstrated that Major World violated Code section 20-700 seven times by charging for unauthorized service contracts and by failing to honor one contract as alleged in count one. $2,800 penalty imposed.

12. Petitioner demonstrated that Major World violated Code section 20-700 by misrepresenting that six vehicles were roadworthy as alleged in count one. $2,100 penalty imposed.

13. Petitioner failed to demonstrate that MWC violated Code section 20-700 by misrepresenting the year of a Nissan as alleged in count one.

14. Petitioner demonstrated that MWC violated Code section 20-700 by misrepresenting the price of a Jeep Wrangler as alleged in count one. $350 fine imposed.

15. Petitioner demonstrated that MWC violated Code section 20-700 by relying on a forged power of attorney to transfer title of a Cadillac as alleged in count one. $350 fine imposed.

16. Petitioner demonstrated that MWC violated Code section 20-700 by falsely telling a consumer that he could renegotiate the terms of his loan as alleged in count one. $350 fine imposed.

17. Petitioner demonstrated that Major World violated DCA Rule 5-33 by failing to provide Spanish translations for 399 documents as alleged in count two. $139,650 fine imposed.

18. Petitioner demonstrated that Major World violated DCA Rule 2-103(b) 28 times by failing to acquaint consumers with financing terms as alleged in count three. $14,000 fine imposed.

19. Petitioner demonstrated that between 2012 and 2017 respondents violated DCA Rule 2-103(g)(1)(iii) 33,661 times by impermissibly purporting to limit its responsibility under VTL 417 in its bill of sale as alleged in count four. Since the

charges are duplicative of count one, no additional penalties are imposed.

20. Petitioner demonstrated that MC, MWCDJR, and MWC violated DCA Rule 1-01.1 by failing to provide truthful responses on 20 license renewal applications as alleged in count five. $10,000 fine imposed.

21. Petitioner demonstrated that MC, MWC, and MMLIC violated Code section 20-113 five times by failing to notify DCA of their trade names as alleged in count six. $1,875 fine imposed.

22. Petitioner demonstrated that MMLIC engaged in unlicensed activity over period of 307 days in violation of Code section 20-265 as alleged in count seven. $30,700 fine imposed.

23. Petitioner demonstrated that MWC violated DCA Rule 2-103(j) by allowing unlicensed persons to sell second-hand cars 45 times as alleged in count eight. $16,875 fine imposed.

24. Petitioner demonstrated that MMLIC, MCJD, and MWCDJR violated Code section 20-268(a) by carrying on its business at places other than the one designated in their licenses three times as alleged in count nine. $1,125 fine imposed.

25. Petitioner demonstrated that MMLIC and MCJD violated DCA Rule 1-05 by including wrong DCA license numbers in 39 print advertisements as alleged in count ten. $14,625 penalty imposed.

26. Petitioner demonstrated that MC violated two prior settlement agreements in violation of DCA Rules 6-42 as alleged in count 11. $1,000 fine imposed.

27. Petitioner demonstrated that MWC violated Code section 20-271(b) six times by failing to post the total selling price of second-hand automobiles and add-on products as alleged in count 13. $3,000 fine imposed.

28. Petitioner demonstrated that MWC, MWCDJR, and MMLIC failed to respond to three DCA subpoenas in violation to DCA Rule 1-14 as alleged in count 14. $1,125 fine imposed.

ADDITIONAL RELIEF

As a result of respondents' violations of the Consumer Laws, they have been assessed $3,164,875 in civil fines. The imposition of civil penalties is meant to punish the violators, to strengthen and expand the enforcement mechanisms of an agency's laws, and to deter other violators so that the agency can prevent similar violations in the future. *See 119-121 East 97th St. Holding Corp. v. NYC Comm'n on Human Rights*, 220 A.D.2d 79, 88 (1st Dep't 1996).

Respondents also settled with the individual consumers, providing: restitution in the amount of $141,775.10; basic maintenance and free oil changes for one year to five consumers; and payments of the vehicle loans for three consumers in the amount of $68,397.63.

In addition to the civil penalties and restitution, petitioner requested revocation of the current DCA licenses held by MWC, MWCDJR, and MMLIC and a finding that Bruce Bendall and Adam Cohen are unfit to hold any DCA licenses in the future.

Petitioner argued that revocation of respondents' licenses and a permanent ban of respondents' principals are warranted because they have repeatedly and persistently violated the law over the past 20 years and their past promises to reform have been illusory. According to petitioner, in order to protect consumers and ensure that this unlawful conduct does not continue, the cycle must be broken.

Respondents argued that petitioner overcharged this case in an effort to justify unreasonable multi-million dollar fines and revocation in order to promote its own agenda and to grab headlines. Moreover, petitioner distorted the facts and ignored that respondents and Adam Cohen in particular, have admitted to making mistakes and have taken numerous good faith steps to correct the issues raised by DCA. Major World further argued that petitioner's portrayal of respondents as an evil empire that cannot be redeemed was baseless.

In support of revocation, petitioner identified prior actions against Major World and other entities that resulted in sustained violations or settlements. This history can be categorized as follows.

The first group consisted of three DCA-issued NOVs against the OldCos which are no longer licensed by DCA:

- In 1999 DCA charged MCJD with offering used cars for sale without prices on them; using an incorrect DCA license number on its bills of sale; and failing to maintain a record of purchases and sales available for inspection in violation of the Code and DCA Rules. MCJD defaulted and was ordered to pay a fine of $1,925.

- In 2009 DCA charged MC with falsely advertising a vehicle in violation of Code section 20-700. MC agreed to pay a $350 fine.

- In 2010 DCA charged MC with failing to identify its license number on an advertisement in violation of DCA Rule 6-105. MC agreed to pay a $100 fine.

The second group consisted of three DCA-issued NOVs against the NewCos:

- In 2014 DCA charged MWC with displaying two vehicles for sale on the sidewalk in violation of Code section 20-268(a) and for failing to conspicuously display a notice that notified consumers about their warranty rights under the VTL section 417 in violation of DCA Rule 2-103(g)(1)(v). MWC paid a $550 fine.

- In 2015 DCA charged MWC with acting as a dealership without a DCA license in violation of Code section 20-265. MWC defaulted and was ordered to pay a fine of $200 for two days of unlicensed activity.

- In 2017 DCA charged MWCDJR with parking three vehicles on the sidewalk in violation of DCA Rule 2-103(m)(2). MWCDJR paid a $750.00 fine.

The third group consisted of two DCA actions against other entities related to either Bruce Bendell and/or Harold Bendell, a non-party:

- In 2003 DCA charged HB Auto and Bronx Auto, entities owned by Bruce Bendell and/or Harold Bendell, with false advertising related to the prices of cars and offers for financing. The two dealerships agreed to settle the charges by paying fines of $90,000 and $10,000, respectively, and to comply with the Consumer Laws.

- In 2008 DCA charged City World Motors ("CW") a dealership owned by Bruce Bendell and Harold Bendell with false advertising related to disclosing qualifying conditions and required finance terms. Following a two-day hearing, the DCA tribunal sustained the violations and imposed a $12,000 fine and a 14-day license suspension. On appeal, DCA's appeals unit found additional violations, increased the fines to $61,500, and sustained the 14-day suspension. The parties subsequently settled the matter with CW agreeing to pay the fines and DCA dropping the suspension.

The fourth group consisted of cases brought by other entities against an OldCo and non-parties that are owned by Bruce Bendell:

- In 2001 two finance companies sued MC in the Illinois Federal Court for the falsification of customer credit applications. The lawsuit was

settled in 2003 for $900,000. *Gelco Corp. v. Major Chevrolet, Inc.*, No. 01 C 9719, 2002 WL 31427027, at *1 (N.D. Ill. Oct. 30, 2002).

- In 2004 a class action was brought against TMAC in New York State Supreme Court alleging, *inter alia*, that TMAC failed to disclose material information about vehicle accident and repair history to consumers. TMAC agreed to settle the case by providing more detailed disclosures to consumers and by giving each implicated consumer a $250 stipend to use toward the purchase of a car. The parties agreed the settlement had a value of more $4 million.

- In 2009 the New Jersey Attorney General settled a lawsuit against Compass Dodge Inc., a subsidiary of TMAC wherein Compass Dodge agreed, *inter alia*, to refrain from deceptive practices related to advertising, misrepresenting consumer credit information, and misrepresenting vehicles conditions and to pay a $142,500 fine.

Finally, petitioner relied on the 2018 guilty plea by Bruce Bendell and Harold Bendell for willfully aiding and assisting in the preparation of a 2009 false federal tax return for TMAC by underreporting income and inflating expenses. The Bendells agreed to pay $3.88 million in restitution to the Internal Revenue Service. Petitioner posited that the creation of the NewCos and the family trusts that own them was simply a way for Major World to continue business, create a tax-friendly channel to distribute profits to the next generation of Bendells, and to cleanse the operation of wrongdoing, including the recent plea to tax fraud.

Petitioner alleged two grounds to support its request for additional relief. First, petitioner argued that MWC's license should be revoked and Bruce Bendell and Adam Cohen found unfit to hold a DCA license in the future because MWC breached the 2010 stipulation signed by MC. This argument was without merit.

As discussed above, in 2010 DCA issued MC an NOV for failing to list its license number on an advertisement in violation of DCA Rule 6-105. MC agreed to pay a $100 fine. As part of the settlement, MC also agreed to bring its business into compliance with the Consumer Laws and to continue to comply with these laws. The settlement included language that a material breach of any provision of the stipulation "shall be a basis for automatic revocation of license(s) issued" to MC by DCA. In addition, the settlement stated that any material breach "shall be deemed conclusive proof that no person who has an equity interest of 10% or more" in the business and/or "significant managerial responsibility" is fit to hold any license issued by DCA.

Even though MWC agreed to pay the consumers restitution and to be responsible for all civil fines assessed, petitioner argued that MWC is a successor in interest to MC and that the 2010 settlement is binding on MWC, Bruce Bendell, and Adam Cohen. Respondents argued that DCA cannot invoke a theory of successor liability to hold MWC and the individual respondents liable for a breach of MC's settlement because MWC purchased MC in 2014 through an arm's length transaction and did not become liable for the debts of its predecessor.

Whether MWC, Bruce Bendell, and Adam Cohen are legally bound by MC's 2010 stipulation need not be resolved because, even if they were, a breach of the settlement by either MC or MWC is not a basis for OATH to revoke a DCA license or to make a finding of unfitness.

The open-ended timeframe for automatic revocation and a fitness finding that were included by DCA in the 2010 stipulation raise questions about whether these provisions are enforceable in 2018, long after the $100 fine was paid by MC. As discussed above, former DCA Rule 6-42(c) providing for revocation of a license for the failure to comply with a settlement was amended by DCA in 2016 to remove this language. 6 RCNY § 6-04(a). The revocation decisions relied upon by petitioner were all decided prior to the amendment of the DCA Rules. Moreover, there is nothing in the Code or DCA's Rules that vest DCA with authority to determine that a respondent is "unfit." Thus, a finding of unfitness cannot be made under the existing Consumer Laws. *Dep't of Consumer Affairs v. 809 Collision Inc.*, OATH Index No. 578/18, mem. dec. 32-35 (Apr. 20, 2018) (denying DCA's request to find a respondent unfit because there was no legal authority to do so); *see also Donmez v. Dep't of Consumer Affairs*, 140 A.D.3d 612, 615 (1st Dep't 2016) (in refusing to renew pedicab business license based upon unpaid driver license fines, DCA exceeded its authority under Code section 20-104(e)(3)); *Dep't of Consumer Affairs v. A New Beginning for Immigrants Rights, Inc.*, OATH Index No. 2644/17, mem. dec. at 35-37 (Sept. 17, 2018) (no authority for OATH to order an unlicensed entity to pay restitution).

DCA's attempt to use the contractual terms of the 2010 settlement to revoke MWC's license and to find Bruce Bendell and Adam Cohen unfit was calculated to achieve what it cannot do under the Code or DCA's Rules. If the 2010 stipulation of settlement is an enforceable contract, DCA possess the authority to revoke MWC's license and declare Adam Cohen and Bruce Bendell unfit. Nothing in the stipulation requires that a trial be held or that a finding of a material breach be made in order for DCA to exercise those rights. In fact, there are

two adjudicated NOVs in 2014 and 2015 finding MWC guilty of violations of the Consumer Laws that could provide the basis for finding a violation of the 2010 stipulation.

Instead, DCA asks OATH to enforce the terms of the 2010 settlement in an administrative proceeding on different violations. OATH has no original jurisdiction, as do the courts of the State of New York, to enforce the terms of a contract settlement with MC. *See* Jud. Law §§ 2, 3 (Lexis 2018) (specifying courts of record, prohibiting any other body from using the term "court" in its name). Enforcement of a contract is appropriately asserted only in state court which has general jurisdiction of such claims. *See* NY Const. Art. VI, § 7(a) ("The supreme court shall have general original jurisdiction in law and equity and the appellate jurisdiction herein provided."); *see also* Jud. Law § 140-b (Lexis 2018); *Cf. Dep't of Housing Preservation and Development v. Coradin*, OATH Index No. 1803/01 at 13 n. 2 (Aug. 14, 2001) (trial continued to enable respondent to enforce subpoena in State court).

Thus, even if the theory of successor liability was viable, OATH cannot grant the remedy under the settlement that petitioner seeks, namely, to revoke the license of MWC and find Bruce Bendell and Adam Cohen unfit to hold a DCA license in the future.

In the alternative, petitioner argued that the licenses held by MWC, MWCDJR, and MMLIC should be revoked pursuant to Code section 20-104(e)(1) that authorizes DCA, upon due notice and hearing, to suspend, revoke or cancel any license issued by DCA. Admin. Code § 20-104(e)(1).

The record supports a finding that the NewCos and the OldCos are responsible for the majority of the sustained violations. There is little evidence that Bruce Bendell had much, if any, involvement in the day-to-day operations of these dealerships. Even though, as the 100 percent owner of the parent company of the OldCos, he bears some responsibility for their operations. It was also undisputed that sometime in 2010 Mr. Cohen became involved in running the day-to-day operations of the OldCos. Likewise, as a 15 percent owner and the "Dealer Principal/Manager" and "Operator" of the NewCos, he bears responsibility for their operations.

The prior adjudicated DCA actions against the NewCos are relevant to this penalty consideration. However, two NOVs resulting in fines for MWC in the amounts of $200 and $500 and one NOV for MWCDJR for $750 for minor violations are not compelling aggravating factors for finding that their DCA licenses should be revoked or suspended. Similarly, the three NOVs against the OldCos have little impact because they were committed by prior licensees,

they are remote in time, they occurred before or close to when Mr. Cohen took over the day-to-day operations of the OldCos, and they were for relatively minor infractions.

The 2003 DCA case in which petitioner was unsure whether the non-party dealership was owned by Bruce Bendell and/or Harold Bendell has little relevance since the latter is not a party to this action. While Major World is a family run business, there should be a legal nexus between the parties involved in the prior conduct and the current ones in dispute when assessing the consequential penalties requested here.

On the other hand, the 2008 DCA case against CW is relevant because the dealership was owned by Bruce Bendell, the violations concerned similar misconduct found here, and a $61,500 penalty was imposed. Equally, the 2009 New Jersey Attorney General settlement with Compass Dodge is relevant because it was an enforcement action for deceptive trade practices against a dealership owned by Bruce Bendell and the case was resolved for $142,500, a substantial fine.

The Illinois Federal Court lawsuit brought by the Gelco Corporation in 2001 against MC that concerned similar conduct, has limited significance because it was remote in time and the case was settled without an admission of liability. Similarly, the 2004 class action was a private suit against an entity that is not a respondent in this case, it was remote in time, and it was settled without any admission of liability. According to respondents' counsel, petitioner's assertion that Bruce Bendell paid a $4 million settlement in that case was inaccurate. The $250 stipend for a large group of consumers, while valued at $4 million, was based on an estimation of service rewards cards provided to customers and that the out of pocket expenses for TMAC was only $490,000.

While the 2018 guilty plea by Bruce Bendall may arguably be grounds for revoking a license held by him, he is not a licensee. The only license that is related to him is the one for MMLIC, a subsidiary of Major Acquisition Corp. which is owned by TMAC, Bruce Bendell's company. There was little information about the business operations of MMLIC and there was no evidence that Bruce Bendell is or was involved in the day-to-day operations or management decisions of this dealership. MMLIC was also responsible for the least number of the consumer-related violations in this proceeding. During the charged period, most of the vehicles were purchased at the NewCos or OldCos and MMLIC was sometimes utilized to finance the deals because of its relationships with a lender. Finally, MMLIC, while technically licensed, has not operated as a dealership since 2015. Imputing Bruce Bendell's 2018 conviction to the MMLIC license without more information would be unfounded.

Although Bruce Bendell admitted that the trusts that purchased the NewCos were created for estate planning with favorable tax consequences, there was nothing to support petitioner's claim that the trusts were created in 2013 and 2014 to cleanse prior wrongdoing, including the 2018 guilty plea. Petitioner's additional claims that Major World has been the subject of more DCA complaints than any other dealership and that it is being or has been investigated by the New York State Attorney General and United States Department of Justice were not supported by the record. Similarly, while petitioner claimed that respondents have harmed thousands of New Yorkers it produced only 37 out of an alleged 40,000 consumers who complained about respondents' practices. As evidenced by Mr. Woods, who gave Major World a five-star rating, and other proof that respondents have a repeat customer business, Major World has satisfied customers.

Although petitioner attempted to portray the litigation history as evidence that respondents are repeat and persistent offenders, there was no prior history for MMLIC, only a minimal history for the NewCos and the OldCos, and a more substantial history for Bruce Bendell, who has no ownership interest in the NewCos, the active DCA licensees at stake. Respondents have also paid all fines and settlements related to their litigation history.

Generally, revocation is reserved for the most egregious of licensees when they are repeat offenders who ignore the applicable laws, and accumulate massive fines that remain unpaid. *See e.g. Dep't of Buildings v. OTR Media Group, Inc.*, OATH Index No. 1835/16 (Aug. 24, 2016) (revocation of outdoor advertising company's registration for failure to pay over $1,000,000 in civil penalties and for being found guilty of multiple zoning regulations); *Dep't of Health & Mental Hygiene v. Lahlou*, OATH Index No. 2212/14 (May 23, 2014) (revocation of mobile food vendor license where vendor committed numerous violations of the Administrative and Health Codes within a two-year period and failed to pay the associated fines and penalties).

Under the circumstances presented here license revocation is unreasonable. For the same reasons as well as the additional reasons articulated below, a suspension of the current DCA licenses is also unwarranted at this time.

Respondents put forward the following mitigating factors for consideration. Since the commencement of this proceeding, respondents have taken significant steps to bring the NewCos into compliance, including removing the alleged false advertisements, firing two employees who falsified consumer applications, placing employees on notice that such conduct will not be tolerated, changing how consumers' financial information is collected and transmitted to the

financial institutions, utilizing new technology to input vehicle options into Dealertrack accurately, transferring the sign-out process to the finance managers so that they can answer consumers' questions, and hiring consultants to conduct audits and ensure code compliance.

During the trial, Mr. Cohen expressed genuine surprise and dismay about some of the consumers' negative experiences. Respondents also agreed to provide restitution to the identified consumers presumably to the satisfaction of the consumers and DCA. Furthermore, Mr. Cohen seemed willing to consider DCA's suggestions to improve the purchase process such as allowing consumers to read documents that need to be signed while they are waiting.

In addition, respondents put forward the following financial factors. For example, the NewCos' operating income in 2017 was about $4.5 million, which was down significantly from the 2015 high of about $14.3 million. Mr. Cohen explained that the decrease in revenue was based in part on changing conditions in how vehicles are purchased on-line but also on this litigation. In addition to the bad press that caused the NewCos to lose customers, Wells Fargo, the NewCos lender for the purchase of inventory, now scrutinizes every transaction and contacts customers to determine whether they have been harmed in any way. According to Mr. Cohen, customers with good credit prefer to go other dealerships where they are not required to provide proof of income and can drive away with a vehicle without the extra paperwork. Also, the fleet business of selling vehicles to the City was suspended during the pendency of this proceeding. Except for the Police Department that has a special exemption other City agencies have gone to other dealers to purchase new vehicles.

Mr. Cohen testified that since the commencement of this litigation Wells Fargo has required him to personally guarantee the $50 million dollar loan on the inventory. He stated that he was worried that the loan would be called if the NewCos' licenses were suspended or revoked. He also expressed concern that the banks have lost interest in working with him but he was optimistic that after this case was completed he would get the NewCos' reputation and value back on track. In the meantime, morale at the NewCos has been poor because employees are concerned about whether the companies will survive.

Finally, Mr. Cohen stated that if there was a suspension or revocation imposed on the NewCos several situations could occur that would permanently alter the viability of future business. For example, DCA may not renew the NewCos' licenses and it would be difficult for Mr. Cohen to get another franchise because regulatory agencies, including DCA, ask whether a licensee or a person associated with the license has ever had a license suspended or revoked. Mr.

Cohen was also worried that a suspension or revocation would result in banks refusing to work with him in the future.

Notably, this is the first licensing proceeding brought by DCA or any other enforcement agency against the NewCos and Mr. Cohen. In addition, a number of the allegations that form the basis for a suspension or revocation are remote in time and are duplicative, or they have been dismissed, withdrawn, or were not properly pled. Given Mr. Cohen's personal stake in the NewCos, the substantial civil penalty imposed on respondents, the impact this action has already had on the NewCos's business, and Mr. Cohen's rational concerns about the future viability of any new business it is unlikely that there will be serious violations of the Consumer Laws by the current licensees in the future. This is not to say that the violations in this case are trivial and not meriting the significant fines imposed here. However, respondents, and Mr. Cohen in particular, are now on notice that failure to comply with the Consumer Laws will likely result in revocation or significant suspensions of their DCA licenses.

Finally, petitioner requested that respondents be directed to create a consumer restitution fund to compensate potential unnamed consumers in the future. As discussed above, DCA cannot impose penalties in the absence of statutory authority to do so. Even if such a remedy were authorized, petitioner started its investigation in 2014 and engaged in extensive outreach efforts to identify potential consumers harmed by Major World. Petitioner found only 37 complainants and it seems unlikely that more would materialize after this case is concluded. Moreover, petitioner failed to provide any framework for how much money should be set aside, how long such a fund would exist, and how a claim would be evaluated. The request is denied.

FINAL ORDER

Respondents are ordered to pay $3,164,875 in civil penalties for the sustained violations found herein. This constitutes a final decision.

Alessandra F. Zorgniotti
Administrative Law Judge

January 24, 2019

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Appendix A – Summary of Consumers' Violations

Consumer Name	CPL § 20-700 Credit Applications	CPL § 20-700 Accessories	CPL § 20-700 Service Agreements	CPL § 20-700 Roadworthiness	CPL § 20-700 Prior Use Certification	CPL § 20-271(b)(1) & (b)(2) Price Disclosure	6 RCNY § 2-103(b) Financial Terms	6 RCNY § 5-33 Spanish Translations with number of documents	CPL § 20-700 Miscellaneous Violations
B. Cintron	D	0	0	0	0	0	S	S (16)	0
B. Suero-Tejada	S	S	0	W	S	0	S	S (18)	0
C. Payne	D	0	0	0	D	0	0	0	0
C. Payne *	D	0	0	W	W	0	S	0	0
C. Paredes	0	0	D	S	0	0	S	S (19)	0
C. Paredes *	S	S	0	D	0	0	S	S (18)	0
C. Devine	S	0	W	S	0	0	S	0	0
D. Gonzalez	0	S	S	S	0	S	S	S (22)	0
D. Gonzalez *	0	0	S	W	0	0	S	S (09)	0
F. Romero	0	0	0	W	0	0	S	S (23)	0
F. Romero *	0	0	0	W	0	0	S	S (09)	0
G. Aspiazu	0	0	S	0	0	S	0	S (19)	0
G. Aspiazu *	S	0	S	W	S	S	S	S (21)	S
I. Belliard	S	S	0	0	0	0	S	S (15)	D
J. Yene	D	0	0	0	0	0	D	D	0
J. Williams	0	0	0	W	0	S	0	0	S
J. Rivera	S	S	0	W	0	0	S	0	0
J. Jessurum	0	0	S	S	0	S	S	0	0
J. Dominguez	S	0	0	0	0	0	S	S (15)	0
J. Dominguez *	S	0	0	0	0	0	W	S (15)	0
J. Dilone-Duran	S	S	0	0	0	0	S	S (19)	0
J. Hernandez	S	S	0	S	0	0	S	S (17)	0
J. Valerio	0	0	0	0	0	0	0	0	S
K. Woods II	D	0	D	0	0	0	0	0	0
L. Sotomayor	D	0	0	0	0	0	0	0	0
M. Zollner	S	0	0	0	0	0	0	0	0
M. Guerrero	S	0	0	W	0	0	S	S (18)	0
M. Fernandez	D	0	0	0	0	0	0	S (10)	0
M. Gonzalez	0	W	0	0	S	0	S	S (16)	0
M. Gonzalez *	S	0	0	0	0	0	S	S (16)	0
M. Vaughan	S	S	0	0	0	0	S	0	0
M. Wade	D	S	0	0	0	0	D	0	0
M. Wade *	0	0	D	0	0	0	D	0	0
M. Suarez	D	0	0	0	0	0	S	S (18)	0
N. Espinal	S	0	0	S	0	0	S	S (17)	0
N. Moreno	0	S	0	0	0	0	D	D	0
P. Masih	S	0	S	0	0	0	0	0	0
R. Figueroa	S	0	0	W	0	0	S	S (17)	0
R. Jefferson	D	S	0	0	0	0	D	0	0
R. Sutter	S	0	S	0	0	0	S	0	0
R. Sutter *	S	S	0	0	0	0	0	0	0
R. Castillo	S	S	0	0	0	0	S	S (15)	0
R. Arias	S	S	0	0	S	0	S	S (17)	0
S. Brown	S	S	0	0	D	0	S	0	0
T. Wong	S	0	S	0	0	0	0	0	0
V. Rentas	0	0	D	W	0	S	D	0	0
Total Violations	**23**	**15**	**8**	**6**	**4**	**6**	**28**	**399**	**3**

Key: S = Sustained; D = Dismissed; 0 = Not Charged; W = Withdrawn

* Represents subsequent transactions.

Appendix B – Summary of Advertisement Violations (Print and Web)

Number of Screenshot(s)	Date Range of Screenshot Capture(s)	Website	Type of Pages	Alleged False Statement(s) on Webpages	Statement(s) Found in Violation	Number of Violation(s)
58	8/18/2012-12/16/2013	MW (MC)	Car	1, 2, 4, 5, 6, 7, 13	5, 6, 7, 13	*52
2	4/8/2014	MW (MWC)	Car	1, 2, 4, 5, 6, 7, 13	5, 6, 7, 13	*0
1	11/26/2012	MW (MC)	Car	1, 2, 4, 5, 6, 7, 13, 14	5, 6, 7, 13,14	1
1	9/21/2013	MW (MC)	Car	1, 4, 7	7	1
1	4/7/2014	MW (MWC)	Car	1, 4, 7	7	1
5	4/2/2017-5/3/2017	MW (MWC)	Car	2, 19	19	5
6	8/18/2012-4/22/2013	MW (MC)	Car	2, 4, 5, 6, 13	5, 6 ,13	6
90	4/28/2014-3/4/2017	MW (MWC)	Car	2, 4, 5, 6, 13	5, 6, 13	*85
1	10/31/2011	MW (MC)	Car	2, 4, 5, 6, 13, 14	5, 6, 13, 14	1
1	9/15/2012	MW (MC)	Car	2, 4, 5, 6, 7, 13	5, 6, 7, 13	1
5	5/12/2016-3/9/2017	MW (MWC)	Car	2, 4, 6, 13	6, 13	5
2	3/24/2017-4/25/2017	MW (MWC)	Financing	2, 19	19	2
13	11/3/2011-12/16/2013	MW (MC)	Financing	4, 12	12	*11
5	11/16/2017-12/7/2017	MW (MWC)	Home	19	19	5
19	10/13/2011-7/24/2013	MW (MC)	Home	1, 4, 7	7	19
3	3/5/2014-4/11/2014	MW (MWC)	Home	1, 4, 7	7	*2
12	4/19/2012-12/9/2013	MW (MC)	Home	1, 4, 7, 17	7, 17	12
4	1/12/2014-2/19/2014	MW (MWC)	Home	1, 4, 7, 17	7, 17	4
61	4/29/2014-6/11/2015	MW (MWC)	Home	2, 10, 13	13	61
24	3/24/2017-5/20/2017	MW (MWC)	Home	2, 19	19	*21
26	8/19/2012-12/10/2013	MW (MC)	Inventory	1, 2, 4, 5, 6, 7, 13, 14	5, 6, 7, 13, 14	26
2	2/9/2014-4/11/2014	MW (MWC)	Inventory	1, 2, 4, 5, 6, 7, 13, 14	5, 6, 7, 13, 14	2
86	4/28/2014-10/15/2016	MW (MWC)	Inventory	2, 4, 5, 6, 13	5, 6, 13	*85
10	5/25/2012-10/11/2013	MW (MC)	Inventory	2, 4, 5, 6, 13, 14	5, 6, 13, 14	10
1	3/9/2014	MW (MWC)	Inventory	2, 4, 5, 6, 13, 14	5, 6, 7, 13, 14	1
1	4/11/2014	MW (MWC)	Inventory	2, 4, 5, 6, 7, 13, 14	5, 6, 7, 13, 14	1
7	11/14/2016-3/8/2017	MW (MWC)	Inventory	2, 5, 6, 13	5, 6, 13	7
						Total 427

Number of Screenshot(s)	Date Range of Screenshot Capture(s)	Website	Type of Pages	Alleged False Statement(s) on Webpages	Statement(s) Found in Violation	Number of Violation(s)
18	6/14/2014-4/21/2016	MWE (MWC)	Car	2, 4, 5, 6, 13	5, 6, 13	*17
18	8/21/2012-1/6/2014	MWE (MC)	Car	2, 4, 5, 6, 13, 14	5, 6, 13, 14	18
5	1/8/2014-3/26/2014	MWE (MWC)	Car	2, 4, 5, 6, 13, 14	5, 6, 13, 14	5
1	8/28/2012	MWE (MC)	Car	2, 4, 5, 6, 14	5, 6, 14	1
1	1/13/2017	MWE (MWC)	Car	2, 5, 6, 13	5, 6, 13	1
14	6/7/2012-12/20/2013	MWE (MC)	Home	1, 4, 7	7	14
2	1/14/2014-4/20/2014	MWE (MWC)	Home	1, 4, 7	7	2
1	9/7/2012	MWE (MC)	Home	1, 4, 7, 17	7, 17	1
6	6/5/2013-10/22/2013	MWE (MC)	Home	1, 7	7	6
1	10/6/2012	MWE (MC)	Home	2, 4, 7	7	1
7	6/30/2013-1/5/2014	MWE (MC)	Home	4, 17	17	7
30	1/26/2013-1/1/2014	MWE (MC)	Inventory	2, 4, 5, 6, 13	5, 6, 13	30
27	1/8/2014-10/27/2016	MWE (MWC)	Inventory	2, 4, 5, 6, 13	5, 6, 13	*26
22	6/6/2012-1/3/2013	MWE (MC)	Inventory	2, 4, 5, 6, 13, 14	5, 6, 13, 14	22
3	1/6/2017-3/9/2017	MWE (MWC)	Inventory	2, 5, 6, 13	5, 6, 13	3
						Total 154

*Differences between number of website violations and number of screenshots found are due to duplicative statements that appeared on the same day and same page being counted once.

Appendix B – Summary of Advertisement Violations (Print and Web)

Number of Print Ad(s)	Date Range of Print Advertisement (s)	Major World Entities	Alleged False Statement(s) on Print Ads	Statement(s) Found in Violation	Number of Violation(s)
7	9/15/2017-9/21/2017	MWC	20	20	7
2	6/20/2014-7/1/2014	MWC	1, 10, 11	11	2
1	6/19/2014	MWC	1, 11	11	1
2	12/9/2016	MWC	1, 8, 20	20	2
6	1/03/2014-1/12/2014	MC	2, 7, 10, 11, 16,17	7, 11, 16, 17	6
10	4/15/2015-5/31/2015	MWC	2, 8, 15, 16, 17	16, 17	10
1	5/15/2015	MWC	2, 8, 15, 17	17	1
4	4/17/2015-5/29/2015	MWC	2, 8, 16	16	4
2	10/21/2016-11/4/2016	MWC	2, 8, 20	20	2
7	8/12/2016-10/21/2016	MWC	3, 8, 20	20	7
120	6/6/2014-7/10/2014	MWC	7, 10, 11, 16, 17	7, 11, 16, 17	120
11	12/24/2014-1/25/2015	MWC	7, 8, 15, 16, 17	7, 16, 17	11
4	3/6/2015-3/20/2015	MWC	8, 15, 16	16	4
35	1/27/2015-5/25/2015	MWC	8, 15, 16, 17	16, 17	35
1	5/21/2015	MWC	8, 15, 17	17	1
3	5/20/2015-5/26/2015	MWC	8, 16	16	3
11	3/25/2015-4/13/2015	MWC	8, 16, 17	16, 17	11
15	9/2/2016-1/13/2017	MWC	8, 20	20	15
2	10/3/2014-10/10/2014	MCJD	9, 11, 18	11	2
28	6/27/2014-3/16/2015	MMLIC	9, 11, 18	11	28
					Total 272