

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

Barry's Auto Group Inc.,
Respondent.

C.A. No.: PC-2023-01036

ASSURANCE OF VOLUNTARY COMPLIANCE

1. This Assurance of Voluntary Compliance ("AVC") is a consent agreement between the State of Rhode Island, by and through Attorney General Peter F. Neronha, and Barry's Auto Group Inc. ("Barry's Auto") and Lucas Barry and is entered into and executed with the full knowledge that the allegations of fact and law contained herein constitute allegations of violations of R.I. Gen. Laws § 6-13.1-1, *et seq.*, entitled the Deceptive Trade Practices Act ("DTPA").

AUTHORITY

2. The State of Rhode Island, by and through Attorney General Peter F. Neronha, has the authority, pursuant to R.I. Gen. Laws § 6-13.1-6, to accept an AVC in full settlement of this matter with respect to Respondent's alleged violations of the DTPA.

JURISDICTION

3. Barry's Auto Group Inc. is a Rhode Island Domestic Profit Corporation registered with the Secretary of State. It operates a motor vehicle dealership at its primary business address of 166 Connell Highway in Newport, Rhode Island.

4. Lucas Barry is the corporate Treasurer and Vice President, and has managed the day-to-day operations at Barry's Auto since 2018.

5. The Superior Court of Providence County has jurisdiction over the subject matter and the parties hereof pursuant to R.I. Gen. Laws § 6-13.1-5(b).

FACTUAL ALLEGATIONS

6. Barry's Auto operated a used car dealership in Newport, Rhode Island. The dealership closed on January 31, 2023 for financial reasons.

Illegal Service Reconditioning Fees

7. In January 2021 Barry's Auto began charging a "service reconditioning fee" on all motor vehicles. Customers were told that the fee was added on top of the advertised price of the motor vehicle to account for the amount of money Barry's Auto had to spend "reconditioning" or preparing each vehicle for sale.

8. In reality, Barry's Auto often charged this fee before reconditioning work had been complete (and therefore before the cost had been determined) and even when a vehicle needed minimal reconditioning. That fee was set at \$1,000 in January 2021 but rose to \$1,750 by October 2022. Barry's Auto ceased charging that fee on October 5, 2022 in response to the Attorney General's investigation.

9. Barry's Auto advertised a price for each vehicle on their website which included a disclosure that the sale would be subject to the "service reconditioning fee," but did not disclose the amount of the fee until a customer talked to a sales person.

10. This practice was unfair and deceptive to consumers and unfair to competing businesses who engage in fair and transparent pricing. Barry's "service reconditioning fee" practice allowed it to advertise a lower price for a vehicle than they ultimately intended to sell it for, thereby luring in customers with artificially low prices. Similarly, customers were led to believe that this fee covered Barry's expenses in preparing their car for sale when they were, in fact, being charged a flat fee added to every vehicle.

11. This practice was a direct violation of the Division of Motor Vehicles (“DMV”) rules and regulations regarding pricing and fees, which prohibit dealers from charging customers fees for preparing vehicles for sale. DMV rules and regulations provide that “[n]o dealer shall advertise the price of motor vehicles unless such price is the full delivered price. Charges for freight, handling, *vehicle preparation*, overhead expenses, consultation fees, or any other fees that are inconsistent with these rules shall not be used in advertising nor included on the bill of sale.” 280-30-20 R.I. Code R. 1.9(B)(1) (emphasis added). Because this practice violated public policy as expressed in the DMV’s rules and regulations and caused consumer harm, it was unfair under the DTPA.

Failure to Inspect Vehicles Before Sale

12. Barry’s Auto was also engaged in the practice of selling and offering for sale motor vehicles before they had passed a state safety inspection. Because of this, some consumers bought vehicles that required substantial repairs before they were able to take possession.

13. Pursuant to R.I. Gen. Laws § 31-38-1(b), “[n]o dealer of used vehicles ... shall sell at retail a used motor vehicle unless a new inspection of the vehicle conforming to the standards set pursuant to this chapter and chapter 47.1 of this title has been conducted and the vehicle has a new certificate of inspection affixed to the windshield at the time of sale, except used cars sold ‘for parts only’ and clearly identified accordingly on the bill of sale.” *See also* 280-30-20 R.I. Code R. 1.6(R)(1) (requiring the same). “A dealer’s failure to comply with § 31-38-1 as to the inspection of used motor vehicles, shall constitute a deceptive trade practice under the terms” of the DTPA. R.I. Gen. Laws § 31-5.3-2.

14. Similarly, this practice violated DMV rules and regulations regarding pre-sale inspections of new vehicles, which require that “[a]ll vehicles offered for sale on a dealer’s premises must have valid state inspection stickers affixed to the vehicles’ windshields.” 280-30-20 R.I. Code R. 1.6(R)(1). Because this practice violated public policy as expressed in these laws, rules and regulations and caused consumer harm, it was unfair under the DTPA.

COMPLIANCE PROVISIONS

15. Barry's Auto (as a corporation) and Lucas Barry (in his personal capacity) agree that, should they ever own or operate a motor vehicle dealership or engage in the sale, leasing, or financing of motor vehicles, that they shall:

- a. Comply with the Division of Motor Vehicles Dealer Licensing and Registration Rules and Regulations, 280-30-20 R.I. Code R. 1, which delineates what fees Rhode Island motor vehicle dealers may charge in connection with sales and at what point a motor vehicle must pass a state safety inspection before sale;
- b. Refrain from any misrepresentations related to fees or pricing in connection with the sale of a motor vehicle; and
- c. Refrain from any misrepresentations regarding whether a vehicle has undergone a state safety inspection or an inspection at the dealership (such as a quality or certification inspection); and
- d. Comply with R.I. Gen. Laws § 31-38-1(b).

16. Barry's Auto shall take no action that would impair the availability of their \$50,000 Surety Bond on file with the Division of Motor Vehicles Dealers License and Regulations Office, No. 70000484 and expiring on December 31, 2023, which may be assigned by the Regulations Office in response to violations of their Rules and Regulations until December 31, 2025.

PENALTIES

17. Barry's Auto shall pay a civil penalty to the Office of the Attorney General in the amount of \$30,000 by March 31, 2023.

18. The Office of the Attorney General has calculated this civil penalty in light of Barry's Auto's cooperation in the Office's investigation, immediate cessation of the business practices described above upon the Office's request, and the Corporation's inability to pay a higher amount.

OTHER TERMS

19. Barry's Auto and Lucas Barry agree that this AVC shall be binding on them and that it shall be entered as an Order of the Court.

20. The Attorney General hereby releases and discharges any claims it could have brought under the Deceptive Trade Practices Act based on Barry's Auto or Lucas Barry's conduct related to the practices described herein.

21. The Superior Court of Providence Rhode Island shall have jurisdiction over this AVC and the parties hereto for the purpose of enabling the Attorney General to apply to this Court at any time for orders and directions as may be necessary or appropriate to enforce compliance with, or to punish violations of, this AVC.

22. Acceptance of this AVC by the Rhode Island Attorney General's Office shall not be deemed approval by the Attorney General of any practices or procedures of Barry's Auto not required by this Assurance, and Barry's Auto and Lucas Barry shall make no representations to the contrary.

NOTICE

23. Barry's Auto Group may receive notice at P.O. Box 2518, Newport, Rhode Island 02840, with a copy to Girard Galvin Esq. at 10A Washington Square, Newport, Rhode Island 02840.

24. Lucas Barry may receive notice at P.O. Box 2518, Newport, Rhode Island 02840.

25. Barry's Auto and Lucas Barry shall notify the Attorney General of any change of business name or address within twenty (20) days by mailing a notice to:

Consumer Protection Unit
Rhode Island Office of the Attorney General
150 South Main Street
Providence, RI 02903

EFFECTIVE DATE

26. This AVC shall take effect immediately upon execution by the parties.

APPROVAL BY COURT

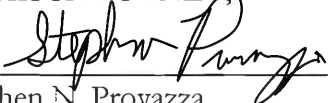
APPROVED and SO ORDERED. Signed:

/s/ R. David Cruise
Associate Justice

/s/ Alexa Goneconte
Deputy Clerk I
March 7, 2023

FOR THE STATE OF RHODE ISLAND


PETER F. NERONHA
ATTORNEY GENERAL
BY HIS ATTORNEY

By: 

Stephen N. Provazza
Special Assistant Attorney General
150 South Main Street
Providence RI, 02903
SProvazza@riag.ri.gov
(401) 274-4400

Date: March 2, _____, 2023

FOR BARRY'S AUTO GROUP INC.



Girard Galvin, Esq. 7312.
GALVIN LAW
10A Washington Square
Newport, Rhode Island 02840
(401) 239-8603
girard@galvinlawri.com

Dated: 3/1/2023 _____

FOR LUCAS BARRY



Lucas Barry

Dated: 3/1/2023 _____