



SCI FOLLOW-UP REPORT

GAMING THE SYSTEM II

**ABUSES IN THE
USED-CAR INDUSTRY**

***State of New Jersey
Commission of Investigation***

November 2018

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Commission of Investigation



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USED-CAR INDUSTRY**

SCI

28 West State St.

P.O. Box 045

Trenton, N.J.

08625-0045

609-292-6767

www.state.nj.us/sci



State of New Jersey

COMMISSION OF INVESTIGATION

28 WEST STATE STREET

PO Box - 045

TRENTON, NEW JERSEY 08625-0045

Telephone (609) 292-6767

Fax (609) 633-7366

Joseph F. Scancarella

Chair

Robert J. Burzichelli

Rosemary Iannacone

Commissioners

Lee C. Seglem

Executive Director

November 2018

Governor Phil Murphy
The President and Members of the Senate
The Speaker and Members of the General Assembly

The State Commission of Investigation, pursuant to N.J.S.A. 52:9M, herewith submits a report following up on the findings and recommendations of an investigation into systemic abuses and unscrupulous activity in the used-car industry.¹

Respectfully,

Joseph F. Scancarella

Chair

Robert J. Burzichelli

Commissioner

Rosemary Iannacone

Commissioner

¹ Prior to his resignation effective August 31, 2018, former Commissioner Frank M. Leanza participated in this inquiry.

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SUMMARY

In 2015, the Commission examined conditions in the used-car industry and found serious flaws and discrepancies in the regulation and oversight of hundreds of dealers licensed in group settings known as multi-dealer locations, or MDLs.¹ Focused primarily on New Jersey's largest MDL complex – the New Jersey Dealers Auto Mall in Bridgeton, Cumberland County – the investigation revealed that while NJDAM operated under a veneer of apparent legitimacy, it was, in reality, a sham enterprise that enabled rampant dealer abuses ranging from consumer and bank fraud to tax evasion and money laundering.

Under the MDL business model, a landlord leases space and provides other services to individuals or entities who are tenants – at least on paper – giving them an apparent base of operations within New Jersey and allowing them to meet the minimum requirements for obtaining used-car dealer licenses from the State. In fact, a large number of such dealers actually are based elsewhere, with many conducting business from locations out-of-state – mainly in New York – where stricter licensing rules make it difficult, if not impossible, for them to qualify for certified dealer credentials.

During that inquiry, the Commission found that dealers who rented cubicles at NJDAM and similar entities were able to profit from an assortment of questionable and unscrupulous activities at the expense of taxpayers, consumers and legitimate commercial interests, and that much of this occurred because MDLs exist and function beyond the reach of basic rules governing licensure and oversight of car dealers in New Jersey.

Despite the best efforts of line personnel at the state Motor Vehicle Commission (MVC) to scrutinize these dealers and enforce official regulations, the SCI found that meaningful oversight routinely was thwarted by MVC managers. In numerous instances, their actions, and in some cases, inaction, coincided with outside influence on behalf of NJDAM in the form of aggressive legal maneuvering and behind-the-scenes pressure from a prominent Trenton lobbyist – the former Director of MVC's precursor, the New Jersey Division of Motor Vehicles.

Favored treatment allowed MDLs and their tenant-dealers to be exempt from certain inspections and audits that are standard for other types of vehicle dealerships in New Jersey. For instance, the complexes were permitted to flagrantly misrepresent compliance with the MVC's requirement that dealers be present at their licensed locations and be open for customers a minimum of 20 hours per week. Ignoring this basic requirement essentially became standard operating procedure at one particular complex after the MVC agreed to recognize the landlord NJDAM's clerical personnel as "employees" of each of its more than 300 rent-paying tenant-dealers.

To its credit, the MVC took steps during and soon after completion of the initial SCI investigation to address some of the most blatant regulatory weaknesses and resultant abuses

¹ See December 2015 SCI report, *Gaming the System: Abuse and Influence Peddling in New Jersey's Used-Car Industry*.

detailed in the report. That effort had barely gotten off the ground, however, when a counter-offensive to undo the reforms was launched in the New Jersey Legislature. A lobbyist pressing for the bill was the same individual criticized in the SCI's 2015 report for meddling in agency matters on behalf of NJDAM.

The pending legislation would effectively legitimize nearly all of what the Commission found to be wrong in this corner of the used-car industry.² This fact, along with credible allegations that extensive dealer abuses endured at these complexes absent comprehensive oversight as recommended by the SCI, prompted a follow-up inquiry into the continuing proliferation of MDLs in New Jersey.

Commission investigators discovered that not only has the MDL business grown significantly over the past three years – there are now more than 100 additional tenant-dealers statewide than in 2015 – but that these sites remain a base camp for deceitful and, in some cases, unlawful activity.³

Once again, the Commission found dozens of instances in which consumers were ripped off after spending thousands of dollars for vehicles that in some instances turned out to be thinly disguised piles of junk. Aside from being unfit for the road, some were downright dangerous, such as the Ford Explorer SUV so thoroughly corroded that the buyer's elderly mother narrowly escaped injury when she attempted to board the vehicle via a rusted step-rail that fell away.

Other types of unscrupulous activity persisting at these sites include schemes by tenant-dealers to evade sales tax, to commit insurance fraud and to sell access to dealer credentials to unlicensed individuals. The Commission also learned of a pattern of abuse by some MDL-based dealers to circumvent inspection requirements for certain salvage vehicles – potentially putting cars too damaged to repair back on the road. Indeed, this practice has been so rampant that it recently prompted regulators in New York State to stop accepting salvage titles from New Jersey in order to protect unsuspecting consumers.

Meanwhile, notwithstanding progress made by the MVC to address some regulatory gaps, the agency simultaneously has undermined that improvement by continuing to allow tenant-dealers to circumvent certain rules, including the requirement that dealers be present during posted business hours. The agency also lacks written guidelines for handling disciplinary action against used-car dealers who violate rules and regulations, relying instead on informal judgment calls by staff. Those decisions vary widely and can result in inconsistent penalties for violations, according to a detailed SCI review of MVC records.

The Commission realizes that the MVC is responsible for overseeing a vast portfolio of entities, including but not limited to used-car dealers, and that it must do so with finite

² The proposed legislation would legitimize significant regulatory loopholes that have long been exploited for nefarious purposes at MDLs. Among other things, it would eliminate the requirement for dealers to maintain office hours, allow one person to serve as the authorized signatory for hundreds of separate dealerships simultaneously and, in the case of an unannounced MVC audit, enable dealerships to escape penalties for record-keeping violations.

³ There were 19 multi-dealer complexes in New Jersey as of November 2017, according to the MVC. In 2015, the Commission identified 11 MDLs. Some of those sites include multiple buildings which may operate together as a single MDL.

resources. It is also important to note that not all of the tenant-dealers housed at the various MDLs across New Jersey are involved in nefarious activity. Nonetheless, as the findings of this follow-up inquiry amply demonstrate, failure to enact any meaningful supervision of MDLs means that dishonest dealers will continue to victimize consumers and that other illicit activity at these complexes will continue with impunity.

Given the SCI's persistent findings, it may be that the only way to eradicate the myriad problems associated with the absentee tenant-dealers who use these sham complexes as a subterfuge is to eliminate the MDL system altogether. Short of that, the Legislature and the MVC need to impose authentic oversight and genuine consequences for those who violate statutory and regulatory rules to the public detriment. At the very least, the State should adopt more stringent requirements for those seeking to both obtain and retain retail used-car dealer licenses to deter abuse and ensure the presence of legitimate commercial enterprises.

Finally, the Legislature should enact stronger protections for consumers who seek to buy used cars. The State of Massachusetts, for example, requires dealers to make repairs or to give buyers a refund if the vehicle in question fails to pass inspection within a week from date of purchase. The Bay State extends these protections to vehicle purchases costing a minimum of \$700 and with an odometer reading of up to 125,000 miles – far more expansive than the limits covered under existing New Jersey law.

KEY FINDINGS

Enduring Abuses

Consumer Exploitation

Rip-Offs With No Recourse

Just as in its initial inquiry, the SCI discovered numerous consumer complaints from buyers who purchased used vehicles from dealers licensed at New Jersey-based MDLs.⁴ While the specific details of more than 85 complaints reviewed by the Commission vary, many share a common outcome: Buyers were unable to recover repair costs or obtain refunds because the transactions were “as is” sales.⁵ While consumer complaints occur across the industry as a whole, the unique challenge with MDLs is that buyers have no physical location to visit to address problems related to a transaction. In most cases, buyers visiting the licensed location for an MDL-based dealer will find nothing but an empty building full of locked cubicles with one complex employee on-site serving as a representative for up to hundreds of dealers who often knows little to nothing about the individual businesses and/or specific transactions. In addition, many of the sales reviewed by the SCI were transacted out-of-state, or at a place other than a dealer's licensed

⁴ The complaints were for used-car purchases made between 2014 and 2017.

⁵ N.J.S.A 56:8-67 “As is” means a used motor vehicle sold by a dealer to a consumer without any warranty, either express or implied, and with the consumer being solely responsible for the cost of any repairs to that motor vehicle.

location – practices prohibited under state regulations. The following examples are emblematic of the Commission’s findings:

- In May 2015, a New York resident went to a used-car dealership operating out of a parking and car wash business in New York City, seeking a vehicle that could be used to transport her elderly mother to medical appointments. The buyer agreed to purchase a 2005 Ford Explorer for \$4,200 from a salesman with N & E Auto Sales LLC, which is licensed at NJDAM but which – in clear violation of New Jersey dealer licensing rules – conducts business out of the car wash location in The Bronx.

In the weeks following the purchase, the vehicle displayed significant problems. First, the muffler fell off; then, the buyer’s 84-year-old mother escaped injury when the step bar broke away as she attempted to climb into the vehicle. After spending more than \$1,200 on repairs, the buyer asked the dealer for a refund. Instead, the dealer provided a second vehicle that had obvious defects, including an illuminated check-engine light, a broken radio and an inoperable passenger-side window. Worse, the buyer found the car needed more than \$5,000 worth of repairs to its engine, transmission, catalytic converter and brake systems – a cost exceeding the purchase price.

The buyer was unable to obtain assistance from any consumer protection agency in New York because the dealer was not licensed in that state. After filing a complaint with the Office of the Attorney General in New Jersey, the buyer received a letter dated April 4, 2016, from the Division of Consumer Affairs stating that no consumer protection laws were broken because the car was bought “as is.”

- In March 2016, another New York resident responded to a Craigslist ad for a 2005 Nissan Altima priced at \$3,200. The buyer visited the seller’s White Plains, N.Y., home to examine the car, which the dealer claimed was in excellent condition despite the fact that the “Service Engine Soon” light was on. The buyer agreed to the sale but found that on the drive home, the car began making generalized rattling noises as well as a screeching sound upon braking. The next day, the buyer brought the car back to the seller, who asked his brother, also his business partner, to repair the brakes. When the car continued to make rattling noises the following day, the buyer phoned to complain, but the seller did not return the call.

Three days after the purchase, the buyer brought the vehicle to another mechanic who told her the engine was empty of oil and that the tread on all the tires was worn to the metal. The next day, as the buyer drove on Interstate 95 near the Rye, N.Y., exit, the engine blew. The vehicle was subsequently towed to a scrap lot.

The seller and his brother, owners of the NJDAM-based Bros Motors, LLC, refused to refund the purchase price, telling the buyer that the mechanic who added the oil killed the engine. Ultimately, the seller stopped responding to the buyer’s calls. The buyer attempted to file a complaint in Small Claims Court in White Plains, but the matter was outside the court’s jurisdiction because the dealer was licensed in New Jersey. Meanwhile, the police in Bridgeton, where the dealer is registered, declined to investigate the matter because the sale took place in New York. In total, the buyer spent more than \$4,000 and still ended up with a useless vehicle.

- In October 2017, a Jackson, N.J., resident found a CarGurus ad online for a 2004 Jeep Liberty priced at \$2,784. The vehicle was offered by Ride of Your Dreams, a dealership operating at an MDL located on Ocean Avenue in Lakewood.⁶

The buyer agreed to meet a dealer representative to examine the vehicle, but instead of meeting at the Lakewood site, the seller asked the buyer to come to a location on Route 36 in Keyport that the representative referred to as an “overflow lot.” However, because the seller failed to bring a dealer tag, the prospective buyer was unable to test drive the car during that visit. Still, he agreed to purchase the vehicle and returned to the lot a week later to complete the sale.

Some 20 minutes after driving off following the purchase, the starter malfunctioned. After the starter was replaced, the check-engine light came on, and a mechanic at the repair shop told the buyer the vehicle would not pass inspection without a new oxygen sensor. The next calamity to strike was an exploding engine coolant tank which resulted in the need for a second oxygen sensor. All of these malfunctions occurred within a week of the date of purchase. The buyer made multiple calls to try to obtain recourse from the dealer representative, but his efforts were unsuccessful. Instead, the seller offered the services of the dealership’s mechanic, assuring the buyer he would receive a good deal.

Missing Ownership Titles

Failure by dealers to convey a vehicle’s ownership title at the time of purchase is also a recurrent consumer problem. Lacking a clean title, buyers are unable to legally register a vehicle. The Commission interviewed a number of consumers who waited months – in one instance, for nearly a year – before receiving a title.

At the time of sale, temporary tags typically are issued so the buyer can at least legally drive the vehicle off the lot prior to officially registering it. Except in rare circumstances, only one such “temp” tag may be issued per vehicle, and tags are not permitted to be transferred from one vehicle to another, or shared between dealers.⁷ The title is also supposed to be provided at time of sale, but dealers occasionally have difficulty securing it for reasons that might be legitimate or not.⁸

One buyer told investigators he had to threaten to “shut down” the dealership before the appropriate paperwork was provided; another was so frustrated with the delay – especially after he was stopped by police for failing to register the car – that he returned the vehicle to the seller. In some instances, consumers ultimately received the required documents only after they submitted complaints to the MVC or other authorities.

⁶ Ride of Your Dreams is currently licensed at NJDAM.

⁷ N.J.A.C. 13:21-15.9 dictates the temporary tag registration process for in-state residents and N.J.A.C. 13:21-15.10 dictates the process for non-resident temporary tags.

⁸ A lack of title could mean the vehicle is not legally owned by the dealer because it has an outstanding lien on it or it is stolen. Under N.J.A.C. 13:21-15.9(h) MVC permits the issuance of a second temporary tag for a resident if the original title is lost or the lien holder has delayed in providing the original title.

For example, after a New York couple paid \$4,500 to purchase a 2005 Volvo XC90 from a New Jersey-licensed dealer doing business in The Bronx, they experienced a three-month delay and the issuance of five temporary tags before receiving a clean title.⁹ The salesman initially issued a non-resident temporary tag and assured the couple the title would be provided within a week. When a second and then a third temporary tag were issued, the buyers filed a complaint with the MVC seeking help to resolve the matter.

While the MVC is not a consumer protection agency, it is empowered to assist consumers indirectly by penalizing dealers for violating conditions of licensure. Prompted by the couple's complaint, an MVC inspector visited the dealership's NJDAM rental office in Bridgeton and cited it for numerous violations, including improperly issuing more than one temporary tag for the same vehicle and failing to conduct business from its licensed location. Following the issuance of a March 2016 MVC violations report, the dealer's license was suspended for five days and the owner was charged a \$200 license restoration fee.

Another New Yorker, who paid \$2,000 for a used BMW 323i from a dealer licensed at NJDAM but doing business out of a residence on Long Island, became so frustrated with the persistent failure to obtain a title that he returned the vehicle without even trying to wrangle a refund. The buyer told the SCI he placed numerous calls and sent text messages to the dealer, Fraction Auto Sales, but never received a reply. Finally, after police stopped him for driving without a registration, the buyer called a tow truck to return the vehicle to the seller's home, then filed a consumer complaint with the Suffolk County (N.Y.) Department of Labor, Licensing and Consumer Affairs. That agency, however, offered no recourse because the sale involved a dealer licensed outside its jurisdiction. The buyer subsequently registered a complaint with the Better Business Bureau in New Jersey, located in Hamilton Township, Mercer County. He is also pursuing the matter in Small Claims Court in Suffolk County.

Abuse of Licensure

The following examples of questionable, unscrupulous and abusive activities mirror some of the same practices highlighted by the SCI's 2015 inquiry and reflect additional means employed by MDL-based dealers to exploit and subvert used-car licensure and sales regulations:

Straw Owners

The Commission identified instances in which a spouse or other family member obtained a New Jersey used-car dealer license on behalf of a relative who would likely be ineligible to obtain licensure for any number of reasons. These straw owners typically had little or nothing to do with the operation of the business and were owners in name only.

A New York State resident admitted to SCI agents that he orchestrated a scheme that enabled his sister to become the licensed owner of a newly established used-car dealership at a

⁹ The dealer, N & E Auto Sales LLC, is mentioned on page 3 of this report in reference to a questionable transaction with another consumer.

multi-dealer location in Phillipsburg, N.J., while he remained the *de facto* operator of the business. Claiming concern that a poor credit history might have made it difficult for him to secure a license under his own name, this individual used fraudulent means to make it appear that the dealership was really his sibling's business, going so far as having the sister obtain a New Jersey driver's license and register vehicles here in her name – even though she never lived in the Garden State.

Documents reviewed by the Commission show that in May 2015, the sister obtained a New Jersey driver's license that listed her address as a small rental home in Fairfield, Essex County. The property's landlord told SCI investigators he had never seen the woman whose photo was on the license despite the fact that she allegedly had lived at that location for more than 15 months, according to information filled out on the New Jersey dealer application. The landlord stated he actually leased the property to a man later identified as the brother. In a subsequent interview, the brother, a resident of Astoria, N.Y., admitted his sister did not live there. SCI investigators further verified the sister's student status via a newsletter published by an upstate New York college which listed the woman's name among a class of students graduating in May 2017.

The brother, who is an authorized signatory for the dealership, told SCI investigators that MVC inspectors were aware he was the actual owner of the business, and that they had no problem with the arrangement. Indeed, records reviewed by the Commission show that MVC inspectors treated this individual as if he were the licensee and asked him to take a "New Jersey Dealer Regulations General Knowledge Examination," a non-binding questionnaire that seeks to measure a dealer's knowledge about the used-car industry. The New York man also is referred to as the owner of the dealership in notes written by the MVC compliance officer who completed the dealer's site inspection in October 2016. During that inspection, the man told the MVC that he had previously held a dealer license but that it was in suspended status. That information was not included in the initial licensing paperwork submitted for the dealer application at the Phillipsburg site.

Investigators identified another NJDAM-based dealership owned – on paper – by a South Jersey woman but operated by her husband, a convicted felon whose criminal background likely would render him as unfit for licensure under MVC regulations. In 2013, federal authorities arrested this individual for selling counterfeit merchandise valued at more than \$4 million. He later pled guilty and was sentenced to five years of federal probation. Five months after his arrest, however, the MVC approved an application filed by the wife for a used-car license for a dealership to be based at the Bridgeton MDL. A review of MVC records revealed that the husband's name does not appear on any paperwork submitted to the agency on behalf of the dealership.

Due to his fraud-related conviction, the husband would likely be barred from licensure under MVC regulations, which require applicants to not have been convicted of crimes involving fraud or misrepresentation.¹⁰ Notwithstanding that regulatory impediment, the SCI found that the man directly conducted a range of vehicle transactions over a number of years. Records

¹⁰ N.J.A.C. 13:21-15.3(a)3 In order to be considered a proper person, an applicant must not have been convicted of a crime arising out of fraud or misrepresentation.

indicate that between 2014 and 2018, for example, he was the dealership's main representative for purchasing vehicles through a major auction house with sites in multiple states, including New Jersey and Pennsylvania.

Beyond auto auctions, this individual also conducts retail sales transactions with consumers, including at least one completed from his home in South Jersey. For example, the buyer of a 2006 Toyota Rav 4 told investigators he agreed to pay more than \$7,000 for the vehicle in 2015 after seeing an ad for it on Craigslist. The buyer said the unlicensed dealer told him the vehicle was in perfect condition. Yet, on the drive home, the transmission failed. After two weeks of calling the seller and asking for some type of restitution, the buyer was refunded \$1,000 of the purchase price.

Renting of Dealer Credentials

Another persistent abuse initially identified by the Commission in 2015 involves the renting or selling of dealer credentials to unlicensed individuals. Previously, the SCI identified an NJDAM dealer who charged a fee to enable unlicensed individuals to gain unauthorized access to dealer-only wholesale auto auctions. More recently, the SCI found unlicensed individuals who sold vehicles directly to consumers by either renting credentials from a licensee or working from credentials held by a legitimately licensed dealer.

Prompted by complaints that a dealer was operating out of an unauthorized site in East Orange, MVC inspectors visited the location in February 2016 and found that not only did an NJDAM-licensed dealer sell cars there but that he also permitted an unlicensed individual to use his credentials to conduct sales. The unlicensed individual claimed the dealer was his business partner in an entity called Saamsept Auto Corp. and that the two split the proceeds of each sale evenly. A review of MVC paperwork submitted by the dealer showed no information about a partner. Further, regulators noted that the unlicensed individual drove a vehicle displaying the dealer plates belonging to the licensee. Based on the unlicensed seller's poor driving record and a history of unpaid child support, he would likely be ineligible to obtain his own dealer's license.

In another case with a similar scenario, a Bridgeton-licensed dealer, Mimi Auto Sales, rented out dealer plates to a non-licensed individual and let another unlicensed individual sell vehicles on behalf of the dealership from a North Jersey storefront in Paterson. One unlicensed seller paid \$400 a month to rent the plates. The other unlicensed individual, who paid for the monthly rent at NJDAM, received a commission for each vehicle he sold on behalf of the dealership. MVC inspectors discovered this questionable business activity during an April 2016 audit. While Mimi Auto Sales was found to be in violation of numerous regulations, including failure to be present at the dealership during posted business hours and failure to maintain vehicle records at a permanent location, the dealer faced no penalties from the MVC, according to records provided to the Commission.

Temporary Tag Scheme

Commission investigators also learned of a scheme by at least 10 MDL-based dealers who created phony sales receipts and issued temporary tags for vehicles they had never bought or sold in order to assist fellow dealers unable to complete sales transactions. State regulations prohibit temporary tags from being transferred from one vehicle to another or shared between dealers, but these dealers from NJDAM and another multi-dealer location in Hackettstown, Warren County, took part nonetheless, telling MVC inspectors they engaged in the practice to help friends who had trouble acquiring titles to vehicles.

The MVC first became aware of this activity in late 2016 in the wake of an insurance fraud investigation by the Hudson County Prosecutor's Office involving one of the Hackettstown dealers. The MVC conducted an audit of the dealership and discovered several transactions in which vehicles had been issued numerous temporary tags by different dealers, including one that had 13 temporary tags from nine dealers over a 10-month period.

To create a tag through the electronic temporary tag system, the online tag-generating system that all licensed motor vehicle dealers are required by MVC to use, a dealer must enter information about the vehicle sale, such as the buyer's name, address and insurance policy number. Using license and insurance information provided by a dealer – who had sold the car but was unable to secure the title – the cooperating dealers created phony sales receipts to make the transactions look legitimate. Once the data was entered into the system, the tags were printed out and provided to the dealer in need.

This type of fraudulent activity is prohibited under MVC rules, yet no dealers involved in the scam lost their State-issued licenses to buy and sell vehicles, according to MVC documents provided to the Commission. The penalties faced by participants included immediate suspension of their dealer licenses; however, the final disposition shows the penalties were reduced to mere fines and the suspension of only the temporary tag issuance privileges for periods ranging from 60 days to six months.

Despite the penalties issued by the MVC, subsequent improper activity suggests that at least one dealer did not take the sanctions very seriously. In a report issued in August 2017 after a follow-up review, the MVC found that the individual, who operated two separate dealerships at the Hackettstown MDL, continued to issue temporary tags during the time both of his businesses were suspended for participation in the tag scheme. At the time of its 60-day suspension in 2017, one of those dealerships, 4JG Stars Auto Sales LLC, issued 99 temporary tags. Meanwhile, MVC records showed 92 instances in which 4JG and Premium JG Auto Sales LLC – also owned by the same individual – issued temporary tags to the same vehicle during the suspension. Notwithstanding these additional violations, MVC records provided to the Commission show no further penalties for the dealer.¹¹

¹¹ Other dealerships involved in the scheme were Auto Premium Corp, Auto Select Inc., Premier Auto Land LLC, and C&M Auto Sales LLC of NJDAM; and Tri-State Auto Sales Corporation, Unlimited Auto Mall Corp, Executive Auto Mall Inc. and Adventure Auto Sales LLC based in Hackettstown.

Subversion of Salvage Inspections

During this follow-up inquiry, the SCI discovered a new pattern of abuse by some MDL dealers to circumvent inspection requirements for salvage vehicles. The practice was so rampant that it recently prompted New York regulators to end an arrangement that enabled repaired salvage-titled vehicles from New Jersey to receive titles without further inspection.

The New York State Department of Motor Vehicles stopped accepting salvage titles from the Garden State in April 2018 after finding that a number of the vehicles in question “were not fit for the highway.” The two states have similar standards for inspection of repaired salvage vehicles and had a long standing arrangement in which vehicles given that title by the MVC automatically received the same designation in New York.¹² New Jersey has a similar arrangement with many others states, including Pennsylvania.

MVC defines a salvage car as a vehicle so damaged that an insurance company considers it uneconomical to repair. In some circumstances, such vehicles can be restored to a roadworthy condition and sold again. Regardless of condition, all salvage vehicles must be titled in New Jersey, whether restored or not.¹³

In October 2017, state motor-vehicle investigators in New York noticed a pattern in which many salvage-titled vehicles that had come to New York from New Jersey were first issued a reconstructed/rebuilt salvage title in Pennsylvania. The vehicles had taken this state-to-state route within a few days from the date of purchase. Approximately 90 percent of the 60 salvage vehicles awaiting rebuilt salvage titles in New York each week had taken this route, according to regulators there. Dealers from MDLs based in Bridgeton, Hackettstown and Hasbrouck Heights had sold most of the vehicles seeking New York title.

Investigators in New York were able to confirm this sequence of events from a Bridgeton-based dealer who explained how sellers often went through Pennsylvania to get a “phantom exam” because it is widely known among dealers that inspectors there would issue rebuilt/reconstructed salvage titles without a thorough inspection.

Since ending the arrangement with New Jersey, New York now conducts its own inspection of vehicles with repaired salvage titles ready to return to the road.

The potential harm of the phantom-exam process is illustrated by the case of a dealership registered at a multi-dealer location in Hackettstown that secured a salvage title in Pennsylvania as part of a scheme to commit insurance fraud in 2016. That dealer purchased a 2011 Porsche Panamera, generated a bill of sale and created a temp tag for the vehicle to enable a co-conspirator to submit an insurance claim stating the vehicle was involved in an accident.¹⁴ The car had indeed been involved in an accident – but it occurred in 2014, well before this transaction, and the car had been so severely damaged that it had been declared a total loss when the dealer

¹² Before receiving a title in New Jersey, salvage-titled vehicles from other states are run through the National Motor Vehicle Title Information System, a database that tracks sales, repairs and other vehicle history information.

¹³ <http://www.state.nj.us/mvc/vehicles/salvage.htm>

¹⁴ The two men agreed to split the proceeds of an insurance payout later quoted at approximately \$40,000.

purchased it. Documents filed with the Pennsylvania Department of Transportation indicate the vehicle was taken to a privately-operated inspection station in Reading, Pa., where the station's owner – a certified state inspector – signed a statement purporting to show that, based on his evaluation, the vehicle was roadworthy. Along with that certification, the documents submitted include photographs that show a fully intact vehicle.¹⁵

An investigation by a major insurance company and the Hudson County Prosecutor's Office in 2016 determined the claim was fraudulent because the vehicle's odometer reading remained unchanged from the time of the 2014 crash, and the damages were the same as from the initial accident. Based on the SCI's review of the documents it is apparent that photographs of a different Porsche were submitted in the application for the reconstructed title.

In addition, New York regulators recently flagged another abuse by some dealers in New Jersey to conceal the fact that particular vehicles received salvage titles. These dealers altered salvage title documents, in some cases using liquid nitrogen or razor blades, to remove the "S" designation from the paperwork. Motor vehicle regulators in New York are still trying to determine if the intent of the dealers was to defraud customers or to simply get the vehicles registered.

Unresolved Regulatory Matters

During the course of the SCI's first inquiry, as noted earlier, the MVC developed new regulations to close a number of regulatory loopholes that had given rise to dealer abuses over the years. Among those reforms was stronger oversight of dealer signatories, who have the authority to represent licensed dealers in their absence.

MVC had previously permitted clerical employees of the Bridgeton landlord NJDAM to serve as "authorized signatories," enabling dealers ostensibly based there to skirt the requirement to be on-site during business hours.¹⁶ To halt that practice, MVC adopted regulations in 2017 requiring the signatory to be a *bona fide* employee of the dealership and prohibiting one person from serving as a signatory for multiple dealers.

However, NJDAM had taken steps to mitigate the effectiveness of the new regulation by changing the designation of one of its employees from an authorized signatory to now serving as a corporate officer for a large percentage of its tenants.¹⁷ This allowed the dealers to demonstrate compliance with the rule and also to avoid, or at least delay, inspection of business records. Records reviewed by SCI investigators found that this change had the practical effect of continuing to enable dealers to thwart MVC's attempts to conduct random audits and caused regulators to make multiple, often fruitless, visits to a targeted dealership.

¹⁵ http://www.dot.state.pa.us/public/dvspubsforms/BMV/BMV%20Fact%20Sheets/Reconstructed_Vehicles.pdf

¹⁶ N.J.A.C. 13:21-15.4(c)

¹⁷ Of the 155 dealer records reviewed by the SCI, more than 85 percent of the NJDAM dealerships named the same complex employee as either an authorized signatory or corporate employee.

In August 2017, the MVC developed a new strategy: If any dealership that listed the NJDAM employee as part of its corporate structure faced a suspension, the agency would, in turn, seek to suspend the licenses of all the dealerships which name that individual as a company officer. To establish that the NJDAM employee truly worked for a given dealership, the MVC even asked some licensees to provide tax forms reporting annual wages. NJDAM dealers countered by following their usual course in such circumstances: they filed a legal challenge. At the time of this report's publication, the matter was awaiting a hearing before an administrative law judge while business at NJDAM proceeds as usual. Taking an aggressive legal stance against MVC has served NJDAM dealers well over the years. According to an SCI analysis of MVC records, several NJDAM dealers facing state sanctions between January 2016 and March 2018 had their penalties downgraded or eliminated after legal intervention.

While such external legal maneuvering clearly has served to impede MVC oversight and reform, the agency itself sometimes has not been helpful to its own cause in the MDL arena. For example, the agency typically does not penalize dealers until they violate a regulation on at least two separate occasions. Even then, the agency's first action is to issue a warning letter. Further, although the regulatory scheme calls for fines and penalties to generally increase with repeated offenses, there are no written policies or procedures to guide regulators in imposing such sanctions. Instead, those decisions are judgment calls made by inspectors and managers. The result is broad inconsistency in enforcement, and, as noted throughout this report, that sometimes means dealers face no meaningful punishment even after committing serious violations.

Under the law, the agency's Chief Administrator has the discretion to determine who is a proper person to be licensed as a dealer.¹⁸ Yet, even if an applicant provided false information about or omitted a past criminal history, it would not necessarily preclude a person from licensure or cause a loss of a license. Further, while the agency has the authority to revoke a dealer's license if there is clear evidence of outright fraud, the Commission found that some dealers remained in business despite engaging in questionable activities.

Meanwhile, there are few safeguards in place for consumers who buy faulty vehicles from dishonest dealers. The MVC holds no authority to provide direct recourse to buyers. It does follow up on consumer complaints or allegations of illicit dealer activity by conducting audits to ensure dealers are complying with conditions of licensure. The Division of Consumer Affairs in the Office of the Attorney General addresses consumer matters in New Jersey, but it is limited in the scope of remedies it can provide. Further, New Jersey's Used Car Lemon Law does not cover vehicles that cost less than \$3,000, are more than seven years old or have more than 100,000 miles on the odometer. It also does not cover cars sold "as is," which, as previously stated, means any defects or flaws are the buyer's responsibility.

By contrast, dealers in Massachusetts must give consumers a written warranty against defects that could impair the vehicle's use or safety for any used-car purchase costing at least

¹⁸ N.J.S.A. 13:21-15.3(a)2

\$700 and for vehicles with odometer readings of up to 125,000 miles. Subsequent to the sale, if the defect continues to impede vehicle operation after 10 business days or three repair attempts, consumers can return the vehicle for a refund. The law in Massachusetts also allows consumers to return and obtain a refund if a vehicle does not pass inspection within seven days from the date of sale and if the cost of repairs exceeds 10 percent of the purchase price.¹⁹

In New Jersey, MVC regulators are drafting new progressive discipline standards for used-car dealers and are nearly ready to launch an innovative program designed to enable inspectors to pinpoint exactly where sales occur to ensure transactions take place at the dealer's licensed location. The idea is that, once in possession of this information, regulators will be better able to enforce a new regulation, which took effect in June 2017, that requires a dealer to conduct at least four sales in New Jersey to maintain a license.

Unresolved Lobbying Issues

During its initial investigation, the SCI also examined the activities of a lobbyist, C. Richard Kamin, a partner in the firm of MBI-GluckShaw, which had been retained by the owners of NJDAM to press their case in Trenton.²⁰ A former state Assembly Assistant Majority Leader, Kamin was familiar with the inner workings of New Jersey's motor-vehicle bureaucracy based on a six-year stint (1994-2000) as Director of the state Division of Motor Vehicles, the MVC's predecessor agency. MVC visitor logs, email and other material showed that Kamin positioned himself to communicate directly with agency officials whose responsibility involved supervision and evaluation of matters affecting car-dealer regulation.

State law requires registered lobbyists to file quarterly reports identifying their efforts to influence legislation, regulations and/or various governmental processes. In preparation of its 2015 report, the SCI examined quarterly reports filed by MBI-GluckShaw with the New Jersey Election Law Enforcement Commission (ELEC) and found significant gaps and discrepancies in the reporting of Kamin's lobbying on behalf of NJDAM and its individual tenant-dealers. The most blatant reporting omissions occurred in 2012 and 2013 when, for two full years, the quarterly disclosure forms signed by Kamin contained no reference to any activity by him for NJDAM even though multiple emails demonstrated that he lobbied MVC officials on NJDAM's behalf during that period. This finding was referred to ELEC "for whatever action is deemed appropriate." ELEC did not pursue the matter.

During the course of this follow-up inquiry, ELEC officials told the SCI the agency did not investigate the matter in the context of its own statutory oversight responsibilities because the SCI did not explicitly ask it to do so. In point of fact, the SCI is not authorized or obliged to direct or request that any agency of government undertake any kind of investigation. Rather, when it identifies facts and circumstances that implicate the jurisdiction of other agencies, it typically

¹⁹ ALM GL ch. 90 §§ 7N-7N ¼

²⁰ Following his retirement from State government in July 2001, Kamin registered as a lobbyist with the State of New Jersey. During the SCI's follow-up inquiry, Kamin's lobbying activities on behalf of NJDAM were consistent with disclosure and reporting requirements and in compliance with state law.

alerts them to those facts and circumstances by way of a referral. In doing so, the SCI essentially waves a red flag and invites the receiving agency to examine the matter further.

ELEC also stated that it was constrained from acting because the SCI did not provide it with the actual evidence to support the finding of apparent lobby disclosure violations. In fact, ELEC never asked for that evidence. If it had, the request would have triggered an official dissemination process designed to protect the integrity of evidentiary materials that are part of a confidential investigative record. This dissemination process has been utilized successfully many times over the years as the secure mechanism for conveying evidence to government entities that have received and responded to SCI referrals.

In the interim, Kamin continued his lobbying activities on behalf of NJDAM, including efforts to press for enactment of legislation that would have the effect of both weakening MVC oversight of multi-dealer locations and legitimizing regulatory loopholes that produced some of the worst abuses identified by the SCI's initial investigation. During the last legislative session, that bill was overwhelmingly approved by the Assembly but was not acted on in the Senate.²¹

Quarterly lobbying activity reports filed by Kamin in 2017 during the first and second quarter reporting cycle indicate that he promoted Bill S2979 in the Senate and Bill A4185 in the General Assembly. ELEC records show that NJDAM paid MBI-Gluck Shaw \$73,350 to lobby on its behalf in 2016 and 2017.

It is noteworthy, to say the least, that ELEC has not issued any complaints for violations of the Lobbying Act since 2010. In all of the instances prior to that year, registered lobbyists were cited for either the late filing of, or for the failure to file, quarterly reports. Violators typically paid fines of between \$250 and \$500 for not filing the requisite reports.

Soon after publication of the SCI's report, ELEC mandated electronic filing for lobbyist disclosure forms that required additional detail regarding the extent of an agent's governmental affairs activities. These guidelines are consistent with recommendations made by the Commission in the 2015 report *Gaming the System-Abuse and Influence Peddling in New Jersey's Used-Car Industry*. The report suggested the statute and regulations be amended to require more explicit disclosure that, at a minimum, should include the names and titles of government officials with whom there was substantive contact; the date and location of that contact and the specific topic and governmental process discussed.

²¹ After A4185/S2972 failed to advance during the 2016-2017 Legislative session, the legislation was re-introduced in the new session in February 2018. The current version of the legislation is S1649. No version has been introduced in the Assembly.

Referrals and Recommendations

The Commission refers the findings of this inquiry to the following agencies of government for whatever action is deemed appropriate:

- Office of the Attorney General of New Jersey
- New Jersey Division of Criminal Justice
- New Jersey Division of Consumer Affairs
- New Jersey Election Law Enforcement Commission
- New Jersey Motor Vehicle Commission

* * *

As noted earlier in this report, since the completion of the Commission's initial investigation into the regulation of multi-dealer complexes, the MVC has made numerous improvements to strengthen its oversight of the MDL system. Unfortunately, that progress, as well as other ongoing reform efforts, remain threatened by pending legislation that, if enacted, would effectively legitimize nearly everything the Commission found to be wrong in the regulation and oversight of this segment of the used-car industry.²² The proposed law would authorize the loopholes that enable tenant-dealers to operate outside the framework for licensure of car dealers in New Jersey and set the stage for distorted and ill-advised regulatory policymaking. Most notably, it would clear the way for them to continue to transact business *in absentia*.

Positive steps by the MVC have included the hiring of more investigators in the unit that oversees motor vehicle dealer licensing, the development of a progressive discipline structure to ensure that penalties are based on policy – not the whim of a particular inspector or manager – and the creation of a monitoring system to thwart dealers who conduct sales transactions at out-of-state locations. These are laudable steps, and, if fully implemented, they will certainly improve government control and oversight of multi-dealer complexes. But, as established by the Commission's findings in the original investigation, as well as in this follow-up inquiry, much more needs to be done to ensure proper oversight and accountability of the tenant-dealer system in order to foil sellers who engage in illicit activity, and to protect consumers who fall victim to unscrupulous sales practices.

²² The bill is S1649 as noted on page 14 of the report.

Based upon the investigative record, the Commission makes the following recommendations for regulatory and statutory reform:

1. Enact Stronger Protections for Consumers

Legislation should be enacted to strengthen and expand New Jersey's consumer protection laws to assist buyers of used vehicles with undisclosed damage or defects in obtaining some form of recourse. Under current law, warranty protections only cover vehicles purchased from a New Jersey-licensed dealer for a minimum of \$3,000, are less than seven years old and have fewer than 100,000 miles on the odometer. Purchases involving older or less expensive vehicles, or any sold "as is," are not protected.

Other states, including California and New York, have imposed more extensive safeguards that require dealers to provide written disclosure prior to a sale certifying that a vehicle is in good running order and meets basic safety requirements. For guidance, the Legislature may also wish to consult the Massachusetts Used Car Lemon Law, which offers ample protections to consumers. As noted earlier in this report, Massachusetts extends warranty protections to cover cars that have up to 125,000 miles and with a minimum purchase price of \$700. That state also requires dealers to fix certain vehicle defects, and if the repair is not adequate after three attempts or 10 business days, the law gives the buyer the right to a full refund. It also provides a full refund to buyers if the vehicle fails inspection within one week after purchase.

2. Require In-State Inspection of Rebuilt Salvage Titles

The MVC should require all vehicles seeking rebuilt/reconstructed salvage titles to be inspected in New Jersey, even if the vehicle already bears that title designation from another state. Presently, New Jersey has an arrangement with most other states, including New York and Pennsylvania, that permits these salvage vehicles to automatically receive operable salvage titles without further inspection.

New Jersey's inspection standards were called into question in April 2018, when the New York State Department of Motor Vehicles stopped accepting salvage vehicle titles from the Garden State after finding many of the cars seeking title in New York were not roadworthy. Before receiving New Jersey titles, many of these vehicles had first received rebuilt/reconstructed salvage titles in Pennsylvania, which is known among dealers for having a less-than-thorough inspection process. Due to its agreement with neighboring Pennsylvania – which permits certain repaired salvage cars to receive title without further physical examination – MVC regulators did not inspect the cars.

Given concerns raised about the integrity of the inspection process elsewhere, the MVC should re-evaluate the arrangement it holds with other states that allow rebuilt/reconstructed vehicles to evade in-state review. Only by requiring separate inspections here can the MVC

ensure that these rebuilt/reconstructed vehicles, which often have sustained serious damage and require extensive repairs, are safe and fit for the road.

3. Enforce Abuse-of-License Violations

During the course of both the Commission's initial investigation and this follow-up inquiry, investigators found numerous examples of individuals who abused dealer license privileges or used fraudulent means to obtain licensure. These included schemes in which a dealer charged a fee to allow an unlicensed person to use his dealer credentials, and cases in which a spouse or other family member obtained licensure while the *de facto* owner of the business was an individual whose past criminal history or poor credit may have been a bar to licensure. In several instances reviewed by the SCI, these violators faced minimal or no penalties at all for committing licensing abuses.

The Commission recommends that the MVC conduct more extensive vetting and background checks of applicants to ensure that individuals who seek dealer licenses are not straw applicants. In one case identified by SCI investigators, the MVC had no record of contact with the licensed owner, who was a woman, but instead conducted all communications through her brother, an unlicensed individual who was, in fact, the actual operator of the dealership.

Further, the MVC should develop clear disciplinary standards to address abuse-of-dealer licensing. Currently, the MVC's Chief Administrator has the discretion to determine whether actions by a dealer rise to a level in which a license should be suspended or revoked. But given the seriousness and persistent nature of these abuses, the Commission recommends that the appropriate statutes and/or agency regulations be amended to give the MVC authority to require immediate suspension of any dealer found to have given an unlicensed person improper access to motor vehicle dealer credentials. Further, a second violation should result in license revocation. Violators should also face a fine based on an amount determined by the MVC. Further, any evidence of potentially fraudulent activity by dealers should be referred to the local County Prosecutor's Office.

4. Create a Wholesale License

As in the first investigation, the Commission again recommends the establishment of a separate license for those engaged solely in the wholesaling of used vehicles. Wholesale licensees should be required to meet basic qualifying standards, such as possessing a valid New Jersey driver's license and maintaining an established place of business in New Jersey, just as their retail counterparts. However, because they have no reason to show consumers an available product, wholesalers should be exempt from retail vehicle-display and personnel business-presence requirements. If dealers wish to engage the entire used-car market, they should be required to obtain and adhere to the rules governing both retail and wholesale licenses.

5. Strengthen New Jersey's Lobbying Disclosure Law

Following the Commission's initial investigation, the New Jersey Election Law Enforcement Commission mandated electronic filing for quarterly lobby disclosure reports that required additional detail regarding the extent of an agent's governmental affairs activities. These guidelines, which are consistent with recommendations made by the Commission in its 2015 report, call for lobbyists to disclose the identity of the official or government agency contacted; a detailed description of the bill, regulation or governmental process involved; and the full name of the represented entity on whose behalf the communication was made.

In the spirit of promoting greater transparency of lobbying activities, the Commission recommends that the Legislature expand the statutory authority for the requirement of quarterly lobbying disclosure set forth in N.J.S.A. 52:13C-22 so that the expanded disclosure rules adopted by ELEC will be integrated into law.



*State of New Jersey
Commission of Investigation*