



State of New Jersey
Commission of Investigation

GAMING
THE
SYSTEM

**Abuse and Influence Peddling
in New Jersey's
Used-Car Industry**

December 2015

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December 2015

Governor Christopher J. Christie
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 final report of findings and recommendations stemming from an investigation into abuse, manipulation and criminal intrusion in New Jersey's used-car industry.

Respectfully,

Joseph F. Scancarella
Chair

Robert J. Burzichelli
Commissioner

Frank M. Leanza
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Rosemary Iannacone
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EXECUTIVE SUMMARY

The sign out front says “New Jersey Dealers Auto Mall,” but there are no dealers in sight, no mall to speak of and, most notably, no cars for sale. Indeed, surrounded as it is by barbed-wired chain-link fencing and an expanse of empty pavement sprouting weeds, the low brick structure that forms the centerpiece of this place has the feel of an abandoned factory or warehouse. Even on a Saturday when business in the used-car trade typically is brisk, the hundreds of small “dealer” cubicles packed in rows inside the main building are silent behind locked doors, no phones ringing, no sales personnel, no customers.

But that’s not to say nothing is going on here. The State Commission of Investigation has found that, beneath a veneer of apparent legitimacy, this compound off East Commerce Street in Bridgeton, Cumberland County, is a sham that serves as the foundation for an amalgam of consumer and bank fraud, unpaid taxes, suspicious financial transactions and other questionable, unscrupulous and possibly illegal activities. The owner of record – an individual with familial and financial ties to members and associates of organized crime – leases space and provides other services to absentee tenants, enabling them to meet minimum requirements for obtaining official used-car dealer licenses from the State of New Jersey. Many actually are based elsewhere and conduct business from out-of-state locations, mainly in New York but as far away as California and Florida, where stricter licensing rules make it difficult, if not impossible, for them to qualify for certified dealer credentials.

Known by the acronym NJDAM, the Bridgeton operation is the largest of 11 multi-dealer “complexes” or “locations” (MDLs) identified by the Commission in New Jersey. Over the years,

efforts have been undertaken to crack down on questionable and unscrupulous activity at these entities, most notably starting more than a decade ago when NJDAM was the target of a State Police investigation into allegations of consumer fraud and other untoward conduct by dealers with criminal records. The findings of that inquiry, including sales of stolen vehicles with “washed” titles, misuse of dealer plates, forgery of official documents and other issues, prompted the state Motor Vehicle Commission (MVC) in 2006 to take action aimed at curtailing abuses by what it termed “phantom dealerships.” At the time, the agency boasted its new regulations not only would protect consumers but also would enhance security “essential to the collective fight against terrorism.” More recently, MVC investigators found additional violations at NJDAM and sought remedial action, including suspension and/or revocation of licenses held by various dealers registered there.

Ultimately, however, such efforts often fizzled with little positive effect. That is because, over time, the MVC’s role as a regulator of business in this corner of the used-car world devolved into that of an enabler of some very troubling business as usual.

During this investigation, the SCI found that the hundreds of dealers based at Bridgeton and at other MDLs exist and function largely beyond the reach of basic rules governing licensure and oversight of car dealers in New Jersey. Instead, they occupy a loosely regulated niche framed by a history of weak and inconsistent enforcement, aggressive legal challenges and bureaucratic receptiveness to behind-the-scenes pressure from Trenton lobbyists, including an individual who served for six years as Director of MVC’s precursor, the New Jersey Division of Motor Vehicles.

In sworn testimony, MVC personnel assigned to the agency’s Business Licensing Services Bureau described circumstances in which efforts to scrutinize these dealers and enforce

adherence to official regulations were frustrated, delayed or derailed by questionable or inappropriate intervention. Dealer license applications were ordered approved over the objections of line staff. Violation notices were interfered with, lessened or waived. In one instance, officials anxious to avoid litigation circumvented the MVC's statutory administrative rule-making process, including the requirement for public comment, by crafting shadow regulations known internally as "alternative guidelines." Less stringent than the officially adopted rules, these were used exclusively for matters involving multi-dealer locations.

MVC officials also agreed to recognize clerical personnel of the landlord NJDAM as "employees" of each of its more than 300 tenant-dealers. These individuals could then be designated as on-site business representatives, or "signatories," clearing the way for those dealers to transact business *in absentia* and thus thwart a central condition of state licensure. This was allowed to occur even though, as NJDAM's office manager testified, it was plain that posing as an employee of the tenant- dealers was nothing but a ruse.

Meanwhile, random on-site inspections, routine for other kinds of vehicle dealerships in New Jersey, were set aside for those in MDLs. They also were exempted from random examination and auditing of their current sales and transaction records, which must be kept in their offices and made available there for MVC review, a rule rendered moot in any event because they have been allowed to flagrantly misrepresent compliance with the MVC's requirement that dealers be present at their licensed locations and open for business a minimum of 20 hours every week.

Much of this occurred at the behest of MVC managers who took it upon themselves to effectuate what amounted to substantive policy and regulatory changes that benefited a narrow

private interest – all without the knowledge or authorization of the agency’s Chief Administrator and governing Board. In similar fashion, line personnel, including investigators responsible for regulatory enforcement, were left in the dark even when decisions affecting multi-dealer locations impacted the performance of their jobs. Thus, with the agency’s top and lower ranks cut out at significant junctures on matters involving these dealers, the MVC essentially was a government entity run by mid-level bureaucrats accountable to no one.

Besides calling into question the integrity and trustworthiness of the State’s top motor-vehicle regulatory agency, the favored treatment given this narrow segment of the dealership community carried other deleterious consequences. These include the untold cost of wasted time and resources of MVC investigators who, having devoted considerable work to identify and address regulatory violations, submitted enforcement recommendations only to see them ignored, reversed or summarily dismissed. Moreover, the wholesale exemption of MDL dealers from the prevailing rules has distorted the commercial playing field by putting legitimate competitors around the State at an operational and economic disadvantage. Perhaps the most egregious consequence of the events and circumstances detailed in this report, however, is that a range of consumer and other fraud and abuse was allowed to persist for years even after credible authorities had blown the whistle on it.

With regard to the future, the SCI is cognizant of significant changes occurring in the marketplace with the advent and proliferation of internet-based car sales and other virtual means of transacting such business outside the conventional realm of showrooms and fixed-lot vehicle inventories. These new alternative business models carry the promise of efficiencies and savings for buyers and sellers alike. But such innovation does not diminish the need for effective

oversight, transparency and accountability. If anything, given the loosely regulated world of e-commerce, it demands more.

One of the great gaps in oversight and accountability in the present case is that the ownership and operations of MDLs themselves – not the tenant-dealers but the landlords, locations, etc. – are subject to no scrutiny or control by the MVC or any agency of government beyond municipal entities concerned primarily with local matters of zoning, building code and fire- and public-safety compliance. Ironically, although the MVC has become closely involved with New Jersey's largest MDL, the New Jersey Dealers Auto Mall, this has occurred primarily in response to pressure from that entity and its lobbyists to relax oversight and enforcement, not to increase it. As the findings of this investigation amply demonstrate, that approach poorly serves the public interest, a conclusion the MVC itself had reached back in 2006 before largely retreating from its own efforts to bolster the State's control in this area.

The SCI also recognizes the need to strike a meaningful balance between proper and effective regulation of the State's business community and legitimate efforts to sustain and spur economic development. With regard to MDLs, this balance is thoroughly out of order. For example, despite its founder's assurances that NJDAM would produce hundreds of jobs, it has employed a grand total of 25 individuals over the years, not including the owners' relatives. This outcome is unfortunate given the fact that Bridgeton is one of New Jersey's 32 designated Urban Enterprise Zones, which were created in an effort to revitalize economically distressed communities by providing businesses with tax breaks and other incentives to develop and create private-sector jobs. Furthermore, MDLs have become notorious as havens for unpaid taxes. NJDAM's used-car tenant-dealers lead the way on this score, accounting for more than \$4.2

million – nearly half – of an estimated \$10 million due to the New Jersey Division of Taxation from dealers registered at all of the State’s MDLs.

Based on the findings of this investigation, the SCI recommends a series of statutory and regulatory changes, outlined in detail at the conclusion of this report, to provide better oversight and control of individuals and entities engaged in commercial activity centered on the wholesaling and retailing of used vehicles. To some extent, even the MVC itself seems to have finally recognized the need for action. During the latter stages of this inquiry, for example, the agency proposed new regulations to limit access to temporary tags and dealer plates and to define and scrutinize who can act as an authorized signatory in a dealer’s absence. But these are only first steps toward achieving a broader base of necessary systemic reform in this area – an effort that, to be meaningful and effective, will require significant structural adjustments.

Primarily, this investigation has demonstrated that the MVC is neither properly equipped nor institutionally inclined to carry out its own regulations, let alone to assume the burden of enforcing additional rules necessary to ensure fair and proper business practices by all elements of the used-car industry. Also, the MVC has no jurisdiction over the owners and landlords of multi-dealer locations (in fact, it has been manipulated by them) and offers no direct recourse for taxpayers and consumers victimized by their unscrupulous tenants. Thus, the SCI recommends that the scope of the State’s used-car regulatory apparatus be expanded to encompass key associated entities, such as MDL owners and landlords, and that the power to administer and enforce that apparatus be transferred from the MVC to a professional board established under the auspices of the State Division of Consumer Affairs.

Further, all qualified applicants for dealer licensure should be required to possess a valid New Jersey driver's license – proof of New Jersey residency – and to disclose whether and to what extent any civil actions and/or judgments have been taken or are pending against them. The Legislature should also consider requiring more extensive criminal background checks for prospective licensees and imposing a lower threshold for what constitutes an automatically disqualifying criminal offense. Moreover, tougher disciplinary sanctions, including substantial fines and license suspension leading to revocation, should be rigorously applied in cases involving repeat violations of the regulatory code. The SCI also recommends that New Jersey seek to establish an information-sharing network with neighboring states, particularly New York, to determine whether individuals applying for dealer licenses here have had licenses suspended or revoked for reasonable cause by authorities in other jurisdictions.

In addition to transferring the administration and policing of the used-car industry to New Jersey's leading consumer protection agency, the State should also consider adopting a "Used-Car Buyers' Bill of Rights" putting all parties to a vehicle sale on notice as to certain ground rules that must followed before such transactions are completed.¹ This measure could include provisions enabling consumers to purchase limited options permitting the cancellation of a sales contract within a specified "cooling-off" period (California mandates two days). Dealers could also be required to inspect and certify in writing that the vehicle is in adequate condition for service upon public roads at the time of delivery.

¹ At least four other states – California, Louisiana, Massachusetts and Minnesota – have adopted legislation setting forth car buyers' bills of rights in recent years.

Finally, this investigation revealed the ease with which New Jersey's lobby reporting and disclosure requirements can be circumvented or altogether ignored. Pursuant to the original intent of that disclosure system – to provide for public transparency when private influence is brought to bear on governmental processes – the law should be amended, at a minimum, to require more explicit reporting by lobbyists of substantive matters they discuss and/or advocate in meetings and other contacts with government officials.

THE JERSEY WAY

It is not surprising that used-car dealers looking to set up shop in this region often choose New Jersey as home base, if only on paper. Within the industry, it is widely understood that, compared to other states, New Jersey’s licensing and registration rules, operational restrictions, enforcement and overall regulatory framework are relatively lax on everything from requisite signage to vehicle warranties.

In Connecticut, for example, in addition to having a “suitable office in which business may be conducted,” a licensed used-car dealer also must maintain an on-premises repair department capable of servicing at least two vehicles simultaneously, plus at least one qualified mechanic.² Pennsylvania, meanwhile, requires a “permanent enclosed building” as a place of business and devotes more than two pages of regulations to the definition and description of an accompanying lot that must big enough to accommodate at least five vehicles available for purchase. According to Pennsylvania’s rules, “The dealer must have a display area . . . where the public is permitted and invited in the regular course of business to inspect or test drive vehicles that are being offered for sale, purchase or exchange by the dealership.”

Retail used-car dealers in New Jersey, by contrast, are required only to present “evidence” of an established place of business, and the regulatory threshold for meeting that requirement is minimal: an office no less than 72 square feet in size (e.g. 12 by 6) with a desk, chair, landline telephone, a safe in which to store and secure MVC documents and motor-vehicle transaction records, and space capable of displaying two vehicles.³ There is no explicit reference in the

² Conn. Regs. §14-63-3 (2015)

³ N.J.A.C. 13:21-15.4

regulations as to on-site repair shops or to anything like anticipated customer test drives or inspections.

As to the integrity of prospective dealer licensees, New York, New Jersey and other states require criminal background checks. Under New Jersey statutes, the MVC can reject applications submitted by those convicted of fraud or misrepresentation explicitly involving motor vehicle transactions.⁴ The MVC's Chief Administrator also has discretionary regulatory power to reject an applicant due to prior involvement in unlawful activity.⁵ This investigation, however, yielded evidence that dealers based at MDLs have recently been licensed in New Jersey despite criminal convictions for crimes such as money laundering, bank fraud and odometer tampering.

Unlike their counterparts in New Jersey, New York authorities take action against applicants who fail to disclose the taint of a criminal record. Under New York's licensing regimen, an applicant's failure to disclose a conviction (both misdemeanor and felony), or a forfeiture of bail, is considered to be a materially false statement, which results in an automatic denial of licensure. Similarly, should New York authorities learn at any time that a license-holder has been convicted of a misdemeanor or felony, or has practiced dishonest or misleading advertising, the license is revoked and the individual is prohibited from re-applying.

Though vested with similar authority, New Jersey's MVC has allowed applicants to be licensed despite failing to disclose arrests and/or convictions during the application process.⁶ As

⁴ N.J.S.A. 39:10-19

⁵ N.J.A.C. 13:21-15.3(a) states, in part: *[I]n order to be considered a proper person, an applicant must: (2) Be of sufficient good character, in the Chief Administrator's discretion, to warrant consideration as a proper person to be licensed as a dealer. To assist the Chief Administrator in making this determination, he may consider an applicant's financial responsibility, as well as whether or not the applicant has been involved in any illegal activities prior to applying for a license. (3) Not have been convicted of a crime arising out of fraud or misrepresentation.*

⁶ New Jersey's used-car dealer license application states: *Have the owners, partners, or officers ever been arrested, charged or convicted of a criminal or disorderly persons offense in this or any other state?*

part of its investigation, the SCI reviewed the license applications of dealers from various MDLs to determine if applicants failed to disclose their arrest/criminal records to the MVC.⁷ In one instance, an individual was able to obtain a dealer license despite failing to disclose a history of federal credit-card fraud convictions and two theft-related arrests in Pennsylvania. After serving time on federal probation, he was arrested under an alias on charges that included theft by deception, forgery and tampering with public records. Another MDL licensee failed to disclose that he had been arrested under an alias in 2012 for tampering with public records and providing a false statement. In yet another case, a licensee who failed to disclose an arrest on her application designated her husband as an authorized signatory for the dealership without disclosing his own significant criminal background and history of violating MVC regulations.⁸ Such non-disclosure is not uncommon. In reviewing the license applications for 37 used-car dealers at an MDL in Delran, N.J., for example, the SCI found that nearly one-third had dealer principals with arrests prior to becoming licensed, yet only a handful disclosed that fact on their license applications.

Used-car dealers in New Jersey also operate under comparatively relaxed requirements governing the condition of vehicles at time of sale. No pre-sale inspections are mandated here, and certain categories of vehicles can be sold “as is,” meaning that any defects or flaws will be the buyer’s responsibility and not covered by warranty. Warranty coverage requiring dealers to correct defective or malfunctioning parts is required only in limited circumstances. Their

⁷ Applicant has made a willful misrepresentation or omission in an application for a dealer license or renewal thereof under the provisions of the rule. N.J.A.C. 13:21-15.5(a)(3)

⁸ Authorized signatory means a dealer and any employee, officer, director, partner or other holder of an ownership interest in the licensed business, which person is authorized to execute documents on behalf of the dealer. N.J.A.C. 13:21-15.1.

counterparts in New York, meanwhile, must inspect all vehicles and, upon delivery, certify that they are in satisfactory working order.⁹ Also, detailed warranty requirements are statutorily embedded in New York's Used Car Lemon Law, which subjects used cars sold by dealers with less than 100,000 miles to mandatory warranty protections like those provided for buyers of new vehicles which, for certain mechanical reasons, defy repeated efforts at effective repair.¹⁰ Connecticut also requires a more elaborate warranty regimen for used-car sales.¹¹

On another matter, New Jersey is among a number of states that maintain generous policies on providing dealers with special dealer license plates intended for use when demonstrating, testing and delivering vehicles. While it has been known for years both in the industry and among law enforcement that these "dealer plates" are prone to improper distribution and misuse once they leave the State's control, any dealer who receives a MVC dealer license in New Jersey automatically and unconditionally qualifies for five such plates even with no record of sales and no evidence of a vehicle inventory. The State of Delaware, by contrast, limits the distribution of dealer plates based on the number of vehicles actually sold, requiring dealers to demonstrate sales of at least five vehicles a year.¹²

⁹ NY CLS Veh & Tr § 417 (2015)

¹⁰ NY CLS Gen. Bus § 198-b (2015)

¹¹ Conn. Gen. Stat. § 42-221 (2014)

¹² 2-2000-2275 Del. Admin Code §3.1 (2015)

RISE OF THE MDLs

Among those who found value in New Jersey's lean regulatory landscape was Dennis Altman, a transplanted New Yorker who pulled out of that state's used-car trade in the early 1980s to set up shop on this side of the border, first in Asbury Park, then Sayreville, and finally at the site of an abandoned textile processing plant on East Commerce Street in Bridgeton.

Altman told the SCI in sworn testimony that he was introduced to the unconventional strategy of turning his used-car enterprise into a rental base for multiple dealers about two decades ago by an entrepreneur who was already using that business model on a small scale in Belmar. According to Altman, this individual told him that minimal advertising had aroused significant demand among would-be tenants, and that there were no impediments to obtaining appropriate licensure and zoning approvals. In fact, he pointed out, there are no licensing or other state regulatory requirements whatsoever for landlords under such circumstances, as long as they are not themselves engaged in the car-sales business.

Concurrently, Altman's late brother Steven was seeking to establish a separate business to build and sell recreational boats. Pursuant to that, Steven Altman approached local officials in Bridgeton with a plan to locate both the boat company and the multi-dealer operation at the vacant Commerce Street facility. According to Dennis Altman, his brother worked out a deal in which the Altmans gained possession of the property in 1994 in exchange for agreeing to pay off several hundred thousand dollars in delinquent property taxes and utility bills owed by the abandoned plant's former owners. The city, an economically distressed community, also granted

a number of required zoning changes after being told the two businesses would generate more than 300 new jobs.

Steven Altman also approached the state Division of Motor Vehicles, the MVC's precursor, about his plan, according to Edwin Lawler, who was in charge of DMV's legal section in the mid-1990s. Lawler told the SCI he was inclined at the time to block the project even though Altman told him it would also be a venue for vehicle auctions and repair facilities and would employ hundreds of people. Lawler said he visited the Commerce Street location and found it in need of substantial repairs, including abatement of asbestos contamination. He said he was also aware of law enforcement concerns that the site could be a draw for unscrupulous dealers from other states. Ultimately, Lawler said he reluctantly agreed that qualified dealers could be licensed there after being advised by the Attorney General's Office that a precedent had been established with the DMV's earlier approval of licensing for dealers at a similar facility in Bergen County.

Dennis Altman testified that within months, relying initially on advertisements targeting New York residents to attract tenants, he had signed leases with about 40 dealers. Nearly all, he stated, were full-time residents of New York – a phenomenon that would remain consistent as the business grew, eventually becoming the largest multi-dealer location in New Jersey.

NJDAM is one of 11 MDLs identified by the SCI in the State.¹³ Over the past two decades, they have been identified in licensing documents as the base of operation for approximately 2,450 used-car dealers. The following list details New Jersey's separately-owned MDLs, showing the total number of dealerships registered at each location over the years since its inception:

¹³ For photographs of NJDAM see Appendix p. A-2.

- New Jersey Dealers Auto Mall (NJDAM), 330 East Commerce St., Bridgeton, Cumberland County. 1,214 dealers.
- Caesar Corp., 92 Railroad Ave., Hasbrouck Heights, Bergen County. 243 dealers.
- WNAG Realty LLC, 60 Asbury Rd., Hackettstown, Warren County. 240 dealers.
- Ledgestone Associates LLC, 614 Frelinghuysen Ave., Newark, Essex County. 145 dealers.
- Dealer Management Services Inc., 2925 Rte. 23, Newfoundland, Passaic County. 133 dealers.
- Duelly Holdings LLC, 2345 Rte. 9, Toms River, Ocean County. 118 dealers.
- Foxcreek Inc., 101 Industrial Ave., Teterboro, Bergen County. 91 dealers.
- George Yelland Inc., 150-1 and 207/209 Carriage Lane, Delran, Burlington County. 89 dealers.
- Richard Catena, 430 Industrial Ave., Teterboro, Bergen County. 81 dealers.
- Drees Property LLC, 60 Railroad Ave., Hasbrouck Heights, Bergen County. 70 dealers.
- Don-Lynn Inc., 398 Rte. 9, West Creek, Ocean County. 26 dealers.

Nearly 40 percent of the dealers licensed at these locations over the years have been owned by non-New Jersey residents, primarily New Yorkers, and most of these out-of-staters have purportedly been based at NJDAM, arguably New Jersey's most remote multi-dealer location. Michael Fredrick is one such New Yorker. A Brooklyn resident, Fredrick has operated After 5 Motors Inc., from the Bridgeton MDL for more than 11 years. He established the business after learning the business from an associate who operated a separate dealership through NJDAM. He stated that his monthly rent includes a range of services provided by the landlord, such as the completion of official licensing paperwork and assistance in dealing with MVC

regulators. His annual license renewal applications, Fredrick said, are always provided to him with some information pre-completed by NJDAM representatives. Fredrick stated that he has been visited by MVC inspectors on only two occasions, once immediately after his dealership was established and again when a customer was involved in an accident with expired temporary tags. He laughed when asked if he is ever at the Bridgeton location during his listed office hours, stating “I live in New York.”

Initially, New Jersey mandated no distinct operating requirements for businesses anchored at MDLs beyond the normal prerequisite of filing an application and obtaining a state license to sell used cars. When Altman started renting his Bridgeton address to dealers, they were not even required to have a phone, only an “established place of business.”¹⁴ To satisfy that requirement, Altman had rudimentary cubicles constructed on the bare concrete floor of the old factory, each with a door to display the tenant-dealer’s name. Separated from one another by drywall and lined up along both sides of a hallway, the narrow spaces resembled rows of closets. The ceilings, meanwhile, remained open except for chicken wire strung from one cubicle to the next, a feature that earned Commerce Street the trade nickname as a “chicken coop” venue.

Chicken wire notwithstanding, Altman would come to describe the enterprise as a “golden goose” – with good reason. During his tenure at the Bridgeton location, rental proceeds from tenants alone totaled up to \$90,000 a month – more than \$20,000 a week. And that flow of cash came with little overhead beyond costs associated with routine maintenance, property

¹⁴ N.J.A.C. 13:21-15.3(a) (2004): *All applicants shall submit satisfactory evidence that the applicant has established and maintained a permanent, properly identified location wherein there are facilities to display automobiles and at which place of business shall be kept and maintained the books, records and files necessary to conduct the business.*

taxes and coverage of the prior owner's delinquent tax and utility obligations. Also, since landlords are not regulated by the MVC as long as they are not directly involved in vehicle sales, there were no licensing or other fees to pay. Once in possession of an official dealer's license, each tenant also received the State's normal minimum distribution of five dealer plates, even though no actual physical inventory of vehicles for sale was required.

Despite this early success, the New Jersey Automobile Dealers Exchange, as the Bridgeton MDL was known at the time, soon began to suffer the cost of subsidizing the adjunct boat business, which floundered from the start. As the financial condition of both enterprises worsened, Dennis Altman testified, his brother turned for help to a family friend in Staten Island, N.Y. According to Altman's sworn testimony, that individual, Louis Civello Sr., provided a substantial loan. In the late 1990s, according to Altman, Steven Altman jettisoned the boat business and left Commerce Street altogether and, in exchange for having the loan forgiven, ceded his share of the multi-dealer business to Civello and his son, Louis Civello Jr.¹⁵

Altman testified that he has known the elder Civello since they were teenagers. Asked how his brother so readily obtained such a large infusion of cash from him, Altman testified that Civello "was always known as a Shylock . . . somebody who you borrow money from . . . 'Louie the leg-breaker.'" Indeed, law enforcement authorities in New York and a confidential SCI source have identified Civello Sr. as a member and soldier of the Bonanno organized crime family of *La Cosa Nostra* (LCN) and a prior member of the Colombo LCN organization. When confronted with this evidence, Civello Sr. repeatedly exercised his Fifth Amendment constitutional right against

¹⁵ In sworn testimony, Civello Jr. stated that he loaned the money to Steven Altman and that his father did not have any business transactions with Steven Altman.

self-incrimination and refused to provide any substantive response to questions pertaining to organized crime and his reputed links to it. He denied playing any role in the ownership or operation of the Bridgeton MDL, which he said is owned, controlled and administered solely by his son.

Over the years, however, Civello Sr. has benefited substantially from the enterprise, both directly and indirectly. Despite testifying he never worked at Bridgeton, employment records confirm nonetheless that he was on the company's payroll from 2003 to 2007. These records show that, in the fashion of a normal employee, he was issued an IRS Form W-2 and received salary payments from NJDAM totaling \$169,400 for those years. Civello Sr. said he engaged in various activities, such as driving his son to work on occasion and offering advice on various matters, but that he never considered it a job. Records also show that Civello Sr.'s wife, Deborah Civello, also collected a salary from NJDAM even though she had no regular duties or responsibilities at the company. From 2003 to 2009, she was paid \$245,750 in wages from NJDAM. In 2010, she ceased to receive W-2 payments from NJDAM and began receiving Unemployment Compensation, totaling \$60,600 for 2010 and 2011.

Civello Sr. testified that he and his wife are supported in large measure by his son, who in 2007 purchased a home for them for \$1.3 million in the Morganville section of Marlboro Township, Monmouth County. This five-bedroom, 5.5-bath house of nearly 5,000 square feet sits on more than an acre of land and features a salt-water swimming pool, a garage for six cars, a wine cellar and a hand-painted mural. In addition to paying the mortgage, utility bills, landscaping and upkeep on that property, the younger Civello also covers the leasing and insurance costs for two vehicles operated by his parents, plus \$900 in monthly rent for a

furnished apartment used by his father in Staten Island, according to Civello Sr.'s sworn testimony. In addition to assuming the financial responsibilities of his parents, Civello Jr. maintains a home in Millstone, Monmouth County, he purchased in 2007 for \$890,000. This four-bedroom, five-bath, 4,327-square-foot property features indoor and outdoor swimming pools and an eight-seat movie theater.

The SCI discovered evidence of a financial and real estate relationship between Louis Civello Jr. and a convicted felon known to law enforcement as an associate of the DeCavalcante LCN criminal organization. Beginning in March 2011, Civello Jr. shared a bank account with that individual, Robert Volpe of Staten Island, N.Y., whose criminal record includes cocaine trafficking, interstate transportation of stolen property, assault and firearms violations. An analysis of bank records for this joint account showed substantial activity involving the deposit of checks and electronic fund transfers from companies sharing the address of a nondescript building in Brooklyn linked to the wife of a Colombo LCN member. Volpe and Civello Jr. also jointly purchased a residential property on Staten Island in April 2013. Later that year, Civello Jr. loaned Volpe \$60,000 to cover the mortgage on a Brooklyn apartment building. Civello Jr. told the SCI in sworn testimony that he did not know Volpe was associated with organized crime, stating, "It is my opinion if someone was associated with organized crime they wouldn't broadcast it."

* * *

Within a year of Steven Altman's departure, as the Civellos undertook an increasingly active role in the Bridgeton operation and in its promotion, the number of tenant leases topped 100. But along with this growth came problems. In his sworn testimony, Altman recalled telephone complaints from irate customers who said dealers based at the Bridgeton MDL took

their money without delivering vehicles. Others complained of purchasing cars with hidden mechanical defects that rendered them unsafe and/or inoperable. Still others called to complain that dealers were not responsive to messages left at Commerce Street and could not be located. Altman testified that no dealers ever kept an inventory of vehicles at that location, and most transacted sales and other business from their out-of-state homes or elsewhere, a violation of state regulations.

Some of these complaints evidently reached the MVC as well because in 1999 the agency abruptly stopped renewing licenses for dealers located at the Bridgeton MDL. In response, Altman retained legal counsel and filed for a temporary injunction against the State. Shortly thereafter, the MVC resumed renewing licenses for Bridgeton-based dealers.

Notwithstanding the agency's reversal, however, problems persisted. In 2003, State Police detectives investigating allegations of deceptive and fraudulent business practices at Bridgeton found evidence that dealers with criminal records were conducting improper out-of-state vehicle transactions and possibly evading payment of New Jersey taxes. Authorities characterized the site as "a major conduit of car-sale fraud throughout the Northeast." The State Police also reported incidents of odometer manipulation, failure to disclose vehicle salvage histories and circumstances suggesting the sale of stolen cars with false titles and altered vehicle identification numbers (VINs).

Based upon these and other findings, the MVC acknowledged glaring weaknesses in its regulatory framework and targeted the State's MDLs for more stringent oversight and control. Among other things, the agency mandated upgrades in the physical infrastructure required for the housing and support of legitimate dealerships, additional background screenings of dealer

license applicants and their employees, automatic exclusion of anyone convicted of fraud involving a motor vehicle and a requirement that all licensed dealers be present at their places of business a minimum of 20 hours per week. The new rules, which applied to all used-car dealers, retail and wholesale alike, also mandated a number of dealership structural requirements, including firewalls and climate controls. In a “service assessment” made public on March 30, 2006, MVC pointedly outlined its rationale for the regulations and boasted they would constitute “a powerful tool for New Jersey citizens’ benefit and security.” That document, in part, states:

These changes address abuses that have surfaced within the auto dealer industry over the years. Indeed, New Jersey often served as a haven for dealers’ applications that were denied in other states because of a history of criminal or fraudulent activity. New Jersey’s antiquated regulations left consumers vulnerable to fraud and abuse by such dealers.

One common abuse was the use of “accommodation addresses,” essentially mail drops used by dealers, allowing them to qualify for a NJ dealer license and set up “phantom dealerships.”

Phantom dealerships abused customers in the old regulations. For instance, stolen vehicles with “washed titles,” fraudulent, forged or otherwise false vehicle documentation were sold to unsuspecting customers. These dealerships would sell MVC’s temporary registrations, dealer plates and other official documents on the black market. Such abuses raised both consumer-protection and homeland-security concerns. In fact, according to law enforcement, black market temporary registrations traceable to the most egregious of phantom dealerships have surfaced in terrorism investigations. Dealer regulation changes will play a major role in curtailing these abuses.

Because phantom dealerships do not occupy their licensed locations and, more often than not, conduct business elsewhere while moving titles through the MVC database, they operate beyond the reach of regulatory and enforcement authorities.

Today, a number of robust, newly-implemented provisions have strengthened MVC efforts to combat such activities.

It is important to note, based on the nature of subsequent events, that these regulations were the product of an exhaustive drafting and statutorily required promulgation process that included active solicitation of input from MVC personnel who would be responsible for their enforcement as well as from dealership industry stakeholders, law enforcement officials and other interested parties. Prior to formal adoption by the MVC's governing Board, officials prepared a 58-page document detailing extensive public comments on the proposed regulations and delineating the agency's response to each. During the public commentary, the proposed regulations drew strong support from the New Jersey Divisions of Taxation and Consumer Affairs, the New Jersey State Police, the New York Department of Motor Vehicles and the New Jersey Police Traffic Officers Association.

PHANTOM REGULATION

In the years following the MVC's very public declaration of war against unsavory and improper practices at multi-dealer locations, the reality of the agency's purported effort took quite a different shape behind the scenes. Instead of requiring MDL dealers to buckle down to an era of tough licensing standards as set forth in the new regulations, the MVC backed off. Rather than ordering such dealers, once and for all, to behave like all other dealers under its jurisdiction, i.e. to conduct their affairs transparently from locations identified in licenses as their official places of business, the agency winked at MDL business-as-usual conducted in *absentia*.

At the center of it all was the New Jersey Dealers Auto Mall, which continued to expand and prosper – under a new ownership structure. At the time of the MVC's promised crackdown in 2006, NJDAM was now fully controlled by the Civellos, who, through a combination of intimidation and legal actions, had ousted Altman and were on the way to securing a tenant-dealer base numbering in the hundreds. According to a former NJDAM employee, Civello Sr. threatened to throw Altman through a window on at least one occasion. Nine years later, as of mid-2015, the enterprise boasted more than 300 tenants, each paying between \$450 and \$760 a month for total gross rental income estimated at more than \$2.2 million a year. By way of illustration, during one month alone – July 2014 – NJDAM received nearly \$190,000 in direct deposits for rent and rental packages, not including any check or cash payments by tenants.

This revenue stream has been sustained in large measure by the dealers' State-sanctioned ability to receive and retain viable New Jersey licenses, all the while flouting the letter and intent of New Jersey's official licensing rules. How and why this was allowed to occur and persist to the

present day is a testament to aggressive lawyering, well-connected lobbying and the indulgence of government officials whose actions, and inaction, in response to outside pressure effectively neutered MVC's enforcement of appropriate public laws and regulations and made elements of the agency a tool in service of a narrow private interest.

* * *

Soon after the MVC began its regulatory push in March 2006, NJDAM launched a counterattack on two fronts. Arguing that the agency had overstepped its authority, lawyers for Civello Jr. mounted a legal challenge over a flurry of rejected license applications involving individuals seeking space at the Bridgeton location. In many instances, these dealer applicants were denied licensure for failing to comply with the new rules mandating structural upgrades, including the installation of safety-related firewalls between the dealership cubicles. Meanwhile, in a bid to influence the regulatory process going forward, Civello retained the services of a prominent State Street lobbying shop, MBI-GluckShaw LLC – a choice that placed NJDAM squarely on the doorstep of the agency's wheelhouse.

The key figure in this lobbying effort would be C. Richard Kamin, an MBI-GluckShaw partner well-connected to the Trenton political establishment and, more to the point, intimately familiar with the inner workings of New Jersey's motor-vehicle regulatory bureaucracy. Kamin served for six years (1994-2000) as Director of New Jersey's Division of Motor Vehicles, the MVC's predecessor agency.¹⁶ A former state legislator elected to five terms in the General Assembly,

¹⁶ During his tenure at the Division of Motor Vehicles, Kamin was a central figure in the events and circumstances that led to an investigation by the SCI into mismanagement and influence-peddling in the award and execution of a state contract to privatize motor-vehicle inspection services. See SCI report, *N.J. Enhanced Motor Vehicle Inspection Contract*, issued in March 2002.

including a stint as Assistant Majority Leader, he also served as Co-Chairman of the New Jersey Republican Party and as an Assistant Commissioner of the state Department of Transportation. As the Civellos and their tenant-dealers geared up to preserve the *status quo*, Kamin's access proved instrumental. He described his technique in sworn testimony:

[M]y life's experience with government is that often the folks at the top of the food chain have no idea what's going on and I try to get answers for my client and drilled laterally into the organization to see how we can, my client can best respond to the issue of the day.

Documents reviewed by the SCI, including MVC visitor logs, email and other materials, show that Kamin's lateral drilling positioned him to communicate directly with agency officials whose responsibilities involved supervision and evaluation of matters affecting dealer regulation. Notably, his contact list included James Walker, Director of the MVC's Division of Business and Government Operations; Daria Gerard, the agency's then-Chief of Operations; and Steven Robertson, then-Director of Legal and Regulatory Affairs. For services rendered in this regard, NJDAM has paid MBI-GluckShaw more than \$295,000 since 2006, according to records on file with the New Jersey Election Law Enforcement Commission.

One measure of the relationship Kamin cultivated with key MVC personnel is embodied by a series of emails beginning on April 23, 2013 when Kamin asked Walker to explain why MVC personnel were visiting NJDAM. Within 30 minutes of receiving this query, Walker reached into the MVC's Security, Investigations and Internal Audit Division for an explanation. After being denied this information, Walker then provided background material on Kamin, including his prior role as State Motor Vehicle Director and his position as a lobbyist with MBI-GluckShaw representing NJDAM. Six days later, on April 29, 2013, Walker stated in an email exchange with Kamin that, if possible, he would provide the lobbyist with information regarding the SCI's

confidential investigation, which at the time was just getting under way with visits by special agents to the Bridgeton location:¹⁷

Kamin: *NJ Dealers Auto Mall heard from a competitor – who was also visited – that the personnel may be from the State Commission of Investigation. Any update on your end?*

Walker: *I am not privy to the reason for their visit. If I am given anything that I can pass on I'll certainly give you an update.*

In sworn testimony, Walker told the SCI that his response to Kamin “was my way of not really giving him an answer. . . . I’m just being courteous . . . there is no meaning behind that.”

Known around the agency on a first-name basis, Kamin could also count on being accommodated with little or no delay when he sought information or requested a meeting. In an email on May 1, 2014, for example, Walker told MVC dealer-licensing personnel, including staff investigators, that he wanted to meet with them the following day to discuss a request from

Kamin:

Dick wants to meet with me to discuss the following:

- 1. MVC use of Emergency Suspension provision of regs*
- 2. Dealers being denied the ability to sell business due to uncited IRS regulation*
- 3. New fingerprinting process*
- 4. Delay in Renewals*
- 5. Change in MVC application to include seal from Zoning Office/Dept*

I am unaware of these issues and need to meet with you Friday, May 2 to discuss this.

MVC email also provides a glimpse into senior staff concerns early on about keeping contact with Kamin and NJDAM under wraps so as to avoid possible scrutiny. On February 25, 2008, for example, in an email entitled “NJDAM CONFIDENTIAL,” Daria Gerard forwarded a

¹⁷ See Appendix p. A-3

request from Kamin for answers on a number of issues concerning his client to four agency officials, including Walker, and admonished them not to disseminate the material within the MVC's Business Licensing Services Bureau (BLS), which regulates dealer licensing:

Please dot (sic) share this document with others in BLS as it may result in an official investigation.

I am sure you have been addressing these issues and realize you may not want to put in email. How do you want to handle responding to me – want me to schedule a meeting with you and Jim [Walker] in a few days – that will give you time to all talk etc?

Let me know as I will have to get back to Dick soon.

The primary focus of NJDAM's lobbying effort was on the actions of the Business Licensing Services Bureau ("Licensing Bureau"), a small but important branch of Walker's Business and Government Operations Division. The Licensing Bureau oversees the credentials and operations of a range of motor-vehicle-related entities in New Jersey, including auto body shops, driving schools and emission-repair facilities, but its key functions go to the licensing and regulation of approximately 3,500 car dealers, most of which – roughly 2,700 – deal in used cars. The Licensing Bureau is charged with reviewing and making recommendations to approve or deny all dealer licensing applications. The Bureau's investigative staff is responsible for conducting applicant background checks, performing inspections of applicant sites prior to license approval and/or renewal, and investigating possible regulatory violations. They also are empowered to issue citations with fines or other penalties, including license suspension or revocation, where appropriate.

By almost any measure, however, the Bureau's ability to cover all four corners of this expansive mission is challenged even under the best of circumstances. For one thing, according

to the MVC's current organizational chart, there are only eight field investigators – fewer than one for every two of New Jersey's 21 counties – assigned to the task of ensuring compliance by a total of more than 8,000 regulated businesses statewide. Also, the Bureau has long struggled to maintain a complete and accurate electronic record of regulatory violations, particularly those involving repeat offenders, because of an archaic in-house computer system with limited memory and questionable security. According to sworn witness testimony, for example, data pertinent to a dealer's violation history can be permanently deleted with a single keystroke. Moreover, even when the factual basis for issuing citations is clear-cut, alleged violators can avail themselves of multiple levels of appeal in an effort to delay or nullify penalties.

Against this backdrop, the Commission found that it is common knowledge within the Licensing Bureau and elsewhere in the MVC – and has been for years – that multi-dealer locations are magnets for fraud and abuse and, as such, present the agency with a unique and critical regulatory challenge. According to the agency's own data, while MDLs comprise about 15 percent of all licensed used-car dealers in the State, they account for one-third of all violations cited.¹⁸ As recently as 2014 – fully eight years after the agency promised it was getting a grip on the problems associated with MDLs – Hector Maldonado, the Licensing Bureau's current Manager, described them as housing dealers that can be “havens” for wrongdoing, including tax evasion. Even Walker, his boss, responded under oath as follows:

Q. *So a lot of these dealers are simply using the New Jersey system to obtain a dealer license but conducting business in another state such as New York?*

A. *Yes, I believe that.*

¹⁸ In 2010, the MVC documented deficiencies in the current statutes and regulations as relates to the motor vehicle industry, and made recommendations for addressing them.

And James Clifford, the MVC's current Chief of Investigations, stated in sworn testimony:

[W]e are all keenly aware that these multi-car, multi-dealership locations are just a huge scam – it is not something that is healthy for anybody.

Paradoxically, it is also known within the agency, particularly among personnel responsible for enforcement, that in the face of this difficult regulatory challenge the MVC became a paper tiger.

Apart from the inadequate staffing, problematic record-keeping and interminable appeals, investigators assigned to the Licensing Bureau say that when it comes to MDLs – and particularly when it comes to the one called NJDAM – they have had to deal with an additional impediment: questionable intrusion by management and other forces that all too often has gotten between them and their ability to do their jobs. In sworn testimony and documents obtained from the MVC, investigators and other personnel cited example after example of interference in official licensing and disciplinary matters; of instructions to reduce or waive penalties without explanation; of investigative reports written, filed and ignored; of orders to withhold enforcement of certain regulations without explanation; of sudden phone calls instructing them to cease inspections; and of generally adversarial, often disdainful and dismissive, treatment by those in leadership positions. Appearing before the Commission under oath, numerous present and former MVC employees expressed deep frustration with working under such circumstances. This was particularly true of personnel, including career employees, caught in the difficult position of carrying out orders that they found to be personally

questionable or even objectionable. The testimony of Supervising Investigator Thomas Bramley is emblematic:

. . . I'm fighting my own department over issues and I'm not getting anywhere. . . I'm bringing these issues to my manager or they're supposed to take it up the chain, but I'm being told no, no, you just do things this way and that's the way you're going to do them, period. So I'm saying it's my own . . . department that's my biggest enemy. I'm trying to enforce something and I'm getting back nothing in return.

His colleague, George Kinczel, a supervising investigator employed by the MVC for more than 30 years, put it bluntly:

We find it hard to do our job because of roadblocks that we get from upstairs . . . just let us enforce the regulations, and everything would be fine.

At significant junctures, this disconnect between MVC management and rank-and-file staff has manifested itself in the form of investigators being left in the dark when significant regulatory or policy changes have been undertaken involving matters that directly impact the performance of their jobs. For example, less than two weeks after the launch of the 2006 regulatory upgrades, the MVC's Chief Administrator at the time, Sharon A. Harrington, notified the State's dealership community in writing that the agency would not enforce a new rule requiring transfer of vehicle titles at the time of sale. Designed to curtail longstanding problems associated with cars sold without proper ownership paperwork, including stolen vehicles and others of questionable legacy, according to Harrington, the rule failed to take into account delays in the processing of appropriate documents by banks and other lienholders. Pending "legislative and administrative solutions," she wrote, "there is no intention to . . . monitor dealerships for this requirement in the absence of consumer and law enforcement complaints."

Licensing Bureau staff responsible for enforcing the regulation told the SCI they received no notice of Harrington's order. It "caught everyone off-guard," Bevan Carruthers, the Licensing Bureau's Coordinator, stated in sworn testimony. "We found out when an investigator went out to a site and a dealer kind of shoved it in his face. . . . [we]weren't even aware the letter existed."

The decision to rescind the title rule, however, was not taken capriciously nor was it applied selectively. The order applied uniformly to the State's entire dealership community and followed an internal agency process in which the rationale for rescinding the rule was scrutinized and subjected to legal evaluation, according to Harrington. The same cannot be said about subsequent regulatory concessions by MVC officials. Within 18 months of promulgating the new regulations, the agency again back-pedaled – this time in what would be the first of several major reversals that substantially relaxed compliance standards, primarily for dealers linked to MDLs.

The initial trigger for actions steering the agency away from its own regulations was a legal challenge filed by NJDAM on behalf of 27 Bridgeton dealers whose licensing applications had been rejected for failure to comply with the firewall rule. Initially, the MVC turned down demands that the dealers be granted provisional licenses, something the agency had never done. In pressing for temporary licensure, Kamin and NJDAM attorney Thomas Russomano argued that aside from being unnecessary and costly, the retro-fitting of firewalls would interfere with the facility's existing sprinkler system. They claimed the agency's concerns could be alleviated by the installation of separate interior walls between adjoining cubicles. In mid-2007, concerned about losing if the matter were litigated in court, the MVC relented and agreed to the terms of a consent order exempting the dealers from the firewall requirement. The order included language similar to the 90-day provisional license demand the agency initially had denied.

In a related move, agency management agreed with NJDAM to widen the application of the firewall exemption from the 27 dealer/litigants to include all present and future dealers based at MDLs retroactive to March 2006. This was an abrupt departure from the MVC's existing regulatory stance that such "grandfathering" treatment only be considered for individual dealers. Now, the agency had taken the expansive and unprecedented position of grandfathering an entire facility owned by a landlord over which it had no statutory or regulatory jurisdiction.

Based on the evidence made available to the SCI, it is unclear who or what entity on behalf of the State ultimately approved this settlement and made it applicable, not just to current licensees, but to future dealers as well. There is no reference to it nor any discussion addressing its future application in the minutes of meetings held by the MVC's eight-member governing Board. Further, although the consent order effectively amounted to a rewriting of an officially adopted regulation, the change was never codified in the MVC dealer regulations.¹⁹ Confronted with this gap, the agency's legal staff acknowledged that such formal codification should have occurred. It would not be the last time the rules would be subjected to re-interpretation and revision as a matter of policy rather than formal promulgation.

Coincident with the firewall consent order in mid-2007, agency officials also decided to ease several other compliance requirements, including rules governing office heating and air-conditioning, dealership entrances and the display of vehicles. Although these changes were directed at all used-car dealers in the State, they clearly involved matters almost exclusively of concern to those based at MDLs. Under the official regulations, for example, every established place of business was required to "be equipped with . . . climate control sufficient to conduct

¹⁹ The dealership firewall is required by N.J.A.C. 13:21-15.4(d).

business at that location.”²⁰ The intent of this and other established-place-of-business requirements was to ensure that each dealership office housed a legitimate business and was not merely an accommodation address providing the appearance of a business. As altered, however, the rule required no individual heating and cooling units, only a working centralized climate control system for the entire facility where a dealer is housed. The regulations also required that a dealer’s vehicle display area be “contiguous” to the dealership office, a term commonly defined as being in actual contact with an immediate boundary. As recast, this rule now allowed dealer vehicles to be displayed anywhere on the property.²¹ Also, in a move that served to accommodate the indoor, multi-cubicle design model utilized by NJDAM and other MDLs, the agency scrapped a requirement that each dealer have a dedicated entrance leading from the building’s exterior exclusively to its office.

As with the firewall revision, none of these changes was subjected to the statutory promulgation process that normally attends the development of new regulations, including public comment, and there is no evidence that they were ever approved and officially codified by the MVC’s governing body. Indeed, the only document delineating the revisions was an informal memorandum prepared by the agency’s Legal and Regulatory Affairs Office (MVC Legal) that referred to them as “guidelines.” (In later internal email and other materials, these substitute regulations are also referred to as “alternative guidelines.”)²² The preparation and handling of this document was unusual in a number of respects. For one thing, officials seemed preoccupied with keeping the memorandum from being disclosed. In this regard, Steven

²⁰ N.J.A.C. 13:21-15.4(h)

²¹ This was a moot point in any event since few, if any, dealers at NJDAM ever put an inventory of vehicles on display.

²² See Appendix p. A-4

Robertson, then-Director of MVC Legal, incorporated language asserting the importance of maintaining the document's confidentiality and severely restricting its distribution.²³ In particular, he directed that internal duplication or distribution of the memorandum for any purpose was prohibited without express written authorization of the agency's Chief Administrator. Later on, Robertson amplified this theme, admonishing MVC personnel in an email to refrain from making any written reference to the existence of "alternative guidelines." Furthermore, when conveyed to Licensing Bureau personnel responsible for enforcement, the guidelines memo took the form of an untitled, unsigned and undated text document attached to an email with no explanation and none of the usual *indicia* of an official memo from MVC Legal, such as a subject line and the identities of a recipient and author.

Despite the explicit reference by Robertson to a required sign-off by the Chief Administrator, the individual who held that title at the time, Sharon Harrington, testified that she was never made aware of the document's existence.

Meanwhile, down below in the agency, the guidelines threw the Licensing Bureau into turmoil. Unlike the official regulations, which were produced through a regimented process in

²³ After an initial interview with investigators, Robertson was contacted by email to arrange a formal appearance before the SCI, a practice commonly used to gain the sworn testimony of attorneys, senior government officials and out-of-state witnesses. Robertson, however, rejected this request to testify under oath. In a lengthy email response, he responded, in part: "From my perspective, in order for my appearance before one of your Commissioners to be meaningful, I would need to refresh my memory quite a bit about the history and details related to the MVC's efforts dealing with multi-dealer locations over the years during my time there. I am not inclined at this point to take on that kind of effort, especially given that my responsibilities in my current position (sic) consume much of my time. I feel strongly that without such preparation, I would not have much to offer beyond what I have already shared with your agents I regret that I cannot be more immediately amenable to appearing in Executive Session, but I have already spent a couple of hours with your investigators reporting everything that I can recall."

A former MVC co-worker testified under oath that Robertson, a resident of Pennsylvania, referred to the matter of "jurisdiction" in a discussion about his not coming before the SCI. Ultimately, the SCI perfected service of process on Robertson through the Clerk of New Jersey's Supreme Court. As an attorney licensed to practice in New Jersey, he was subject to service under the New Jersey Court rules that designate the Clerk of the Supreme Court as a New Jersey lawyer's agent for service of process under certain circumstances.

which Bureau personnel were solicited in advance for suggestions and other input, the amended rules arrived without warning – months after investigators had undertaken dealership inspections based upon the original regulations and, in doing so, had recorded dozens of violations at Bridgeton and other multi-dealer locations. Some questioned the authority of the unsigned memo and sought guidance, including Supervising Investigator Thomas Bramley. In response to his request for clarification about which set of rules should apply going forward, then-Licensing Bureau Manager Rachel Gervais sent the following email to MVC Legal:

In order for the investigators to begin implementing the standards outlined in the Guidelines memo, we are requesting 'written approval of the Chief Administrator' in accordance with this requirement in the last paragraph of the Guidelines memo. Tom's [Bramley's] investigators are only in the office only on Thursdays and we would need to have the CA's [Chief Administrator's] written approval before then to allow him to duplicate the Guidelines memo and distribute/discuss them with his investigators.

The SCI found no evidence of any such written approval by the Chief Administrator.

Among the rank-and-file personnel who questioned the legitimacy of the guidelines was Diana Bridgeforth, a career MVC employee who during this period was supervisor of the Licensing Bureau's Dealer Licensing Unit. In that position, she was the official responsible for reviewing used-car dealer license applications, along with the initial dealership site inspection reports submitted by investigators, and recommending whether the paperwork warranted further scrutiny due to regulatory noncompliance. When the new guidelines came down, Bridgeforth's unit had a backlog of approximately 100 applications tagged for violations of the firewall and other regulatory requirements now abruptly subject to revision. She was thus instructed by her supervisor, Gervais, to allow these applications to proceed. Bridgeforth refused to do so on grounds that the guidelines were not codified and that they conflicted directly with existing

regulations. According to Bridgeforth, she then took the matter to Clifford, MVC's Chief of Investigations, and a conference call was arranged with Robertson and Walker. During that call, Bridgeforth said that after she explained her position she was told that there were alternative guidelines and that she was to issue the licenses. Again she refused. The applications were given the green light anyway. In a subsequent meeting with Licensing Bureau staff, Walker and Robertson repeated their message. Walker was described in sworn testimony as being irate and stating that people should do what they are told and stop asking questions. Walker testified that he could not recall hearing or using the term "alternative guidelines" or any conversation or meeting involving that topic or the matter raised by Bridgeforth.

Bridgeforth said that in the aftermath of this incident, she was routinely excluded from meetings, transferred from direct involvement in substantive licensing matters and placed in charge of opening mail, becoming a supervisor in name only. Eventually, she retired before she had planned to. Such repercussion was not lost on other staffers. "Word was sort of getting out that if you don't cooperate," Investigator Bevan Carruthers told the SCI, "your career could be hampered."

As for the handling of subsequent reports of inspections carried out at Bridgeton, Investigator Robert Mehl testified that he adopted a practice to preserve a written record of the confusion. His completed reports were passed to his supervisor, Thomas Bramley, recommending denial of licensure for failure to meet the firewall or other structural requirements under the official regulations, while Bramley was instructed by MVC Legal to approve the licenses under the relaxed terms of the unofficial "alternative guidelines."

* * *

While the agency's concessions on firewalls and related matters certainly were helpful to the MDL community, the most serious impediment to the continued viability of such enterprises remained: a regulation requiring that dealers maintain a presence at their licensed places of business a minimum of 20 hours a week.²⁴ This key "business-presence" rule not only was intended to accommodate consumers but it also was designed to ensure that someone familiar with the operations of each dealership would be in the office to safeguard documents and dealer plates and would be present when MVC investigators conducted their periodic unannounced on-site inspections and audits.²⁵ This regulation alone, if properly enforced, would threaten the survival of entities like NJDAM whose business model is wholly dependent on a base of tenant/dealers who are *absent* most, if not all, of the time. Consequently, NJDAM focused its lobbying on efforts to circumvent this core requirement.

The seed of NJDAM's ultimately successful strategy was contained in the very regulation it sought to avoid. Under the rules adopted by the MVC in 2006, a dealer absent from a licensed premises could designate an on-site "signatory" to represent him/her in the conduct of business.

According to N.J.A.C. 13:21-15.1, the term "authorized signatory" means:

a dealer and any employee, officer, director, partner or other holder of an ownership interest in the licensed business, which person is authorized to execute documents on behalf of the dealer, but shall not include any attorney in fact who is not an employee, officer, director, partner or holder of an ownership interest.

With regard to what constitutes an "employee," the developmental history of this regulation demonstrates that when it was proposed, the agency plainly intended for a signatory to be the

²⁴ N.J.A.C. 13:21-15.4(c)

²⁵ 38 N.J.R. 1324(a)(March 6, 2006)

direct employee of a licensed dealer. Clear evidence of this is present in the official record of the public comment phase that preceded the rule's adoption. During that period, the MVC responded as follows in the context of a commenter's claim that it would be overly burdensome to require that licensees submit updated information about their signatories:

The Commission disagrees that this requirement imposes a significant new burden upon a dealership. For every employee, the dealer must process sufficient paperwork to withhold social security, Federal tax, State tax, unemployment and disability payments and to forward those payments to the appropriate authorities Listing the employee's name on an application once a year and whenever there is a change is a de minimis additional exercise. The benefit lies in the fact that since these individuals are acting for the dealership with the same duties and powers granted to licensees, which have substantial privileges, it is important that they be known to – and scrutinized by – the Commission as much as the dealer applicants themselves. [Emphasis added]

As subsequent events would amply demonstrate, however, this language ultimately would have little effect in deterring MVC officials, under pressure from NJDAM, from defining "employee" far more loosely.

Kamin began pressing on this issue in early 2008. Cognizant of the fact that his client's tenants had no direct employees, at least none that routinely were present in Bridgeton, the lobbyist suggested an alternative: that NJDAM's administrative staff be authorized to serve as signatories for the dealers.

Internal MVC email at the time show that agency officials initially were hesitant to go down this road without some form of a record demonstrating a tangible employment relationship between the dealers and the proposed signatories. Emblematic of this early reluctance is the following exchange in late March 2008 between Emily Armstrong, an MVC Legal

attorney; Daria Gerard, the agency's Deputy Administrator; and Steven Robertson, Director of MVC Legal:

Armstrong: *Hi Daria. BLS [the Licensing Bureau] has about 5 applications for renewal where the signatories are the two individuals previously discussed, employees of NJDAM. Their names are on the signatory line, with their signatures as well. We (Legal) suggest asking for proof of employment (for example, pay stubs or other proof showing employer/employee relationship) – were you going to communicate this request to Dick Kamin, or is that something BLS should ask of the individual dealer renewal applicants? Thanks, Emily.*

Gerard: *Would this practice be applied across the board or just where we have reason to doubt the employment relationship?*

Armstrong: *My two cents: across the board. But probably should get Steve's input – I see he is copied here.*

Robertson: *I agree that we should seek it where the AS [Assigned Signatory] is not a principal of the company in some capacity – i.e., just a named employee that doesn't show up in the application other than as an AS.*

Several days later, based upon this discussion, Armstrong gave the following advice to Rachel Gervais, then-Manager of the Licensing Bureau:

[I]n general, if the signatory is an officer or director and named on the application, then I would not require proof of employment. If, however (as in the NJDAM cases) it appears as though the person's name came out of nowhere and is the same for multiple dealers in the same complex (thus appearing as though the signatories are in fact employed by someone other than the dealer), I would start asking for proof of employment. And yes, I would start asking for it now.

In a follow-up email to Kamin on April 7, the following week, Gerard expressed additional reservations, particularly with regard to the safeguarding of MVC documents, tags and license plates when dealers were absent from the site:

Dick, in regard to what we briefly discussed last week. I do not feel that having two people from the landlord's shop being designated as signatories for the dealers at Bridgeton satisfies the hours of business requirements. Not only do we want proof of employment for the dealer signatories working for the landlord; but,

also the person who represents the dealer in his/her absence must be able to tell us where all the records are. Where are the temp tags, the dealer plates, the logs etc. Secure documents must be secured. If the agent cannot fully meet our requirements for compliance checks, then in my estimation, they do not meet the requirements of the regulation.

Within two months, however, much to the confusion of the MVC's licensing investigators, agency officials abruptly agreed to Kamin's suggestion. The move coincided with the submission by NJDAM's attorney of a letter referring to a "contract of employment" agreement purporting to establish that the company's administrative personnel doubled as employees of the tenant-dealers. On June 9, 2008, Steven Robertson, MVC's Legal Director, told Armstrong and Bramley in a terse email without explanation that ". . . I have no problem with accepting the Agreement as proof of employment."²⁶ Seeking further guidance for his investigators pursuant to their dealer inspection responsibilities, Bramley replied:

Now that we have accepted the proof of employment, are they [the signatories] suppose (sic) to be operating out of the dealers office or do we have to go to the main complex office and ask them to go to the dealers office(?) Since they are not familiar with each dealers (sic) day to day operations and cannot respond to questions regarding complaints, do we write them up accordingly(?)

Do we need the proof of employment from each dealership (for which) their names appear as the signatory?

Robertson's response notably did not address Bramley's explicit concern about exactly where the signatories were supposed to be – inside the dealer cubicles or in NJDAM's general reception area:

²⁶ In sworn testimony, NJDAM's administrative staff member explained that prior to 2013, "we did sign off as signatories . . . but we didn't have an employment contract." In 2013, "we did the employment contract because we were trying to adhere to motor vehicles (MVC) because they were questioning the fact that we were signatories, but not employees."

Someone needs to be there during the posted hours, you don't need to go looking for them. If they cannot answer questions concerning the dealer operations, then the licensee or some other rep with knowledge of the dealership needs to show up. And "yes" to the proof of employment in each instance that they claim to be an "employee."

Despite these instructions, confusion prevailed. Five weeks after this exchange, Walker appeared to take a thoroughly contradictory position that using NJDAM employees as dealer signatories was inappropriate after all. In an email to Kamin, he even made a point of noting that MVC could very well act to enforce the business-presence rule:

It should also be noted that the MVC does not accept that the presence of one or two individuals at the building satisfies the requirement that an employee is present for the many dealerships that have posted operating hours on a given day, even if they were to be listed as employees for all of them. An employee must be physically present in the dealership (in this case the dealer's office). Since they can't be in multiple offices at the same time, the 300+ dealerships cannot adequately meet the requirement by declaring them as employees.

I have not yet instructed BLS [the Licensing Bureau] to issue "proposal for suspension/fine" letters regarding the 300+ dealers' lack of presence during business hours, but I believe that the MVC is within its rights to fine and or suspend the dealers for not adhering to this regulation.

It is noteworthy that Walker's email to Kamin, which was extensive and would have provided guidance from a senior official on a significant regulatory matter unfolding amid confusion within the MVC at the time, was copied to individuals that represent NJDAM but to no one in the agency itself.

Furthermore, Walker's enforcement threat turned out to be a non-starter. Going forward, the business-presence regulation was allowed to remain effectively dormant from the time this email was sent through the next six years, until mid-2014, when steps were taken to re-energize it amid the SCI investigation. Indeed, evidence indicates that someone in MVC management

actually issued a directive to stop enforcing key portions of the rule as of March 20, 2009. On that date, then-Licensing Bureau Manager Rachel Gervais emailed the MVC's investigators – and copied Walker, her supervisor – informing them that they were to cease or modify enforcement of the two provisions central to the regulation's integrity:²⁷

Until we have management's approval to resume citing dealers for the following provisions, these temporary changes are to take effect immediately when completing dealer notices for violations cited in the investigators' report. Please note that the investigators are to continue completing their investigations and reports in the usual manner.

N.J.A.C. 13:21-15.4 Established Place of Business²⁸

(c) omit in its entirety from notices, until further notice

(h) cite only in conjunction with other violations; apply on a case-by-case basis.

Two weeks later, Walker received a request from Kamin seeking relief at Russomano's behest for a dealer at NJDAM, S. Auto Sales Corp., that had received a notice of proposed license suspension previously for, among other things, violating the business-presence rule.

"This proposed suspension took place prior to our conversation on the authorized signatory issue. Also, the dealer refused to sign MVC paperwork acknowledging same, hence the charge of impeding the investigation," Kamin stated in his email to Walker. "Hopefully this one can just be dropped."

Walker replied, "I'll check and let you know."

²⁷ See Appendix p. A-5

²⁸ This regulation is also referred to as the "business-presence rule."

Subsection (c) states: *The licensee or an authorized signatory shall be present at the dealership at all times during the business hours set forth in the application for licensure, which schedule shall be conspicuously posted along with the dealer's license on the dealer's premises in an area readily accessible to the public.*

Subsection (h) states: *Every established place of business shall be equipped with office furniture and equipment, including, but not limited to, a desk, chairs, file storage, a fixed safe, electric lighting, communications lines and equipment and climate control, sufficient to conduct business at that location.*

* * *

Over the subsequent months, these circumstances were followed by a series of sometimes conflicting and contradictory emails, memos and other communications between and among MVC officials and NJDAM advocates about how, when and to what extent the regulations requiring dealer presence should be applied or eased. Regardless of the nature and tone of these exchanges, however, there was one constant: words spoke louder than actions, and absentee dealer operations continued without interruption. Several sets of documents, as described below, exemplify a chaotic and inconsistent approach by agency personnel toward enforcement throughout this period.

On April 20, 2010, Walker sent a lengthy email to Raymond Martinez, the MVC's then-new Chief Administrator, summarizing the problematic history of multi-dealer locations with specific reference to NJDAM and its agenda. "These complexes have gone to great lengths to test the letter of the statute and administrative code (regulations) in order to provide their clients with what is in essence a 'P.O.' box," Walker stated. "Numerous audits of these complexes reveal that the dealers are not there and the display spaces are empty. Customers of these dealers do not come to the buildings to view or purchase vehicles. These dealers are internet or wholesalers who conduct their business out of the trunk of a car."

In a ten-page attachment entitled *RECOMMENDATIONS FOR CHANGES TO DEALER STATUTES/REGULATIONS*, Walker outlined a litany of fraud and abuse associated with multi-dealer locations but asserted that the regulations were themselves to blame for the persistence of such problems. As he put it, "These regs [regulations] have proven through attempted

enforcement to be flawed and inadequate to their purpose.” MDL dealers, he stated, “are using loopholes and weaknesses in the regs to create an environment that puts consumers at risk.”

The picture Walker presented to the agency’s new boss, however, was incomplete. Neither the email nor the attachment gave Martinez any hint of the MVC’s own discussions about accommodating a request from NJDAM itself for a loophole that would allow it to satisfy the business-presence rule by using its own clerical staffers as signatories for absentee dealers. Moreover, Walker made no reference to the directive just 13 months earlier ordering MVC personnel to stop enforcing key provisions of the business-presence regulation altogether.

Despite acknowledging rife abuse at MDLs, Walker in this memo also proposed that MVC pursue an option to keep such dealers in business under a different framework that would “adapt statutes and regulations to industry trends.” A core element of this approach, he suggested, would be the establishment of a new “wholesale” licensee category with modified licensing requirements that would separate MDL dealers from the conventional retail used-car trade for regulatory purposes. It is noteworthy that NJDAM’s advocates at the time were pressing for a similar wholesale category in the licensing structure.

Over the following two years, however, the *status quo* prevailed. In fact, the MDLs found themselves in an even stronger position with regard to signatories based upon the terms of an internal MVC legal memorandum delineating an “interpretation” of the business-presence rule. This document, prepared by MVC attorney Emily Armstrong and sent to Walker dated April 17, 2012, addressed a request from the Licensing Bureau for “clarification” in a number of key areas. Among other things, the memo gave a green light to the notion of using one individual as a signatory for multiple dealers in the same location, as follows:

Question: Can one person serve as the authorized signatory present at the dealership during business hours for more than one dealership?

Answer: Yes. Due to the nature of the businesses conducted as many multi-dealer complexes, having little customer traffic, it is acceptable for a dealer, sharing the services of an employee with other dealers in the same complex, to rely on that employee if the employee's name is provided to the MVC and the employee has access to the dealer's office space.

Armstrong's memorandum also set forth a rationale for relaxing another regulation that threatened to crimp the ability of MDLs to operate: a rule requiring that at least three years' of business records be kept at the licensed premises and made available on request to MVC personnel during periodic unannounced audits. Upon "interpretation," it was now suggested that the agency could require no more than 30 days' worth of records and pursue a policy under which dealers could be given advance notice of forthcoming on-site inspections. According to the memo:

Question: If the regulations state that the books and records must be made available "on request," why does BLS have to provide advance notice?

Answer: The MVC previously made a policy decision to provide advance notice to dealers in multi-office complexes. This decision was based in part on the fact that MVC must interpret and apply regulations in a reasonable and practical manner, and it may be deemed reasonable by a court that MVC provide some notice in applying the term "on request."²⁹

Perhaps the most remarkable document to surface from this period was a memorandum authored by Walker dated May 24, 2013 and sent to his supervisor, Selika Gore, Deputy

²⁹ It is noteworthy that Armstrong's memorandum contained the following admonition in bold-face type:

- 1. The suggestions contained in this memorandum are not meant to replace the exercise of common sense and sound judgment. Decisions should be based on reasonable and practical application of the dealer regulations, keeping in mind the underlying intent of the statutes and regulations; and**
- 2. Ultimately, the decision as to how strictly a regulation should be interpreted is a policy decision. However, that policy decision must have a sound legal basis, and be applied consistently in like situations.**

Administrator of Operations.³⁰ Informed about a month earlier by Kamin’s email that SCI agents apparently had visited Bridgeton, Walker told Gore that the agents had asked about the MVC’s switch from unannounced to scheduled audits for dealers based there. In the course of this memo, Walker provided his boss with a skewed and incomplete history of NJDAM and other multi-dealer locations and the MVC’s response to them over the years. He described MDLs as a “new business model” that existing statutes and regulations “did not contemplate” even though, at the same time, he referenced MVC’s attempt in 2006 to establish rules to reign in dealers at such locations and to ensure that they were legitimate. Essentially, he told Gore that MDL dealers could not help but fail to comply with the regulations because of the way they operate, and he openly credited Kamin with offering “a scenario in which [the NJDAM] receptionist at the complex could be employed by all the dealers as a ‘signatory’ in order to satisfy the need for an employee to be present.” He also claimed that since the dealers “were not present for the unannounced audits, it wasn’t possible to ascertain if they kept their records on site,” and, as a result, the MVC had no choice but to provide advance notice of such inspections.

A reader unfamiliar with the convoluted events and communications surrounding these matters over the preceding years would gather from this document a distinct – and inaccurate if not completely false – impression of an orderly process leading to official action. In the following passage, Walker capsulized for Gore what he characterized as a series of formal decisions taken by the MVC to relax key rules:

The MVC executive management team decided in 2008 that, since the statutes in place for the licensure of motor vehicles dealers did not contemplate this new “business model,” some flexibility should be applied. It was decided that it is acceptable to have someone acting as the signatory even though they are not an

³⁰ See Appendix p. A-6

employee of the dealership. The Bridgeton dealers then updated their signature records to indicating (sic) the receptionist at the complex as a signatory. It was also decided at that time that future audits would no longer be unannounced. Instead they would be conducted by scheduling a date to meet with each dealer at their complex.

Walker then concluded by stating that the MVC could continue its then-current policy of announced audits until existing regulations were amended, or it could reinstate unannounced audits. However, he recommended some form of advance notification if the agency were to opt for resumption of unannounced audits.

In his sworn testimony, Walker stated that he could not recall who in the MVC's "executive management team" made the decision referenced in his memo. Furthermore, notwithstanding the sweeping assertions in this document, not everyone within the MVC was on board with continuing to notify MDL dealers about upcoming on-site inspections and audits. Conventional "brick-and-mortar" dealers were not afforded the same courtesy, and even Armstrong – the MVC attorney who a year earlier had authored a legal opinion setting forth a rationale for scheduled audits – now reversed her position because of repeated instances in which dealers failed to show up on the appointed dates and because of questions surrounding the integrity and availability of their records. In a June 20, 2013 response to Walker's memo, Armstrong wrote:

I have reviewed the May 24, 2013, memo prepared by Jim Walker and agree that the regulations provide that the books and records of licensed dealers must be kept on the licensed premises and available for review by the MVC during normal business hours and upon the request of the MVC. . . . There is no regulatory requirement that the audits be scheduled.

Unannounced audits are the only real way to check whether the books and records are kept on the premises at all times. Although the policy decision was made in approximately 2008 to schedule audits, practice has proven that this only delays the audits, and there is no way to check that the books and records are actually

kept [at the] licensed location. If the books and records are not kept at the licensed location, it is more likely that the dealer is not selling cars from the licensed location either.

I note that Dick Kamin, who represents the Bridgeton complex, may very well complain again about MVC's practices if the MVC starts unannounced audits. On the other hand, the MVC is subject to criticism for treating the multi-dealer complexes differently than other dealerships.

Based on the foregoing and the contents of Jim's memo, I recommend unannounced audits, as long as the MVC has the backing of the Governor's office.

MVC's investigative personnel also saw clear value in unannounced audits. They told the SCI in sworn testimony that the scheduling of such visits, together with NJDAM clerical employees serving as dealer signatories and the unavailability of current records, had rendered on-site audits in Bridgeton a pointless waste of time and resources. Ernest DiStefano, a veteran MVC investigator and compliance officer, testified as follows:

Q. *So of the dealers that were audited, what percentage didn't have their records?*

A. *. . . One hundred percent. I haven't seen anyone with records. Again, they have their old records, but if I want to see what they did last week, last month – and the signatories can't answer questions, either, let's understand that, they don't have any knowledge of this business. So if you wanted to drill into a transaction, something didn't look right to you, they can't help you. They'll say, hey, listen, I'm giving you the file, I don't know anything about the file, so how successful is the audit? It's just a farce.*

* * *

[Y]ou want to get people when they are not expecting. You want to see how they conduct business on a day-to-day basis. So if they have time to prepare, they can fraudulently create records that we would request, like dealer plate ledgers, where their plates are . . . [Y]ou come in with these dummy records and it makes it difficult to enforce an action, they are ready for you.

The flat-out declaration by Walker that “it was decided” that signatories did not have to be dealer employees is, in retrospect, particularly baffling because no one in a senior position at MVC at the time could recall any such a decision by management, and nothing in the minutes of the agency’s governing Board reflects that such an action was ever taken. Harrington, the MVC’s Chief Administrator during the 2008 time-frame cited by Walker as when this decision was made, told the SCI in sworn testimony that she never participated in and was never made aware of any such decision. In separate testimony, Armstrong stated:

I don’t know where he got that from, and I never heard that I’m sure I had a conversation with him subsequent to this that they [signatories] have to be employees of the dealers.

Indeed, throughout the fall and winter of 2013 and into 2014 – while the multi-dealer locations continued business as usual – the MVC continued to treat the definition of “employee” as an open question with regard to what constitutes a legitimate signatory. In early December 2013, after a meeting between agency officials, including Gore and Walker, and NJDAM representatives, including Kamin, the Bridgeton group provided the agency with a copy of the “employment agreement” used by NJDAM and its signatories. In an email to Gore on December 3, 2013, Kamin suggested that something similar could be expanded for use by the State’s entire multi-dealer community:

Hi Selika –

*We thought the document would be helpful and perhaps it or a similar format could be used by the other multi-dealer establishments.
Thanks again for the very productive meeting last week and hopefully you had a wonderful Thanksgiving.*

*Regards,
Dick*

The NJDAM document, actually entitled a “Commission Motor Vehicle Sales Representative Agreement,” set forth terms purportedly certifying that anyone who provided his/her name in a blank space adjacent to the term “employee” was engaged in an employment relationship with any dealer whose name occupied another fill-in-the-blank. The document’s boilerplate language delineated the employee’s duties to include selling and soliciting the sale of the dealer’s vehicles and acting as that dealer’s “authorized signatory, as required by *N.J.A.C. 13:21-15.1 et seq.*” Compensation was to be paid in the form of a commission equal to “ten percent (10%) of the net sales of product made by Employee (sic) to retail customers within the month.”

NJDAM’s office manager, who posed in the role of signatory, testified under oath that she never received any consideration or compensation from the dealers and, in fact, never considered herself to be an employee of any entity other than NJDAM. Moreover, the SCI found no evidence that the MVC ever confronted her or other members of the clerical staff about the true nature of their work in Bridgeton even though questions continued to be raised within the agency about the authenticity and legitimacy of the employment agreement.

In May 2014, for example, MVC attorney Armstrong rejected the agreement as inadequate. “This itself is not enough,” she told Gore in an email. “I would be more comfortable if the dealer acknowledged that the individual is an employee and not an independent contractor.” Armstrong went on to say that “payment of workers’ comp[ensation] is a good indicator that a person is an employee and not an independent contractor.”

One month later, on June 5, 2014, as the SCI investigation was heating up amid subpoenaed documents and interviews of MVC personnel, Walker circulated a memorandum

that appeared to lay the foundation for a complete reversal of course by the MVC on the matter of what constitutes a legitimate dealer signatory. Acknowledging what had already been apparent for years to the MVC's investigative staff, Walker stated that using receptionists to represent multiple dealers was a ploy to undermine the agency's regulations:

Dealers in multi-dealer complexes will designate a building receptionist as a signatory in order to comply with the letter of regulatory requirement that they maintain a presence at their licensed location during declared business hours. This circumvents the intent of the regulation. A signatory by definition must be a principle (sic), owner, partner or employee. A receptionist employed by the landlord of a multi-dealer complex cannot adequately address questions posed by a customer of (sic) MVC representative. This is especially true if the same receptionist is listed by hundreds of dealers as a signatory.

Significantly, Walker stated that the regulations should narrow the definition of employee to be a person listed by the state Department of Labor as having filed a Form W-4, excluding independent contractors and anyone compensated solely by commission. By that definition, the employment agreement provided by NJDAM would not be acceptable as proof that members of its clerical staff were also employees of multiple Bridgeton dealers.

Licensing Bureau investigators, however, said they were never officially informed of any such revision in the agency's policy on signatories. In fact, the SCI was informed that in mid-2014, Walker and another MVC official verbally directed them to recognize NJDAM's receptionists as *bona fide* dealer representatives and to conduct audits accordingly, a direct contradiction of the position Walker had taken in his memo just weeks earlier, as referenced above.³¹ "[A]ll he told us was to honor them as signatories," Supervising Investigator George Kinczel stated in sworn testimony:

³¹ Supervising Investigator George Kinczel testified that he only received verbal communication but never "official notice" or anything in writing from MVC Legal or Walker as to what the definition of "employee" would be.

Q. *How did that impact the compliance?*

Kinczel: . . . *So we went down there and we had the signatories take us to offices of the dealerships and show us the records, like we would with any employee if we did an audit, we want to see the records, the files, the logbooks, things we ask every dealer when we do an audit. They had opened the door, go through the cabinets and showed us the records. And there were – we did find some offices that had very old records in it, [but] we found nothing current.*

Q. *Were those signatories that brought you in there, were they able to answer any questions –*

Kinczel: *No. They couldn't answer any questions about the dealership, about how the dealership is run. If we brought up, hey, how come this car – this car was sold in New York, where did the transaction take place, they wouldn't answer any questions because they had no answers because they are not involved with the day-to-day operations of the dealership, but that's what we had to do*

Investigator Mehl called the exercise “absurd.” Mehl testified that he never understood how NJDAM employees could be recognized as dealer signatories there given the fact that they were only ever present in the office of the landlord, which was not a dealer and, therefore, was not licensed or regulated by the agency:

Why do I have to go to the landlord's office to get a, quote authorized signatory who I don't think is an employee of the dealer anyway . . . and lead them back to the dealership site to conduct an audit, what's that all about[?] . . . The point is there's not a person, there's not an authorized signatory at a licensed location within the Bridgeton dealership.

According to Supervising Investigator Bramley, many Bridgeton dealers have never even seen their offices, let alone conducted business at that licensed location:

I've had dealers tell me – dealers that are licensed in Bridgeton a lot of times don't even make the deal at their office, they don't know where their office is. They are made on the Turnpike. They are made at somebody's house. They never see the office. And when they come down there, they don't know where . . . their office is. They are surprised to see what kind of officer (sic) they are paying for. But dealers have said, you do anything against me, they have been told that they have a direct line to Motor Vehicle that they can make a call, you know, if you have any problems

here, if the investigators are hassling you, you know, just tell me and we will make a call.

UNDISCLOSED LOBBYING

State law requires registered lobbyists to file quarterly reports identifying their attempts on behalf of clients to influence legislation, regulations and/or various governmental processes.³² 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 conspicuous 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 Kamin for NJDAM even though multiple emails demonstrate that he lobbied MVC officials on NJDAM’s behalf during that period. Also, NJDAM paid MBI-GluckShaw a combined sum of \$67,000 during those two years, including \$39,500 for 2012 alone – the third highest annual fee paid by the entity since retaining the lobby firm in 2006.

Documents obtained by the SCI via subpoena show that Kamin’s undisclosed lobbying of MVC officials on behalf of NJDAM bore on two particularly critical matters in 2013. On September 10 of that year, Kamin emailed MVC Government and Business Operations Director James Walker with regard to the agency’s dealer inspection and auditing policies. The text indicates the email

³² According to ELEC’s Lobbying Manual, “ ‘Influence regulation’ means to make any attempt, whether successful or not, to secure or prevent the proposal of any regulation or to secure or prevent the consideration, amendment, issuance, promulgation, adoption, or rejection thereof by an officer or any authority, board, commission, or other agency or instrumentality in or of a principal department of the Executive Branch of State Government empowered by law to issue, promulgate or adopt administrative rules and regulations.”

“ ‘Influence a governmental process’ means to make any attempt, whether successful or not, to assist a represented entity or group to engage in communication with, or to secure information from, an officer or staff member of the Executive Branch, or any authority, board, commission or other agency or instrumentality in or of a principal department of the Executive Branch of State Government, empowered by law to administer a governmental process or perform other functions that relate to the governmental process.” According to the ELEC manual, Governmental Process Lobbying includes activity such as attempting to influence the issuing, denying, modifying, renewing, revoking or suspending of permits, licenses or waivers.

was preceded by a telephone conversation. Kamin initiated the contact because 23 dealers housed at NJDAM had received letters of warning from the MVC that they were in violation of agency regulations, specifically that they were not present and that the required paperwork for authorized signatories was not in proper order. Kamin's email, in part, stated:

Jim –

Thank you for taking my call and for your willingness to review the current inspection/audit policy as it applies to New Jersey Dealers Auto Mall.

Attached you will find the following documents: copy of warning letters that were issued to 23 dealers; copy of the signature card for that particular dealer as verification that there are onsite signatories for each of those dealers. Also included is a copy of their check-in sheets as a cross reference for the audits and inspections (sic) dates listed on the letters.

* * *

After reviewing the attachments, I would be appreciative if you would have your investigators provide a list of discrepancies. Any inconsistencies will be addressed as quickly as possible.

Thanks again & Best Regards,

Dick

Several months later, as MVC officials interacted with NJDAM representatives in discussions about a mechanism to establish legitimate dealer signatories, Kamin referenced NJDAM's employment agreement and a meeting that had been held with agency personnel in the following email to Selika Gore, Deputy Administrator of Operations, on December 3, 2013:

Hi Selika –

We thought the document would be helpful and perhaps it or a similar format could be used by the other multi-dealer establishments.

Thanks again for the very productive meeting last week and hopefully you had a wonderful Thanksgiving.

*Regards,
Dick*

On numerous occasions over the years, Kamin also used his standing as NJDAM's registered lobbyist to contact MVC personnel, primarily Walker, pursuant to the individual interests of dealers who lease office space at the Bridgeton facility. These included dealers with numerous recurring regulatory violations, criminal histories and a ghost presence at NJDAM. This advocacy was never reported. It was conducted in the absence of any contract between Kamin and the dealers, and no notice of individual representation, other than that setting forth his client arrangement with NJDAM, was filed with ELEC.³³ During Kamin's sworn testimony, his attorney stipulated that Kamin never represented any dealers that are tenants of NJDAM in terms of having a contract with such dealers for lobbying services. He disputed the need for such, stating:

NJ DAM and these dealers are all one and if these dealers aren't getting satisfaction, then that means NJ DAM's business is suffering and NJ DAM does have a relationship with Mr. Kamin and he does have an obligation to represent them.

Email reflecting this activity often shows Kamin serving as a conduit into the MVC, passing along dealer-specific requests and/or concerns at the behest of NJDAM attorney Thomas Russomano. It was not unusual, however, for Kamin to add his own language to these communications. For example, in an email to Walker on November 9, 2011 Kamin went to bat for one NJDAM tenant as follows:

*Jim –
The NJ Dealers Auto Mall has a tenant . . . who is trying to obtain his dealer's license. He received a call today from MVC advising him that he needs to provide some form of written documentation proving that he is relocating his residence to*

³³ According to the ELEC lobbying Manual, "if the [lobbyist] is not representing the interest of the entity from which he/she receives compensation, the [lobbyist] should clearly identify both the entity providing the compensation and the entity whose interest will be represented."

New Jersey. Thomas Russomano sent me the following showing there is no requirement for residency if you are a corporation[:]

“I have reviewed the MVC form of “Application for license.” The application provides for a corporation with proof of NJ Sales Tax ID # and NJ Unemployment Registration #. In addition, the applicable regulation, NJAC 13:21-15.3, identifies a proper person for licensure (more specifically identifying the requirements of NJSA 39:10-19) as

(1) 18 years of age; (2) be of sufficient good character; (3) not convicted of a crime arising out of fraud or misrepresentation; (4) provide fingerprints upon the request of MVC.

There is no requirement that an officer of a NJ corporation be a NJ resident.

Would you help clarify this situation please?

Manny (sic) thanks, Dick

Less than one hour later, with the problem apparently having been resolved, Kamin sent a follow-up email to Walker:

Jim –

As always, you work well & expeditiously – all fixed – many thanks, Dick.

Other examples of Kamin lobbying the MVC with regard to licensing matters affecting individual dealers absent any disclosure include the following:

- On October 14, 2011, Kamin forwarded Walker an email from Russomano complaining that the license of a dealer housed at NJDAM, Espresso Auto Leasing Ltd., had been suspended by the agency without cause. By way of background, Espresso initially was licensed in 1999. The owner of record was a woman who told the SCI the business was in her name because her husband “had a problem with his fingerprints.” Over the years, Espresso was cited by MVC investigators

for multiple regulatory violations. The 2011 circumstance, involving an alleged failure to be present for an MVC audit, represented at least the second occasion since 2009 that Kamin had intervened with Walker on a licensing matter affecting Espresso. In the October 14 email, Kamin forwarded Russomano's complaint with the following message:

Jim –

Would you be able to help with this and extend MVC courtesy? We would be appreciative – I will call you shortly as well.

Many Thanks, Dick

- On November 18, 2013, Kamin emailed Walker with regard to the MVC's denial of a license for another NJDAM tenant, Exotic Recovery LLC on grounds that the owner had not adhered to an agency regulation governing proper marking of the dealership's requisite vehicle display area. In his email, Kamin disputed the facts and referred to Russomano's contention that no part of the regulation delineated what must be properly marked. Referring to Licensing Bureau Manager Hector Maldonado, Kamin then asked Walker, Maldonado's boss, "Could we ask Hector to reconsider his interpretation . . . [?]" Two days later, Walker replied: "As long as the MVC can connect the marking on the display spaces to the dealer, it is OK to use numbers. Using the suite number [of the dealership's NJDAM cubicle] would satisfy the requirement." Kamin's response:

Thanks you for the clarification and Hector, thank you for the favorable review.

- On several occasions during the first quarter of 2014, Kamin used his influence on behalf of NJDAM to advance a challenge mounted by Russomano to MVC’s denial of licensure for dealers with extensive criminal records. The principal owner of one of these entities, Tow Boyz Motors 973 LLC, has eight felony convictions on charges including drug possession on school grounds and receiving stolen property. His record also includes arrests for theft by deception, forgery and issuing bogus checks. The principal in another, Midnight Auto Sales LLC, has a record that includes arrests for burglary and receiving stolen property and a conviction in New York for forgery of an official document and the unlicensed operation of a motor vehicle. He was also convicted on federal firearms charges in connection with an organized crime racketeering conspiracy in the 1990s.

Russomano, through Kamin, argued that New Jersey dealer licenses for these individuals were improperly denied for “minor crime convictions” and that their records did not explicitly include an arrest or conviction for the only type crime that can be cited by the MVC under its regulations as grounds for automatic exclusion: a crime arising out of fraud or misrepresentation in the sale of a motor vehicle. After multiple failed attempts to resolve the issue with Walker in early 2014 – contacts which he failed to disclose to ELEC – Kamin escalated the same issue to Walker’s superior, Selika Gore, providing her with a detailed memo

prepared by Russomano.³⁴ In his cover email to Gore on April 4, 2014, Kamin wrote:

Hi Selika –

Realizing that there are several important issues on your plate . . . we have been unable to connect. However, our client New Jersey Dealers Auto Mall has been experiencing difficulties as well. Jim Walker has tried to be helpful working with Business Licensing Services but significant unresolved issues remain for NJDAM customers.

A key issue is license denial because of minor crime convictions, even when disclosed. Thomas Russomano drafted the following (attachments not included) to explain the NJDAM position on behalf of several applicants[.]

* * *

Since the legislature is on budget break, my schedule is pretty flexible and I will make myself available to meet at your earliest convenience. Thank you for addressing our concerns.

*Kindest Regards,
Dick*

Early in 2015, Kamin’s access to the MVC was abruptly curtailed out of concern by some within the agency that there might be something ethically questionable about his intervention into active licensing cases involving individual dealers for whom he was neither an attorney nor any other type of officially “identified representative.” The apparent trigger for this was an email sent by Kamin to Maldonado on February 9 requesting relief at Russomano’s behest for a dealer

³⁴ Kamin reported activity to ELEC on behalf of NJDAM during the second quarter of 2014 (April 1 to June 30). Under the section of the disclosure form titled “Description of Governmental Process, he reported nothing other than “general issues of concern.”

whose license had been suspended for failing to meet a specified deadline for responding to a MVC Notice of Proposed Suspension. Kamin wrote:

Hector –

As per the attached documents, you can see that the deadline for Robbie Auto Sales was missed by only one day. After your review, is there any way to have the dealer reinstated?

*Kindest Regards,
Dick*

A subsequent chain of internal MVC email displays mounting concern about how to respond. One day later, Maldonado forwarded Kamin's request to Emily Armstrong of the MVC's Regulatory and Legislative Affairs section and Sarah Miller, an MVC regulatory officer, asking their opinion on the matter and telling them that he and Walker thought the dealer had been given sufficient time to respond. In her reply, Miller articulated misgivings about a broader issue:

Also, I think we all share a concern about the continued communication regarding these dealer cases through a lobbyist instead of directly with the dealer's counsel. With Selika's approval [Selika Gore, MVC Deputy Administrator of Operations], we should communicate both to Dick Kamin and Tom Russomano that this is an ethical concern and as such the dealer's counsel should be corresponding with MVC directly.

At Walker's instruction, Miller prepared a written response to Kamin focusing on the issue of dealer representation. The resulting message was then conveyed by an email sent to the lobbyist on February 12 by a member of the MVC staff, Bevan Carruthers, as follows:

Mr. Kamin:

This is in response to your email to Hector Maldonado dated February 9, 2015. It has been brought to our attention that communication regarding active motor vehicle cases who have retained counsel . . . has been increasingly and routinely submitted to the Motor Vehicle Commission through a third party. Due to ethical concerns and for the purpose of expediency, the Commission will no longer accept or respond to case specific requests, submissions, or other communication from

anyone other than the dealer's identified representative or representative's firm. Communication regarding Motor Vehicle cases, including motor vehicle dealer licenses suspensions, must go directly from the dealer's counsel, as has been identified in a formal notice of representation, to Motor Vehicle Commission employees, without passing through a third party.

Notwithstanding this official admonition, a subsequent email shows that Kamin continued to communicate with senior MVC officials with regard to individual dealer licensing matters. In an email dated March 26, 2015, six weeks after he was put on notice by the agency, Kamin appealed to Walker, with a copy to Selika Gore, on behalf of four applicants who had been denied MVC dealer licenses:

Dear Mr. Walker:

There are several dealers who have been denied a dealer's license due to renting an office of a dealer who had been previously evicted at the New Jersey Dealers Auto Mall. With each application, the proper inspections were performed by the City of Bridgeton and that documentation was submitted with the applications, including a Certificate of Occupancy which clearly states the applicants are in sole possession of the premises. Any prior CO is therefore void.

Would you please inquire as to why these dealer licenses were rejected and advise as to what steps need to be taken by the applicants and/or NJDAM?

Disclosure forms filed by MBI-GluckShaw with ELEC for the first quarter of 2015 revealed no report of activity by Kamin on behalf of NJDAM or individual car dealers during that period.

In sworn testimony before the SCI, Kamin stated that he has never met any dealers who lease office space at NJDAM and that he does not represent any dealers:

Q. *Mr. Kamin, you stated that you represent New Jersey Dealers Auto Mall*

A. *Yes.*

Q. *Do you also represent any other dealers who rent space from the New Jersey DAM?*

A. *Not at all. I have never met any of the dealers that are, that rent space at the New Jersey dealers Auto Mall.*

Q. *So you strictly are the representative of NJDAM?*

A. *Yes.*

A LEGACY OF ABUSE

The New Jersey Dealers Auto Mall never lived up to its founder's promise to be a boon for economic development in the distressed community of Bridgeton. While the East Commerce Street facility has generated upwards of \$20,000 a year in annual property tax revenue for the city, along with assorted zoning, construction and other permit fees, the notion that it would spur the creation of hundreds of jobs over the years translated in reality into less than a handful – even in a loosely administered, “business friendly” regulatory environment.

NJDAM's absentee tenants, meanwhile, have gotten along quite differently, as have their counterparts at other multi-dealer locations around New Jersey. Invigorated by years of relaxed MVC oversight and enforcement, some dealers based at MDLs have been able to profit from an assortment of questionable and unscrupulous activities at significant cost to taxpayers, consumers and legitimate commercial interests, including failure to pay taxes, consumer and bank fraud, and suspicious financial transactions on a domestic and international scale. The following examples, drawn from the broader findings of this investigation, are emblematic:

Unpaid Taxes

The SCI examined data on file with the New Jersey Division of Taxation and found that nearly one-third of the more than 1,200 used-car dealers that have been affiliated with NJDAM alone over the last two decades accrued unpaid state tax liabilities of at least \$4.2 million. This figure, however, is probably understated because it was calculated based on information provided to State tax authorities by the individual dealer-taxpayers and/or businesses. The likelihood of this type of understatement was confirmed by an in-depth examination of the

financial records and tax submissions of individual dealers selected at random for detailed scrutiny and analysis.

On a statewide scale, the tally of unpaid taxes at Bridgeton – New Jersey’s largest multi-dealer location – represents only about half of a far more expansive picture of missing and lost tax revenue. Factor in the known outstanding tax liabilities owed by past and present dealers housed at all of the State’s 11 MDLs and the total of unpaid taxes approaches \$10 million, again a conservative figure. The SCI found that nearly half of this total is due from MDL dealers with owners from states other than New Jersey, most of them residents of New York.

Suspicious International Financial Transactions

A Middle East Connection

Alex Auto Sales Inc. was registered to do business in New Jersey in June 2006, just months after the MVC promulgated strict rules aimed curtailing unscrupulous activity at multi-dealer locations. At the time, the agency declared among other things that the “law enforcement community, as well as the federal government, have supported these new security regulations, calling them essential to the collective fight against terrorism.”

Established by an individual named Hamze Chehab, Alex Auto Sales Inc. was based at WNAG Realty LLC, a multi-dealer location in rural Hackettstown, Warren County. Chehab’s primary sales activity was export-oriented: buying used cars at auction here and shipping them through the Port of Bayonne to the West African nation of Benin. It proved to be a lucrative business model. During a six-year period between July 2008 and August 2014, bank records show that Alex Auto Sales received nearly \$6.2 million in funds ostensibly wired by customers via overseas financial institutions. Chehab initially told the SCI that he received these funds

exclusively from banks in Benin. Closer scrutiny, however, revealed that a substantial portion of this money – approximately \$2.2 million – was instead placed with Alex Auto Sales by banks and financial institutions located in countries other than Benin, primarily Lebanon. Furthermore, at least five of the overseas institutions involved in these transactions with Chehab’s company were named by federal prosecutors in a complaint for their roles in laundering the proceeds of narcotics trafficking and other crimes, and for funding the Lebanon-based terrorist organization known as Hezbollah.

When presented with evidence documenting the Lebanese banking link, Chehab maintained that the money originated with customers in Benin who merely routed it through Lebanese financial institutions to his business in the U.S. He was unable to explain why they would do this, however, especially given the fact that it would cause them to incur costly additional transaction fees for utilizing third-party banks. The SCI investigation also found that in March 2011, Chehab began transitioning away from dealing with these Lebanese financial institutions. He said he did this after becoming aware of a federal money-laundering investigation targeting businesses involved in international used-car transactions similar to his.

That federal investigation concluded in December 2011 when the U.S. Attorney for the Southern District of New York filed a complaint against multiple Lebanese banks and financial exchange houses in connection with a multi-agency investigation led by the U.S. Drug Enforcement Administration (DEA). The investigation revealed a massive international money-laundering scheme in which Lebanese financial institutions linked to Hezbollah manipulated the U.S. financial system to launder hundreds of millions of dollars in drug trafficking and other criminal proceeds through West African countries. As part of this operation, funds were wired

from Lebanon to the U.S. to buy used cars, which were then exported to Benin. Cash from the sale of these cars, commingled with the proceeds of narcotics trafficking from South America, was then funneled back through Hezbollah-controlled money-laundering channels into Lebanon. According to the complaint, substantial portions of the cash were paid to Hezbollah. Although neither Chehab nor Alex Auto Sales were named in the complaint, it is noteworthy that the financial institutions in question were used by him on a consistent basis from the inception of his business until approximately March 2011, when the federal investigation became public and sanctions were imposed.

As to the nature of his interaction with New Jersey's Motor Vehicle Commission throughout this period, Chehab credited the owner/landlord of the Hackettstown MDL with providing him with assistance in the completion of paperwork required by the MVC and with other dealings with the agency. He also stated that the Alex Auto Sales office has never been subject to a single visit, audit or inspection by MVC personnel.

The Temp Tag Red Flag

More than five years ago, MVC officials seemed to recognize the urgency of addressing unscrupulous activity by licensed dealers via MDLs. Of particular concern was the virtually unrestricted ability of these dealers to obtain temporary tags, or "temp tags" – paperwork certifying vehicle ownership after a sale but prior to the transfer of official title. According to a document submitted to the agency's Chief Administrator in April 2010 by the Office of Business and Government Operations, "A check of temp tag purchases reveals that there are many used car dealers that purchase temp tags far in excess of the number of vehicles that they sell. . . .

Misuse of these materials can prove to be serious since they can be used to put unlicensed drivers and/or unregistered and uninsured vehicles on the road.”

This investigation revealed that the unbridled acquisition of temporary tags can also be a red flag indicating more wide-ranging abuses. The 2010 MVC report showed that nine of the top 10 temporary-tag buyers in New Jersey were dealers linked to NJDAM-Bridgeton. In one year, these nine dealers alone bought 3,260 temporary tags compared to a total of 388 vehicles reported sold by them in that period with actual proof of title.³⁵ Raising further questions that span at least a decade of conduct, the dealer who ranked fourth on this list has since become the target of a criminal investigation into international money laundering.³⁶

Taking advantage of NJDAM’s practice of providing its own clerical personnel as on-site signatories for absentee tenants, this dealer has operated a vehicle wholesale and export business out of the Bridgeton location since 2006. Prior to transferring his license there, the owner operated out of an MDL in Hasbrouck Heights. According to U.S. Department of Commerce records, during a four-and-a-half-year period between 2010 and 2014, this dealer shipped some 839 auctioned vehicles with a total declared value of \$11 million through the Port of Elizabeth bound for the African nation of Nigeria.

Behind this export data, however, are circumstances that arouse suspicion beyond the questions already raised in connection with the inordinate purchase and use of temporary tags. For example, this dealer omitted approximately 30 percent of the vehicle identification numbers

³⁵ The data contained in the 2010 internal MVC report were for FY2008.

³⁶ According to the MVC report, this dealer purchased 340 temporary tags in FY2008 while selling only 87 titled vehicles that year. The identities of this dealership and its owner were redacted because the criminal investigation is ongoing.

(VINs) from the requisite Shipper Export Declarations he submitted to the U.S. Department of Commerce when shipping to specific entities in Nigeria. He also listed identical dollar values for multiple vehicles, further clouding the actual overall value of his shipments. Moreover, this dealer often used import consignees in Nigeria that had no clearly established business presence there, and the port of entry for his shipments was a non-transparent free-trade zone that served to further shield his cargo from outside scrutiny. As to profiting from his export inventory, the dealer established a second business in Nigeria to which he exported nearly \$3 million worth of vehicles in just four-and-a-half years, yet failed to register that entity as required with the MVC and the New Jersey Division of Taxation.

Given that the MVC was made aware five years ago of evidence suggesting abuse of temporary tags by this dealer, it is only reasonable to consider that the agency had an opportunity then to intervene and possibly prevent abuses from going further. Asked in sworn testimony what was done at that time, MVC Business and Government Operations Director James Walker, the individual who ordered the compilation of the 2010 data, told the SCI that he could “not recall anything we did.”

International Consumer Fraud

In May 2009, the New Jersey Division of Consumer Affairs (DCA) filed a complaint alleging widespread fraud by a company called Global Auto Inc., an Elizabeth used-car dealership specializing in the marketing of high-end brands like BMW, Porsche and Lexus pitched online primarily to prospective buyers in the former Soviet Union.³⁷ Among other things, DCA charged

³⁷ The SCI investigation determined that individuals associated with Global Auto Inc. also have done business under the names of Auto Collection Group, Global Auto USA, Effect Auto Sales Inc., and G Auto Sales Inc.

Global with false advertising, failure to pay refunds for undelivered cars, failure to provide license plates, titles and registrations and failure to disclose prior vehicle damage. The dealership's owners, themselves Russian immigrants, ultimately agreed to pay more than \$143,000 in damages and restitution – but they didn't go away.

The penalties turned out merely to be part of the cost of doing business because the owners, Sergey Kapustin and his wife, Irina Kapustin, along with Irina's son, Mikhail Goloverya, reorganized and moved their scam to a multi-dealer location in Delran. Despite DCA's findings, Sergey Kapustin retained his dealer's license while Irina and Goloverya subsequently obtained their own for separate companies – Effect Auto Sales Inc. and G Auto Sales Inc., respectively. There is no New Jersey law or regulation that requires applicants for MVC licensure to disclose civil actions taken against them, including those in which facts central to the proper operation of a car dealership are at issue.³⁸ Additionally, Goloverya failed to disclose a 2010 conviction for marijuana possession.

Few, if any, of the cars regularly advertised for sale on the Global group's website and purported to be ready for immediate shipment overseas were actually owned by the group. Instead, vehicle information and accompanying photographs were lifted from the websites of other online sellers, and prices were set just below market value. If prospective customers asked how that was possible, they were told Global operated as a wholesaler without a middleman. Interested buyers would then be issued invoices with instructions to wire initial payments to specified bank accounts. These initial customer outlays averaged the equivalent of \$20,000

³⁸ The SCI found that Goloverya was assisted by the Delran MDL landlord, George Yelland Inc. of 150-1 Carriage Lane, in working through the MVC licensing process and was issued a valid used-car license by the agency in March 2012.

(U.S.). Rounding out what essentially was an elaborate, computer-based “bait-and-switch” scheme, Global failed to make delivery and then doubled down on its ploy by offering customers the option of choosing a different – and unbeknownst to them, often inferior – vehicle for an additional amount of \$1,000 or more. Additionally, the group incorporated terms and conditions in the fine print of every sale invoice that prevented customers from recouping full refunds. Many victims also received additional invoices for storage fees, even though such fees often were never mentioned in the original sale contract. If they refused to pay, they would receive threatening letters from an individual purporting to be the Kapustins’ attorney. Although most ultimately failed to receive vehicles or refunds, some who finally did take possession of vehicles found them fraught with accident, flood-related or other damage.

Collectively, the Global group controlled 11 domestic bank accounts at four different financial institutions in the U.S. Three of these accounts were reviewed in detail by the SCI for a 13-month period. To place the scope of the fraud in perspective on an annual basis, between January 2013 and February 2014 nearly \$321,000 was deposited by wire by various individuals from the former Soviet Union to these three accounts. The actual total is probably far greater given the full number of accounts. In late 2013, a civil complaint filed in U.S. District Court for New Jersey charged that the Global group had defrauded 90 international consumers of more than \$1.2 million. Based upon information presented in that complaint, the court in October 2014 found there to be probable cause supporting civil charges under the Racketeer Influenced and Corrupt Organizations (RICO) Act. The court ordered the group’s websites shut down and replaced with contact information for the Federal Bureau of Investigation, the U.S. Bankruptcy Court and the New Jersey Division of Consumer Affairs’ Consumer Fraud Prosecution Section.

Domestic Consumer Fraud

Documents detailing a wide variety of retail fraud involving car dealers based at New Jersey MDLs have papered the complaint files of multiple state and county consumer protection agencies across this region of the U.S. SCI investigators examined dozens of individual cases, and their often-unresolved disposition, including the following:

- In June 2012, a Connecticut resident seeking a used car for her daughter responded to a Craigslist internet ad for a 2001 Jeep Wrangler offered for \$5,200 “as is” by LEEP LLC, a tenant of NJDAM. Meeting a sales representative at a warehouse in Derby, Conn., the buyer said she was told that while the dealership was based in Bridgeton, N.J., he sold cars on its behalf in Connecticut. A visual inspection of the vehicle revealed some body rust but no obvious structural or other problems. Sealing the deal, the sales rep and his mechanic assured her it was safe for her daughter to drive.

Two weeks later, the buyer took the vehicle to her own mechanic for an oil change and tune-up. He refused to put it on his lift citing serious frame rot covered by duct tape concealed by a layer of black undercoating. He declared the vehicle unsafe and unrepairable. The buyer contacted the sales rep, who advised her that she bought the vehicle “as is” and refused to rectify the matter. Given that the car was sold in Connecticut, she assumed that state’s motor vehicle agency would handle her complaint but was told by authorities there that they had no jurisdiction because LEEP was not licensed to sell cars in Connecticut. She then contacted New Jersey officials only to be told that the MVC could not intervene because the vehicle did not qualify under the state’s Used Car Lemon Law. Referred to the New Jersey Division of Consumer Affairs (DCA), the buyer eventually received a letter informing her that DCA could not proceed in the matter because the dealer was not in violation of the law.

The buyer was unable to contact the sales rep by phone or fax, and a subsequent search of licensed dealers based at NJDAM’s Bridgeton location turned up no listing for LEEP LLC.

- In a 2012 complaint filed with DCA, a Delaware man said he spent more than \$25,000 to buy a high-end import from a dealer based at an MDL in Hasbrouck Heights, N.J., only to find later that the vehicle was so riddled with hidden mechanical defects and structural damage as to render it unusable without expensive repairs.

Prior to the transaction, which occurred in Staten Island, N.Y., a representative of the dealer, Progress Auto Inc., told the buyer that the 2008

Mercedes Benz E-350 4-Matic was in “mint condition.” Shown what was purported to be a legitimate vehicle history report indicating a clean record with no accidents, he was also assured the car was covered by an existing four year/50,000-mile factory warranty. The buyer said the vehicle displayed no outward signs of damage or malfunction, and he paid an additional \$700 for an extra key and manual.

Within two months, mechanical and electrical problems began to mount, costing the buyer approximately \$4,500 in repairs. Eventually, he took the vehicle to a Mercedes Benz dealership in Wilmington which conducted its own history check through Carfax, finding that the factory warranty was invalid since the car in 2010 had been in an accident involving an airbag deployment and, thus, was declared a total loss with a salvage title – none of which had been disclosed by the seller. The Mercedes Benz dealer estimated the vehicle required an additional \$5,300 worth of mechanical repairs, plus nearly \$11,350 to address shoddy and incomplete structural work that hid the collision damage and made the car unsafe to drive. The buyer said he attempted to contact Progress Auto on numerous occasions but got no response. The vehicle remains in his garage.

- In May 2014, a Pennsylvania resident found a 2011 Jeep Wrangler Sport advertised on-line by Jersey Motors Inc. for \$19,999. The owner/manager of Jersey Motors, based at an MDL at 430 Industrial Ave., Teterboro, Bergen County, told this individual that the vehicle was “basically brand new” with low mileage and no accident history. In addition to the Jeep, the buyer purchased a 90-day/3,000 mile drive-train warranty. One week later, mechanics at a Licensed State Inspection Station near his home in Northampton, Pa., put the vehicle on a lift and quickly discovered that someone had made a poor attempt to repair and disguise severe accident damage to the driver’s side front-end. The mechanic told the buyer that there was “no way a dealer sold you this vehicle without knowing about the damage.” Welds were splitting, joints were loose, gear oil was leaking and the driveshaft was bent, held to the frame by a single loose bolt. Declaring the vehicle “uninspectable,” they described it as a “death trap.” A preliminary estimate of structural repairs totaled nearly \$8,300.

For weeks, the buyer tried fruitlessly to contact the dealership. When the manager finally returned his call, the buyer told him he had filed a complaint with the New Jersey Attorney General’s Office. He also told the dealer something else: that he is employed as a detective with the Northampton Police Department. With that, the manager abruptly agreed to take back the Jeep as a trade-in for a 2008 Lexus, to waive dealer fees and taxes on the transaction and to pay \$900 for two new front tires and repairs to the second vehicle’s axle.

Bank Fraud

Dealers licensed to operate via multi-dealer locations in New Jersey have used such arrangements as a means to bilk banking institutions out of hundreds of thousands of dollars. In one case, SCI investigators found that an MDL dealership incorporated false and misleading information into credit applications to create dummy sales transactions. On more than a dozen occasions, this dealer obtained substantial loans from TD Auto Finance, the automotive lending division of TD Bank, for expensive car purchases that never actually occurred, including the following:

- In February 2013, the owner of this MDL dealership prepared a retail installment sales contract purporting to show his purchase of 2011 Ferrari California sports car for \$185,000. When taxes, fees and the purported value of a vehicle trade-in were applied, a total of more than \$163,000 was financed by TD Auto Finance.

SCI investigators, however, found no evidence that the Ferrari was ever physically present or even offered for sale in New Jersey. According to the vehicle's history report, the Ferrari appeared in the manifests of various dealer inventories in the state of Texas, Nevada and California during the time-frame between November 2010 and July 2014. On the date the vehicle was purportedly purchased by the MDL dealer here, it was actually in the inventory of a dealership in Newport Beach, California. The Ferrari remained in that dealer's inventory until it was sold on March 8, 2013 to a California resident.

- In August 2013, bank records indicate that a 2012 Porsche Panamera was purchased from the same MDL dealer for \$142,000, no sales tax included. The contract for this transaction states that the purported buyer "sold" the above-referenced Ferrari to the dealer as part of a deal that included a trade-in credit of more than \$20,000. TD Auto Finance approved a loan of more than \$120,000 on terms requiring 72 monthly payments of \$1,969. Bank records show that the "buyer" made only four such payments between September 2013 and January 2014.

SCI investigators found that on the day of the purported sale here in August 2013, the Porsche was actually in the vehicle inventory of a dealership in Salt Lake City, Utah. According to vehicle's records, it was serviced at that dealership on five occasions between January 2012 and May 2013. The Porsche remained there until it was leased to an unidentified individual on October 17,

2013. TD Bank records show that despite numerous requests, the MDL dealer here failed to produce the vehicle's title.

- In July 2013, records show that the MDL dealer sold a 2012 BMW 6 Series to a New Jersey resident for \$73,500. With purported trade-in plus cash down-payment, TD Auto Finance provided a loan of more than \$69,000. Bank records indicate that five monthly payments were made on the account between September 2013 and February 2014.

The vehicle history report for this BMW, however, show that it has had three owners between September 2011 and the present – none of whom are or were New Jersey residents. On the date of the purported sale here, the vehicle was in the inventory of a dealership in Houston, Texas. According to that dealership's sales manager, the car was sold to a Houston resident on September 28, 2013.

Abuse of License

This investigation revealed that it is not uncommon for dealers licensed at MDLs to rent or sell their credentials in order to enable unlicensed individuals to gain unauthorized access to dealer-only wholesale car auctions in violation of state regulations. Emblematic of this practice is the case of After 5 Motors Inc., a NJDAM-Bridgeton tenant whose owner was licensed in 2003, with subsequent renewals, under questionable circumstances.

A review of the licensing paperwork submitted by After 5 Motors' owner, Michael Fredrick of Brooklyn, N.Y., showed that he failed to disclose the full extent of an extensive criminal record dating back to the mid-90s. Replete with multiple aliases and phony birth dates, Fredrick's record of undisclosed arrests over the years includes charges of enterprise corruption, criminal possession of stolen property, possession of a forged instrument, possession of forgery devices, a scheme to defraud and conspiracy. Fredrick also is wanted by law enforcement authorities in Georgia in connection with various credit-card fraud schemes.

Fredrick was introduced to the idea of gaining unauthorized access to wholesale auctions before he even secured his own license. Another dealer operating out of NJDAM offered Fredrick the use of his credentials for a fee of \$150. To recoup this investment and more, Fredrick charged others interested in purchasing cars for a cash fee of approximately \$500 apiece to attend the auctions with him.

Once he secured his own dealer license, Fredrick established a structured system that enabled him to make potentially unreported cash income on the side by renting out his credentials on a regular basis. Over time, his scheme alone has enabled at least 55 unlicensed individuals to attend dealer-only auctions. Moreover, it is not unusual for these individuals to be accompanied to auctions under false pretense by would-be retail buyers – as occurred with Fredrick himself prior to his gaining a dealer license.

When informed by an SCI investigator during an interview that it is a regulatory violation to bring consumers to such auctions, Fredrick stated that “everyone does it” and it is how he got his “foot in the door” to become a licensed dealer. He stated that in an effort to “police” his crew of license renters, he will remove any who are the subject of complaints because he does not do business with “shady people.”

REFERRALS AND RECOMMENDATIONS

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

- Office of the Attorney General of New Jersey
- United States Attorney for the District of New Jersey
- United States Internal Revenue Service
- New Jersey Department of the Treasury, Division of Taxation
- New Jersey Election Law Enforcement Commission
- New Jersey Division of Consumer Affairs
- New Jersey Motor Vehicle Commission

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During the course of this investigation, particularly toward its latter stages, the MVC took steps to address some of the most glaring regulatory gaps that have given rise over the years to the types of abuses detailed throughout this report. In pending draft regulations, the agency has proposed new limits on dealer access to temporary vehicle registrations (“temp tags”) and dealer plates. Where current rules allow licensed dealers to obtain these materials even if they sell no vehicles, the new regulations would restrict the availability of temp tags and dealer plates to those who provide proof of selling at least four vehicles a year. The MVC also wants stronger oversight of individuals who serve as dealer signatories. In an effort to close loopholes that, for example, enabled a landlord’s employees to pose as authorized signatories for dealers at NJDAM in Bridgeton, the agency has developed a more explicit definition of a dealer employee to mean

“a person who works under the direction and control of another, in return for financial or other compensation, and provides services as an agent and not as an independent contractor.” Individuals proposed as authorized dealer signatories also would be subject to criminal background checks and would be prohibited from simultaneously representing more than one licensed dealership at any given time.

The Commission recognizes these as essential steps toward restoring proper and effective oversight of New Jersey’s used-car dealership community, particularly those elements that take advantage of the low-overhead convenience of establishing their businesses at locations shared by multiple dealers. But much more needs to be done to bring this segment of the industry, the MDLs, into better alignment with the fundamental conditions of licensure, the basic standards of consumer protection and the lawful pursuit of a legitimate commercial enterprise. The Commission thus makes the following recommendations for regulatory and statutory reform:

1. Reorganize Licensing, Oversight and Enforcement

Responsibility for licensing and oversight of used-car dealers and their personnel, as well as for the enforcement of applicable laws and regulations, should be moved from the New Jersey Motor Vehicle Commission and assigned to a professional regulatory board dedicated to this purpose and established by statute within the New Jersey Division of Consumer Affairs (DCA). The jurisdiction of this board should be sufficiently broad so as to include individuals and entities currently beyond the reach of state regulation, such as non-dealer property owners, landlords and others that lease office and/or other space to multiple dealer-licensees.

Through its current universe of professional boards, the DCA is directly involved in licensing and monitoring more than 40 New Jersey professions ranging from physicians to engineers and surveyors. Additionally, the agency is empowered to investigate potential violations of the State's Consumer Fraud Act, Motor Vehicle Advertising Regulations, Automotive Sales Regulations, and the Used Car Lemon law. Moving the regulation of used-car dealers into this structure is an opportunity to further professionalize this sector of the vehicle dealership community while at the same time better serving and protecting the interests of New Jersey's consumers/taxpayers.

The "Retail Used-Car Dealers Board" would regulate the sale of used cars in New Jersey by: (1) Establishing all necessary criteria for licensing used-car dealerships and for certifying multi-dealer locations; (2) Inspecting and auditing licensed used-car dealerships; and (3) Developing appropriate and effective disciplinary sanctions for those that fail to follow the rules and regulations. This Board should be comprised of up to 11 appointed members, including a maximum of four licensed used-car dealers in good standing, three to six public members and at least one government representative.

The Board should be authorized to require that all applicants for licensure present, as part of the application process, a current valid New Jersey driver's license demonstrating proof of residency. Furthermore, all applicants should be required to undergo more extensive criminal background checks, and the grounds for automatic disqualification of license applications and renewals should be expanded pursuant to rules as set forth in Recommendation #2. The Board should also seek to establish an information-sharing process with its regulatory counterparts in neighboring states to determine whether individuals applying for used-car dealer licenses in New

Jersey have had licenses suspended or revoked for reasonable cause by authorities in other jurisdictions.

The Board should be proactive in disseminating informational materials to instruct and assist the dealer community with regard to industry “best practices” as well as the types of activity that constitute statutory and regulatory violations. Violators would be subject to a progressive discipline system, and the Board would be empowered to suspend, revoke or terminate a dealer’s license after proper notice. In a manner similar to the system currently in place in Pennsylvania, the Board should have the immediate ability to suspend a dealer’s operation under circumstances in which it is determined to present a substantial threat of serious harm to the public and/or the government’s best interests. Steps should also be taken to ensure that all such disciplinary matters are adjudicated by the Board within 90 days to facilitate the swift disposition of alleged violations.

2. Broaden the Basis for Denying Licenses for Certain Crimes

Under New Jersey’s current framework, regulators are limited in their ability to deny a license or a license renewal to someone linked to criminal activity. Although the MVC’s Chief Administrator currently has discretionary power to reject an applicant for prior involvement in unlawful activity, the only circumstances that can trigger automatic denial are the provision of false information on an application or a conviction for fraud or misrepresentation explicitly involving motor vehicle transactions. This investigation, however, yielded evidence that dealers based at MDLs have been licensed in New Jersey despite criminal convictions for other serious

crimes that impact the public interest, such as bank fraud, money laundering and odometer tampering, in addition to numerous instances of consumer fraud.

The SCI thus recommends that the appropriate statute be amended to broaden the State's ability to deny a license application and/or renewal by incorporating language similar to that currently in effect in New York. Regulators there are authorized to take such action in instances where an individual has practiced dishonest or misleading advertising or has been convicted of any type of fraud or any crime involving dishonesty or deceit.

3. Address the Wholesale Dealer Licensing Gap

One of the troubling and confusing anomalies associated with multi-dealer locations is that many of the businesses licensed at such venues deal exclusively in wholesale transactions. Although these dealers rarely, if ever, do business with retail consumers, they nevertheless are required to be licensed as such because the current regulatory structure assumes trade at the retail level in every instance. The SCI thus recommends the establishment of a separate license for those engaged solely in the wholesaling of used vehicles, whether between dealers, at auctions or under other arrangements. Wholesale licensees should be required to meet basic qualifying standards, such as having a valid New Jersey driver's license and maintaining an established place of business in New Jersey just as their retail counterparts. Similarly, to maintain a license, and to qualify for a limited number of dealer plates, wholesale dealers should be required to provide evidence of a reasonable number of actual vehicle transactions on an annual basis. However, since they have no reason to show consumers an available product, they 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.

It is also recommended that the system for tracking dealer-to-dealer vehicle transactions be revamped for greater transparency and more accurate record-keeping. The documents memorializing such transactions, known as “reassignments,” are kept by the State in an outmoded, difficult-to-access microfiche filing system, which is not linked to a separate database showing a vehicle’s title-of-ownership record. This system should be fully computerized, streamlined and integrated so that dealers and regulators, including taxation authorities, can readily process, store, review and scrutinize the full scope of a vehicle’s retail and wholesale transaction history.

4. Require Dealer Financial Disclosure and Transparency

Based upon the findings of this investigation with regard to financial fraud and tax avoidance, the state should adopt new rules requiring more extensive financial disclosure as a condition of licensure for used-car dealers. All applicants should be required to provide letters of reference from their banks or other appropriate financial institutions indicating that the applicants’ accounts are handled in a manner consistent with standard banking practices. In addition, all applicants should provide notarized statements certifying that no monies are due to local, state and federal tax authorities by the applicant businesses or by the owners and principal officers of those businesses. Furthermore, all applicants for new and renewed licenses should be required to submit evidence of any orders, judgments, agreements or other instruments which show the status and/or final disposition of any civil or criminal actions brought against the

prospective licensees and dealerships and their officers, members, employees and independent contractors.

5. Adopt a Used-Car Buyers Bill of Rights and End “As Is” Sales

In addition to transferring the licensure, administration and policing of the used-car industry to New Jersey’s leading consumer protection agency, the State should also consider adopting a “Used-Car Buyers’ Bill of Rights” that would put all parties to a vehicle sale on notice as to certain ground rules that must be followed before such transactions are completed.

For guidance, officials may wish to consult the experience of California and New York. In 2006, California adopted one of the broadest car buyers’ bill of rights in the nation, requiring that used cars advertised as “certified” meet certain basic safety and drivability requirements. Dealers must perform a complete inspection of the vehicle and provide consumers with a copy of the report prior to sale. No vehicles can be presented as “certified” if the odometer does not reflect actual mileage; the vehicle was not restored to a safe condition after accident, fire or flood damage; or the title was branded as a Lemon Law buyback, manufacturer repurchase, salvage, junk or similar designation. Although New York has not codified a similar “bill of rights” *per se*, it does require dealers to certify in writing that the vehicle is in safe running order for service upon public roads at the time of delivery to a retail customer. New York’s pre-sale protocol requires that a vehicle’s safety equipment, engine, transmission, suspension and brakes be subject to a reasonable inspection. Under these conditions, a used vehicle in New Jersey could no longer be offered “as is.”

Consumers in California who purchase a used car for less than \$40,000 must also be offered a “cooling-off period” in the form of a contract cancellation option agreement. Under this option, a customer agrees to put no more than 250 miles on the vehicle and, if not satisfied, to return it in the same condition within two days for a fee ranging from \$75 for a car costing \$5,000 or less to \$250 for a vehicle priced at up to \$39,999. If the vehicle is returned, the dealer may charge a “restocking” fee of between \$175 and \$500 minus the initial option payment.

6. Strengthen New Jersey’s Lobby Disclosure Requirements

State law in New Jersey requires lobbyists to file quarterly reports identifying their attempt(s) on behalf of clients to influence legislation, regulations and various governmental processes.³⁹ Exempt from such reporting are routine non-substantive activities such as “schedule[ing] a meeting” and “request[ing] the status of an administrative matter.” Notwithstanding the statutory reporting and disclosure requirements, this investigation demonstrated the ease with which these rules can be skirted or ignored with little risk of discovery in the normal course of events. Even when there is apparent compliance with the disclosure requirements, the lobbying of government officials on substantive matters can routinely be reduced to such generalities as to render the reports next to useless in determining the true nature and import of the contact. This occurs despite the fact that the Election Law Enforcement Commission’s Lobbying Manual specifically admonishes lobbyists to “describe the

³⁹ Legislative and Governmental Process Activities Disclosure Act, N.J.S.A. 52:13c-18 *et seq.*, administered by the Election Law Enforcement Commission (ELEC) through regulations, N.J.A.C. 19:25-20.1 *et seq.*

governmental process” that is the target of their lobbying and to “provide as much detail as possible” about their activities in that regard.

Based upon these findings, and in order to meet the public’s reasonable expectation of meaningful oversight, accountability and transparency, the statute and regulations should be amended to require a more explicit regimen of disclosure that, at a minimum, should include (1) the name(s) and title(s) of the government official(s) with whom there was substantive contact, (2) the date and location of that contact, and (3) the specific topic and governmental process discussed.

APPENDIX









Richard Kamin

From: Richard Kamin
Sent: Monday, April 29, 2013 2:35 PM
To: James Walker
Subject: RE: Jeffrey Streitz - Update

Categories: Walker

Understood - thanks Jim

C. Richard Kamin, Partner
MBI-GluckShaw
212 West State Street
Trenton, NJ 08608
609-392-3100
www.mbi-gs.com

From: James Walker [James.Walker@dot.state.nj.us]
Sent: Monday, April 29, 2013 2:29 PM
To: Richard Kamin
Subject: Re: Jeffrey Streitz - Update

Dick,

I am not privy to the reason for their visit. If I am given anything that I can pass on I'll certainly give you an update.

James Walker
Director, Business & Government Operations
New Jersey Motor Vehicle Commission
609-633-2194

>>> Richard Kamin <rkamin@mbi-gs.com> 4/29/2013 1:42 PM >>>

Jim -
NJ Dealers Auto Mall heard from a competitor - who was also visited - that the personnel may be from the State Commission of Investigation. Any update on your end?
Thanks, Dick

C. Richard Kamin, Partner
MBI-GluckShaw
212 West State Street
Trenton, NJ 08608
609-392-3100
www.mbi-gs.com

Note: (#1) "Firewall" [alternative] only applies to existing multi-unit facilities already in existence as of the date the current regulations went into effect (i.e., where the facility was existing as a multi-unit facility with at least one licensed dealership as of March 6, 2006). These (#1) "Firewall" [alternative] guidelines do not apply to new construction or newly renovated structures to be made into multi-dealer facilities. Those structures must comply with the language of the current regulation. The remainder (#2-#5) apply to all facilities.

1. Firewall [alternative] (NJAC 13:21-15.4(d)) - A proposed place of business where there already exist one or more licenses issued for, or other business entities present at, the same premises, but where there is not absolute common identity of ownership, shall not be approved unless all facilities are completely separated by (a) exterior walls; (b) firewalls as that term is defined by the IBC 2000, where no other approved fire suppression system exists; or (c) where there is a fire suppression system that has been approved by the local building code official (or State DCA) for the applicant's facility, interior walls, each of which must be constructed separately and ~~independently from any other wall of any other~~ proposed or licensed dealership or other business occupying the same premises.

Note: MVC will not issue specific requirements for construction of the interior walls, other than as noted above. Therefore, there is no specified material or dimensions for the interior walls. It is also noted that some offices may lose some square footage as a result of constructing the four interior walls. In cases where there had been at least 72 square feet prior to construction of the four interior walls, the application should not be rejected because of the loss of square footage.

-
-
2. ~~Climate control~~ (NJAC 13:21-15.4(h))- MVC will not reject an application on this basis as long as there is a working climate control system in the facility. Individual heating and cooling systems are not required: central heating and cooling is sufficient.
3. Contiguous display (NJAC 13:21-15.4(d))- There must be at least two display spaces for each dealer. The display spaces must be on the same property as the location of the dealer's licensed premises. There must be clear markings on the display spaces (painted onto the spaces or a permanently affixed sign at the spaces), sufficient to indicate the dealer to whom the display spaces are assigned.
4. Separate entrances (NJAC 13:21-15.4(d))- each dealer within a multi-dealer facility must have an entrance that leads only to its business. This entrance can be an interior entrance. It does not have to be an exterior entrance. For example, it is acceptable for there to be a common exterior door, as long as there is an interior door leading to the applicant/dealer's unit only, and to no other dealer's unit.
5. Relocation of dealer premises within a facility (NJAC 13:21-15.4(e) and (f))- It is also acceptable that an office may move its location within a facility as the facility is reconfigured for new applicants who replace grand-fathered licensees. In that case, as long as the dealer advises MVC that it has moved its location within the facility, and advises MVC, in advance, of the new location, then the move is acceptable.

From: Rachel Gervais
To: Bramley, Thomas; Carruthers, Bevan; Feller, Andrew; Kinczel, George; ...
Date: 3/20/2009 4:18 PM
Subject: Dealer Violation Notices

CC: Walker, James

Until we have management's approval to resume citing dealers for the following provisions, these temporary changes are to take effect immediately when completing dealer notices for violations cited in the investigators' report. Please note that the investigators are to continue completing their investigations and reports in the usual manner.

N.J.A.C. 13:21-15.4 Established Place of Business

(c) omit in its entirety from notices, until further notice

(h) cite only in conjunction with other violations; apply on a case-by-case basis

Please let me know if you have any questions.

Thanks



STATE OF NEW JERSEY

Chris Christie
Governor

Kim Guadagno
Lt. Governor

Raymond P. Martinez
Chairman and Chief Administrator

MEMORANDUM

DELIBERATIVE, CONSULTATIVE & CONFIDENTIAL

TO: Selika Gore Deputy Administrator of Operations
FROM: James Walker Director, Business & Government Operations
DATE: May 24, 2013
SUBJECT: Multi Dealer Complexes

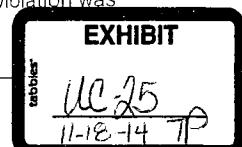
The Division of Business and Government Operations' Business Licensing Services bureau (BLS) conducts audits of licensed motor vehicle dealers throughout each calendar year. Some are initial, site investigations to complete the licensing process, some are audits conducted as part of an investigation into a complaint and, some are random audits.

When conducting these audits, the same set of statutes and administrative code are applied to both new and used car dealers. They are applied regardless of the type of location.

Over the last ten to fifteen years a new type of dealer location began to show up in New Jersey. This type of location is a building in which more than one independent motor vehicle dealer business is housed. These buildings became unofficially known as multi dealer complexes. In some cases these facilities are warehouses that have been retrofitted by installing internal walls and doors to create 72 square foot offices (i.e. NJDAM – New Jersey Dealers Auto Mall located in Bridgeton). In other cases, they are buildings that were constructed to hold office suites (i.e. Route 9 in Toms River). There are between ten and fifteen multi dealer complexes in New Jersey.

There are several apparent reasons for dealers wishing to locate in these types of buildings. Some are licensed in another state and are looking for access to additional dealer plates, some are wholesalers or internet dealers that do not want to invest in a standalone building. Still other dealers are located in these sites for reasons that are not readily apparent.

In 2005 & 2006, the MVC wrote regulations in an attempt to ensure that businesses operating in complexes were legitimate and that consumers could locate the owners in case of an issue. Shortly thereafter BLS investigators conducted unannounced, random audits of dealers located within the complex located in Bridgeton. They found that the dealers were not present. This violation was



recorded and the dealers were notified of proposed fines and/or suspensions. Repeated trips to the complex revealed each time that the dealers were not present.

The law firm representing the Bridgeton complex landlord retained the services of MBI Gluckshaw to represent them in discussions with the MVC over the notices of proposed fines and/or suspensions. The employee representing MBI Gluckshaw was former NJ Division of Motor Vehicles Director, Dick Kamin. Mr. Kamin offered a scenario in which receptionist at the complex could be employed by all the dealers as a "signatory" in order to satisfy the need for an employee to be present.

Dealers are required to store records at their business location and make them available during normal business hours according to N.J.A.C. 13:21-15.4 (a). Since the dealers were not present for the unannounced audits, it wasn't possible to ascertain if they kept their records on site. When dealers arrived for a subsequent scheduled conference at the TOC, they brought their records in with them. It is likely that these records were not being stored at the licensed location.

The MVC executive management team decided in 2008 that, since the statutes in place for the licensure of motor vehicle dealers did not contemplate this new "business model", some flexibility should be applied. It was decided that it is acceptable to have someone acting as the signatory even though they are not an employee of the dealership. The Bridgeton dealers then updated their signature records to indicating the receptionist at the complex as a signatory. It was also decided at that time that future audits would be no longer be unannounced. Instead they would be conducted by scheduling a date to meet with each dealer at their complex.

In April of this year, the State Commission of Investigation visited the multi dealer complex at Bridgeton with a member of the MVC's Security & Investigation. They stated that they were investigating the action of the landlord. Afterwards they met with Tom Bramley and Emily Armstrong to discuss their visit. At that time, they questioned why we are not conducting unannounced audits.

The MVC could continue its current policy until such time that amendments to the existing statutes and administrative code are adopted or, it could reinstate unannounced audits. If we choose to resume the unannounced audits, I recommend some form of advance notification.

BLS is scheduled to start up audits of the multi dealer complexes in June. I've asked them to hold off pending an examination of our current practices. Please let me know when you wish to discuss this further.

N.J.S.A. 52:9M-12.2 provides that:

- a. The Commission shall make a good faith effort to notify any person whose conduct it intends to criticize in a proposed report.*
- b. The notice required under subsection a. of this section shall describe the general nature and the context of the criticism, but need not include any portion of the proposed report or any testimony or evidence upon which the report is based.*
- c. Any person receiving notice under subsection a. of this section shall have 15 days to submit a response, signed by that person under oath or affirmation. Thereafter the Commission shall consider the response and shall include the response in the report together with any relevant evidence submitted by that person; except that the Commission may redact from the response any discussion or reference to a person who has not received notice under subsection a. of this section.*
- d. Nothing in this section shall be construed to prevent the Commission from granting such further rights and privileges, as it may determine, to any person whose conduct it intends to criticize in a proposed report.*
- e. Notwithstanding the provisions of R.S. 1:1-2, nothing in this section shall be deemed to apply to any entity other than a natural person.*

The following material was submitted pursuant to those statutory requirements.



New Jersey Motor Vehicle Commission

P.O. Box 162
Trenton, New Jersey 08666-0162

STATE OF NEW JERSEY

Chris Christie
Governor

Kim Guadagno
Lt. Governor

Raymond P. Martinez
Chairman and Chief Administrator

October 22, 2015

Via Hand Delivery

Chadd W. Lackey, Esq.
Commission of Investigation
28 West State Street
PO Box 045
Trenton, New Jersey 08625-0045

Re: Notice of Proposed Report
Dissemination Number 15-10-007

RECEIVED
2015 OCT 22 PM 3:41
STATE COMMISSION
OF INVESTIGATION

Dear Mr. Lackey:

I have received and reviewed limited excerpts of a report regarding the Commission of Investigation's ("SCI") "investigation involving criminal intrusion into used car dealerships." The following is my response to the SCI's comments concerning some instances in which I was involved in the regulation of used car dealers in New Jersey.

To begin with, I would like to point out two misstatements in the portion of the report you provided to me, as follows:

1. The SCI states that I am an "MVC attorney." (Report excerpt, pages 1 – 3). I am not an "MVC attorney" and do not provide legal advice or legal opinions to the MVC. I joined the MVC in January 2008 as a Legal Specialist and in 2013 became a Regulatory Officer. Providing guidance on agency interpretation of regulations is different from providing legal advice. Legal counsel provides legal advice on legal questions. Legal Specialists and Regulatory Officers provide guidance on agency interpretation of policy and regulations.
2. The SCI states that I "suggested that the [MVC] could require no more than 30 days' worth of records" (Report excerpt, page 2). I never suggested that "30 days' worth of records" could be kept instead of the required three years' worth of records. In the April 17, 2012, memo referenced in the excerpts, I specifically quoted the regulation that allows dealers to keep their records at a centralized location if the dealer has multiple branches. In such cases, only those records needed for the conduct of "current business at a branch location" should be maintained at the branch, as opposed to the centralized records facility. N.J.A.C. 13:21-15.4(g)(1). I was advised by Business License Services staff that "current business" would be approximately 30 days of records. I also stated, in the April 17, 2012, memo, "If there is no approved branch, the licensed premises must house the records for three years," as required by N.J.A.C. 13:21-15.4(g).

The report suggests that the MVC's mission should be to shut down multi-dealer complexes, and that my guidance thwarted that mission: "Armstrong's memorandum also set forth a rationale for relaxing another regulation that threatened to crimp the ability of MDLs to operate: a rule requiring that at least three years' of business records be kept at the licensed premises and made available on request to MVC personnel during periodic unannounced audits." (Report excerpt, page 1). Not only is this statement inaccurate, for the reasons stated above, it shows a misunderstanding of the legal effect that the MVC's regulations may have. Multi-dealer complexes are currently not prohibited under New Jersey law. New Jersey Used Car Trade Ass'n v. Magee, 1 N.J. Super. 371, 377-78 (Ch. Div. 1948). Thus, the MVC cannot promulgate or enforce regulations designed to unnecessarily curtail a legal business. Ibid. (citing Lawton v. Steele, 152 U.S. 133, 38 L. ed. 385 (1894)). Rather, the MVC's mission is to ensure compliance with the laws of the State of New Jersey. The regulation of used car dealers located in multi-dealer complexes has presented an ongoing challenge to the MVC, beginning with case law holding that the MVC's regulations, and New Jersey law, have to be interpreted and enforced such that there is a logical nexus and a reasonable relation between the statutory or regulatory requirement and the regulated industry. Magee, supra. Under these constraints, the MVC, as an administrative agency with limited powers, has strived to prevent and address behavior that would be in violation of Title 39 and MVC regulations. At the same time, the MVC must interpret and apply the regulations in a reasonable way given the nature of the regulated business. This is not to say that the MVC is unaware of the need for improvement in enforcement; the MVC is constantly reviewing the regulations and evaluating its options given the statutory and legal constrictions in place.

In 2007, the MVC made wide scale, significant changes to its regulations, particularly affecting multi-dealer complexes. Shortly thereafter, representatives of several multi-dealer complexes, and dealers located in multi-dealer complexes, informed the MVC that strict compliance with some of the regulatory requirements would cause them undue hardship due to the nature of their business, which they represented was mostly wholesale activity conducted at motor vehicle auctions. Further, several used car dealers challenged the regulations when they were cited for non-compliance. Those challenges resulted in a consent order that addressed the application of certain of our regulations to multi-dealer complexes. See attached. Thus, in 2008, the MVC made a policy decision that more than one dealer may share the services of an employee designated as an authorized signatory, as long as that signatory has access to the dealer's office and is present at the dealer's premises during the dealer's business hours. This is to ensure that the public has access to the dealer, or representative of the dealer, during the dealer's posted business hours, and so that the MVC may audit the dealer's records during those hours. Conventional motor vehicle dealers, with free-standing buildings and retail inventory ("brick and mortar" dealers), are a different type of business from wholesale-only dealers. Conventional used car dealers have an incentive to staff their business locations so that they can sell cars to the public. Their business is selling to the public (retail), and the dealer must staff his or her business with inventory and sales personnel where the cars are displayed. Conversely, wholesale dealers, who the MVC understood to be using multi-dealer complexes for their offices, sell to other dealers, usually at auction, and do not present the same risks to the public.

More recently, however, the MVC has accumulated documentation showing that many dealers within certain multi-dealer complexes have conducted retail sales, and continue to conduct retail sales. Accordingly, the MVC is in the process of drafting amendments to its regulations to require that the licensee or authorized signatory be present in the dealer's premises allocated exclusively to that dealer, that is, in the dealer's suite, as opposed to in a shared reception area. Nonetheless, the same legal concepts control the regulations: because use of multi-dealer complexes is not illegal, the regulations cannot unnecessarily curtail their business.

With respect to advance notice of audits, at the time that practice began, the aim of the MVC was to encourage and ensure compliance with the statutes and regulations pertaining to the proper transfer of title and registration of motor vehicles. One of the core purposes of Title 39, chapter 10, which includes the statutes pertaining to the sale of motor vehicles, states: "This chapter shall be so interpreted and construed as to effectuate its general purpose to regulate and control titles to, and possession of, all motor vehicles in this state, so as to prevent the sale, purchase, disposal, possession, use or operation of stolen motor vehicles, or motor vehicles with fraudulent titles, within this state." N.J.S.A. 39:10-3. Because dealers with offices in multi-dealer complexes were often at auctions and not at their offices to produce records, although the dealers could be cited for not having records in the office, the MVC could not access the records. The goal of the MVC was to see those records, to ensure the proper transfer and registration of motor vehicles. Therefore, a policy decision was made to schedule audits, review records, and to educate dealers, and bring them into compliance with MVC regulations concerning titles. In 2013, the MVC determined that this approach is no longer necessary, and the MVC made a policy decision to return to unscheduled audits.

In sum, I take my duties and responsibilities as a Regulatory Officer with the MVC very seriously. As a Regulatory Officer, and previously, as a Legal Specialist, my duties include providing guidance to MVC personnel charged with interpreting and enforcing MVC regulations pertaining to motor vehicle dealers, as well as every other area covered by Title 39 and within the MVC's authority to regulate. As a regulatory body, the MVC is required to apply and enforce its regulations not in a vacuum, but reasonably, and with an eye toward bringing the regulated industry into compliance with New Jersey laws. That is MVC policy and the spirit in which I was charged with viewing the application of MVC regulations to all motor vehicle dealers. In this context, Business and Licensing Service investigators would often seek assistance from me and others within my unit with questions they had regarding application of the regulations to different types of business, and sometimes would request a response in writing. In carrying out my duties, it is not and was never my intent to further criminal activity, and any suggestion that I aided in the continuation or growth of criminal activity is, in the very least, unwarranted, disingenuous, and detrimental to my career and untarnished reputation. In fact, if I become aware of suspected criminal activity, as is standard procedure, I always advise MVC investigators to notify and assist law enforcement and the governmental entities responsible for prosecuting criminal activity, as well as the Division of Taxation, the Division of Consumer Affairs, and the Department of Labor, when appropriate.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.


Emily H. Armstrong
Regulatory Officer



JON S. CORZINE
Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO Box 0114
TRENTON, NJ 08625-0114

ANNE MILGRAM
Attorney General

ROBERT J. GILSON
Director

August 1, 2007

Via Overnight Delivery

Hon. Bruce M. Gorman, A.L.J.
Office of Administrative Law
1601 Atlantic Avenue, 6th Floor
Atlantic City, New Jersey 08401

Re: Bridgeton Used Car Dealers
OAL Docket No. MVHOT 00042-2007S
Agency Dkt./Ref. No. MVC Dealer License

Dear Judge Gorman:

I represent the Motor Vehicle Commission in the above matter, scheduled for a hearing September 26, 2007. I am pleased to report that the parties have reached an amicable settlement that would dispose of the entire matter. Enclosed please find a Consent Order signed on behalf of both parties. Pursuant to N.J.A.C. 17:27-19.1(C)2, I respectfully request that Your Honor incorporate the terms of the Consent Order in the record of the case, to be deemed the final agency decision.

Respectfully submitted,

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

By: Emily H. Armstrong
Emily H. Armstrong
Deputy Attorney General

c: Clerk, Office of Administrative Law
Thomas G. Russomano, Esq.



ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 114
Trenton, New Jersey 08625-0114
Attorney for New Jersey Motor Vehicle Commission

By: Emily H. Armstrong
Deputy Attorney General
(609) 292-5639

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW

OAL Docket No: MVHOT 00042-2007S
Agency Ref. No: MVC DEALER LICENSE

CONSENT ORDER

In the Matter of :
BRIDGETON USED CAR DEALERS :

WHEREAS, Petitioner, New Jersey Motor Vehicle Commission ("MVC"), and Respondents, collectively known as Bridgeton Used Car Dealers, are parties to the above-referenced matter scheduled for a hearing before the Office of Administrative Law on September 26, 2007; and Respondents consist of twenty-seven used car dealers each seeking a license to operate a used car dealer business from a single structure known as 330 East Commerce Street, Bridgeton, New Jersey; and each Respondent submitted an application for a dealer license, listing 330 East Commerce Street, Bridgeton, as the intended business location; and upon receipt of the applications for dealer licenses,

Petitioner conducted an investigation to determine whether or not the proposed business locations within 330 East Commerce Street meet MVC's regulatory requirements pertaining to licensed motor vehicle dealers; and MVC issued Notices of Proposed Denial to each Respondent, advising that MVC would not issue Respondents a dealer's license because Respondents' respective offices did not comply with one or more of the requirements set forth in N.J.A.C. 13:21-15.4; and this matter was subsequently referred to the Office of Administrative Law for a hearing; and, prior to the scheduled hearing, Petitioner and Respondents have agreed to resolve all disputed issues and enter into the following agreement;

IT IS, therefore, on this _____ day of _____, 2007.

ORDERED that a Final Decision be entered according to the following terms:

1. Petitioner and Respondents hereby stipulate that this agreement shall fully dispose of all issues in controversy between them with regard to this matter.
2. Respondents understand that they have a right to a hearing. Respondents further understand that by signing this Consent Order the hearing request shall be considered withdrawn.
3. Petitioner agrees, subject to the conditions set forth in paragraph 4 below, the requirements for issuance of a dealer license will have been met upon submission to Petitioner from each Respondent: (a) photographic evidence of clearly identified (either by sign or paint reflecting dealer's name) fixed facilities located on the same property as the location of Respondent's licensed premises to display at least two automobiles, pursuant to N.J.A.C. 13:21-15.4 (a); (b) photographic evidence of exterior signage permanently

affixed to the land or building which is consistent with local ordinances and which legibly reflects the dealer name (or trade name, provided the trade name has previously been disclosed to Petitioner), pursuant to N.J.A.C. 13:12-15.4(b); and (c) documentary evidence showing installation of a climate control system sufficient to conduct business at Respondents' location, pursuant to N.J.A.C. 13:21-15.4(h).

4. The parties further agree that Petitioner will issue to each Respondent a dealer license and that each Respondent shall have 90 days from the date of issuance of the dealer license to conform to N.J.A.C. 13:21-15.4(d), as follows (no change to first clause):

[second clause] Any Respondent's proposed place of business where there already exist one or more licenses issued for, or other business entities present at, the same premises, but where there is not absolute common identity of ownership, shall not be approved unless all facilities are completely separated by: (a) exterior walls; (b) firewalls as that term is defined by the International Building Code (2000), where no other code-official approved fire suppression system exists; or (c) where there is a fire suppression system that has been approved by the local building code official (or State DCA) for the applicant's facility, interior walls, each of which must be constructed separately and independently from any other wall of any other proposed or licensed dealership or other business occupying the same premises.

5. If any Respondent is not in compliance with paragraph 4, above, by the expiration of the 90-day period, Respondent agrees that Respondent's dealer license shall be automatically revoked, without a hearing. Respondent further agrees to return, in person, all dealer plates, the wall license, and all reassignment books issued to Respondent by MVC. The dealer plates, wall license and reassignment books shall be returned to MVC

at the Business Licensing Services Bureau, 225 E. State Street, 2nd Floor,
Trenton, New Jersey.

6. Respondents acknowledge that Petitioner will not issue to them any Resident Temporary Registrations or Non-Resident Temporary Registrations unless and until Respondents have met the Established Place of Business Requirements set forth above.
7. MVC will issue dealer plates to each applicant upon MVC's receipt of a deposit in the amount of \$1,000 per five plates issued.
8. Attached hereto and incorporated herein is a letter to be signed by each Respondent, clearly stating the applicant's understanding and agreement with the terms of this Consent Order.
9. Once fully executed and filed with the Office of Administrative Law, this Consent Order will become a Final Decision which is binding in the above-captioned matter.
10. The parties waive their right to file exceptions or cross-exceptions herein.
11. This matter is DISMISSED WITH PREJUDICE.

We consent to the entry of this Consent Order as a Final Decision in the above-captioned matter.

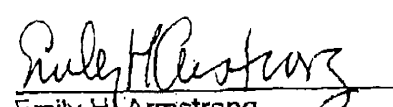
THOMAS RUSSOMANO
SCHILLER & PITTENGER, P.C.
Attorneys for Respondents

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Petitioner

By:


Thomas Russomano

By:


Emily H. Armstrong
Deputy Attorney General

4

DEALER LICENSE AGREEMENT

This Dealer License Agreement is entered into by _____, ("Dealer") with its principal place of business situate at 330 East Commerce Street, Suite __, Bridgeton, New Jersey 08302.

WHEREAS, the State of New Jersey, Motor Vehicle Commission, ("MVC") issued to Dealer a letter, and amended letter, of Proposed Denial advising MVC would not issue Dealer a dealer's license because its offices did not comply with the requirements set forth in *N.J.A.C.* §§ 13:21-15.4(a), 15.4(b), 15.4(d), and 15.4(h).

WHEREAS, Dealer and MVC were parties in that litigation encaptioned, In the Matter of Bridgeton Used Car Dealers, OAL Docket No.: MV HOT 00042-2007S;

WHEREAS, MVC and Dealer have settled the litigation between them by way of a Consent Order whereby MVC has agreed, *inter alia*, to issue dealer a Used Motor Vehicle Dealer License upon certain terms to be agreed to by dealer; and

WHEREAS, in order to avoid the costs and expense of litigation and to settle the claims asserted in the above referenced litigation, Dealer agrees as follows:

NOW, THEREFORE, in consideration of the promises contained herein, and intending to be legally bound, the Dealer hereby represents and agrees as follows:

1. Dealer acknowledges MVC is issuing to it a Used Motor Vehicle Dealer's License (the "License").
2. Dealer's right to maintain its License is contingent upon Dealer, within 90 days of MVC's issuance of said License, causing its office to conform with MVC requirements set forth in the Consent Order.
3. Dealer acknowledges it has no right to purchase Temporary Registrations, both Resident and Non-Resident, from MVC for use with its business until Dealer has complied with ¶ 2 above. Upon MVC's confirmation Dealer satisfied its obligations under the Consent Order, Dealer shall be permitted to buy Temporary Registrations, both Resident and Non-Resident, for use with its business.
4. Dealer acknowledges MVC will issue to it five (5) dealer plates upon MVC's receipt from Dealer of \$1,000.00 which MVC will hold in escrow until Dealer has complied with the Consent Order. Upon Dealer's compliance with the Consent Order, or Dealer's return of the dealer plates to MVC for non compliance with the Consent Order and License revocation, MVC shall release the \$1,000.00 to Dealer.
5. Dealer acknowledges and understands if it does not satisfy the requirements of the Consent Order, MVC may immediately revoke its dealer's license. Dealer also acknowledges and understands New Jersey Law, *N.J.S.A.* §§ 39:10-20 and 52:14B-11, requires Dealer be given a hearing in the Office of administrative Law prior to MVC revoking the License. Further, Dealer

acknowledges and understands that as consideration for MVC entering into the Consent Order, Dealer is waiving its right to a hearing in the event Dealer does not comply with the Consent Order as aforesaid. Accordingly, should MVC determine Dealer has not fulfilled its obligations under the Consent Order, MVC may revoke Dealer's license and Dealer shall be required to immediately turn in its License, and attendant documents, as set forth below, to MVC. Notwithstanding the foregoing, if and in the event MVC has revoked Dealer's License, after Dealer has turned in its License, and attendant documents, Dealer shall be permitted to reapply for a License if and when it has satisfied the requirements of the Consent Order.

6. Dealer acknowledges and understands that in the event MVC revokes Dealer's License, as set forth herein, Dealer shall return, in person, all dealer plates, the License, all reassignment books issued to Dealer. The foregoing items shall be returned to MVC at the Business Licensing Services Bureau, 225 East State Street, 2nd Floor, Trenton, New Jersey.

Dated:

By: _____

RECEIVED

2015 OCT 22 PM 2:23

STATE COMMISSION
INVESTIGATION

From

Hamze Assad Chehab

204 Clayton Terrace

Paramus, New Jersey 07652

Dissemination Number 15-10-017

To the New Jersey State Commission of Investigation office, I'm writing you an explanation as you requested. I wanted to say that I understood the question to be; after 2011 did I receive funds from other than Benin prior to 2011. I did receive funds other than Benin, but my answer as I understood it did not relate prior to 2011.

It was my understanding that by using the Lebanese financial institutions the customers in Benin explained to me that they would be saving time and wires would be faster, not as you stated would incur costly additional fees.

Thank you so much for your understanding, and if you have any additional question please contact me.

~~HAMZE~~
HAMZE CHEHAB.



RAMIN R. SHAH
NOTARY PUBLIC OF NEW JERSEY
ID # 2384239
My Commission Expires 4/3/2019

IN RE REPORT OF THE COMMISSION
OF INVESTIGATION ON ALLEGED
CRIMINAL INTRUSION INTO USED
CAR DEALERSHIPS

**AFFIDAVIT
OF LOUIS CIVELLO, JR.**

I, Louis Civello, Jr., being of full age, on his oath, deposes and says in response to the factually-challenged report:

1. I was personally involved in four separate lawsuits in the Superior Court of New Jersey that addressed ownership, corporate structure, and mode of operation of my business, N.J. Dealers Auto Mall, Inc. ("NJDAM"). At the center of each lawsuit was none other than Dennis Altman, who appears to be your star witness.

2. For each lawsuit I used Jeffrey S. Mandel, Esq. of Cutolo Mandel LLC as NJDAM's corporate trial lawyer. Unlike your investigators, Mr. Mandel sat in court and listened to trial testimony and rulings by a Judge of the Superior Court of New Jersey that your report now seeks to contradict.

3. As detailed in this affidavit, several "facts" in your report are contradicted by two jury verdicts, two Court Orders, and trial testimony given under oath by your star witness, Dennis Altman. *See Ex. A (Court Order/Judgment, 5-24-13; Court Order Dismissing Dennis Altman's Complaint, 9-12-13; Court Order/Judgment, 10-18-13; and Court Order, 10-22-13).*

4. Your star witness, Dennis Altman, became so exasperated at being caught contradicting himself at one trial that he blurted out, "I'm going to lie for my benefit." *See Ex. B (Trial Transcript of April 21, 2014, pg. 21, ln 11).* The judge presiding over the case also found that Dennis Altman spoliated evidence, *i.e.*, intentionally destroyed evidence that would have been detrimental to his case. *See Ex. C (Court Order, 3-18-11).*

5. Your star witness, a professional poker player, *see Ex. D (Hendon Mob website)* who apparently convinced you of “facts” that two juries and a judge rejected, is a disgruntled former employee of NJDAM who NJDAM fired after catching him steal money. A jury confirmed that Dennis Altman stole money and awarded NJDAM thousands of dollars in damages. *See Ex. A (Order/Judgment, 10-18-13)*. We also caught Dennis and his son, Brian Altman, forging records, including tax returns. The forgeries all came out at trial and, if you simply reviewed the exhibit presented by Jeffrey S. Mandel, Esq. to the jury you would understand why the jury rejected Dennis Altman’s stories. *See Ex. E (Trial Ex. D-27)*.

6. Based on your report it appears that your “investigation” missed that your star witness was also implicated at trial of filing false tax returns, fabricating evidence, and forgery. *See Ex. F (Trial Transcript of May 2, 2015, pg. 131, ln 12 to 135, ln 8)*. The trial transcripts are in my lawyer’s office and have been available for your inspection for years. To date, nobody involved in your investigation has asked my lawyer for the transcripts.

7. Even some of the most rudimentary “facts” in your report are wrong. For example, your report represents that New Jersey Automobile Dealers Exchange (“NJADE”) is the predecessor of NJDAM. A jury rejected this “fact” after a full trial. *See Ex. A*.

8. You also represent that Steven Altman (Dennis’ Altman’s estranged brother) “in exchange for having [a] loan forgiven . . . ceded his share of the multi-dealer business to Civello.” Two juries and a judge rejected this, but your report presents them as fact. *See Ex. A*.

9. The information that your investigators received from Dennis Altman about an alleged deal made by Dennis’ brother, Steven Altman, is what my lawyer always explained to me to be inadmissible hearsay. The information relayed to you by Dennis Altman is so inherently unreliable that a Superior Court judge would not permit it to be introduced in a court of law. It found its way, however, into your report.

10. I am sure that your investigators looked into whether Steven Altman would even have spoken to Dennis about Steven's personal business dealings. You must therefore already know that Steven Altman and Dennis Altman were involved in litigation against each other over who owned a certain parcel of land. You also probably read the deposition testimony from Steven's daughter wherein she recounted how "[Dennis] laughed at my father for having cancer . . . [w]hen my father was dying of cancer." *See Ex. G (Dep. Tr. of Alicia Altman, pg. 84, ln 14-19)*. Steven hated Dennis. When Steven begged Dennis to borrow money for cancer treatment, Dennis refused. This is all set forth in a deposition transcript that your investigators never asked my attorney to review.

11. As for the salacious testimony of Dennis Altman that my father is known as "Louie the leg-breaker," Mr. Altman forgot to mention this during seven years of litigation. He first disclosed this "fact" in a brief that he filed on an appeal of the four cases that he lost against my business, NJDAM. The Appellate Division of our Superior Court rejected Mr. Altman's attempt to insert this "fact" into the appeal. *See Ex. H (Appellate Court Orders)*. While the Appellate Division ordered that the so-called nickname be stricken from the court's record, your report regurgitates it as gospel.

12. In what appears to be a tantrum of jealousy, your report also attacks my father and I because I have earned a lot of money over the past twenty years. The report appears geared towards shaming my father for reaping the benefits of having raised me as an entrepreneurial son who has made a lot of money by running successful businesses. Your report omits that NJDAM is just one of many businesses successfully operated by me. Your report makes no mention of me having earned a college business degree, owning car dealerships, real estate holding companies, and a daycare center for special needs individuals and low-income families. *See Ex. I (Trial Transcript of May 2, 2013, pg. 83, ln 4 to pg. 84, ln 23)*.

13. In keeping with the careless presentation of “facts,” your report states that within a year of Dennis Altman’s “departure” (your term for describing a man fired from his job after being caught stealing), the “Civellos undertook an increasingly active role” in the business. Elsewhere, the report almost-sympathetically states that NJDAM “ousted” Dennis Altman. Your apparent lack of impartiality in virtually rooting for Dennis Altman is undeniable. Labeling the property where my business is located a “compound” further reveals your bias. I have invested over one million dollars in my “compound,” including adding bathrooms, adding a kitchen, redoing the roof, removing structures that were once considered an eyesore to the local community, adding radiant overhead heat in 40,000 square feet of building space, retiling, fencing in eight acres of property to prevent children from being exposed to harm during times when we lacked supervision over the property, redoing the entire sprinkler system, rewiring the building, and adding blacktop to parking spaces that were once covered by dirt and weeds. I did all of this with contractors licensed by the State. I even paid for an environmental clean up of the property. All of this work on my “compound” benefited the community and supported local businesses and contractors. Permits are publicly available for all of this work.

14. Your report confirms that the evidence that the “Civellos” (plural) ran the business has no basis in fact other than the lips of a self-professed liar who shortly before running to your Commission lost four lawsuits against NJDAM and who then got caught destroying evidence during the case. Dennis Altman apparently also convinced you that the business received several telephone calls from a myriad of “irate customers,” none of whom are identified and none of whom came forward in seven years of litigation. Also left unexplained is why, if Dennis’ recitation of facts is true, he remained at NJDAM and then so desperately tried to convince a jury that he owned NJDAM.

15. Your report proceeds to present as “fact” that NJDAM, at some undisclosed time, expanded and prospered “under a new ownership structure.” If you have facts to support this, I welcome them because they were absent during seven years of litigation. There are documents, however, omitted from your report that contradict your “fact.” While I hate to point out the obvious, had your investigators simply read the Complaint filed by Dennis Altman in 2005 that started all of the litigation against NJDAM, the investigator would have seen just how wrong your “facts” are. Paragraph 7 of the Complaint filed by Dennis Altman identifies me as the “sole owner” of NJDAM. *See Ex. J (Complaint)*. He repeats this “fact” in paragraph 20. He repeats it two more times in a 2007 Amended Complaint. *See Ex. K (Amended Complaint)*.

16. Also missing from your report is another document that contradicts your “facts.” The June 29, 1998 Certificate of Incorporation for NJDAM identifies one person- me. *See Ex. L (Trial Ex. P-19)*. There is no reference to my father or to Dennis Altman. To date, no investigator has requested from my lawyer a copy of any of the trial exhibits, including another document that contradicts your “facts.” There is a document with Dennis Altman’s handwriting dated August 27, 1998, that identifies me as the “100” percent owner of NJDAM. *See Ex. M (Trial Ex. D-5)*. The “new ownership structure” that you refer to in your report is a fiction created by Dennis Altman that was contradicted years earlier by exhibits introduced to a court of law during trial and by none other than . . . Dennis Altman.

17. I am sure that I could enlighten you on many other mistakes in your report, but the copy given to me includes redactions. Not once in your report do you identify a single law that has been broken. The limited version given to me instead complains about “aggressive lawyering” and the use of “well-connected lobbying.” Respectfully, a lawyer is duty-bound to “zealously” advocate on behalf of a client and a person who pays for a *non*-well-connected lobbyist is a fool.



New Jersey Motor Vehicle Commission

P.O. Box 160
Trenton, New Jersey 08666-0160

STATE OF NEW JERSEY

Chris Christie
Governor

Kim Guadagno
Lt. Governor

Raymond P. Martinez
Chairman and Chief Administrator

October 22, 2015

HAND DELIVERED

Chadd W. Lackey, Counsel
State of New Jersey
Commission of Investigation
28 West State Street
Trenton, NJ 08625-0045

RECEIVED
2015 OCT 22 PM 3:20
STATE COMMISSION
INVESTIGATION

SCI response from NJ MVC Chief of Investigations James S. Clifford
Re: Notice of Proposed Report, Dissemination Number 15-10-005

The draft report uses a quote from my testimony before the SCI with very little context. It is important to understand that used car dealerships (UCDs) come to the attention of at least two different divisions of the New Jersey Motor Vehicle Commission (NJ MVC). Having a number of UCDs operating at a common location is not unlike having multiple retail stores all selling similar items grouped together in a shopping mall. The concept of multi-dealer locations (MDLs) is one that offers both benefits and liabilities for dealers and customers alike. The liabilities of MDLs are addressed through statutes and regulations, which require monitoring and enforcement. That regulatory function within the NJ MVC resides with the Division of Business and Government Operations (BGO); specifically their Business Licensing Services Bureau (BLS). The unit that I manage is the Security and Investigations Unit (SIU), one of the four units that comprise the Division of Security, Investigations and Internal Audit. The SIU is not a regulatory unit; we deal with fraud, security, and employee impropriety.

There are several cross-over areas where the SIU has involvement, directly or indirectly, in matters concerning New Jersey UCDs. The SIU is responsible for maintaining the NJ MVC Fingerprint Program. The fingerprint results of all persons required by statute to be fingerprinted in order to conduct NJ MVC regulated businesses and employment pass through our office. These results are routed to the appropriate division and unit for their regulatory oversight.

One such statute, N.J.S.A. 39:10-19, requires persons applying for a motor vehicle dealer license to submit to fingerprint checks of both their state and federal records. This statute prohibits any person "who has been convicted of a crime, arising out of fraud or misrepresentation in the sale, leasing or financing of a motor vehicle" from obtaining a dealer license. All fingerprint results associated with N.J.S.A. 39:10-19 are routed to BLS. In addition, the SIU works in conjunction with both the NJ Division of Taxation and NJ Division of Consumer Affairs to go after any UCDs that either they, or we, believe are in violation of applicable taxation and/or consumer protection statutes. One of the more noteworthy cases we dealt with involved a used pickup truck that was flood damaged during Super Storm Sandy; it was cleaned up and sold as not having been flooded. This case was brought to NJ MVC attention by a national television network show doing an undercover exposé of storm damaged vehicles passing through insurance companies and ultimately being sold without any "FLOOD" branding of their titles to unscrupulous UCDs, who offered them for sale to unsuspecting buyers. The SIU partnered with the NJ Division of Criminal Justice to investigate this matter. Our joint efforts resulted in the successful prosecution of one person at the involved dealership responsible for the truck in question being offered for sale, as well as exposing and prosecuting a crooked NJ MVC employee who was involved in facilitating this particular crime (see attached **NJ.com** 12/5/14 news article, as updated 1/2/15). Further, the SIU has also offered assistance to, and sought information from, both BGO and BLS in matters related to any frauds reported to them concerning UCDs and MDLs. We stand ready to work with them in all such matters.

My knowledge of published news articles and government reports concerning the Bridgeton MDL is the basis of my sworn statement to the SCI regarding my awareness of the problems associated with MDLs – the very statement the SCI has notified me I will be criticized for in their final report. Be advised, the SIU has investigated and/or properly referred **all** matters that have been brought to our attention.

I certify that the foregoing statements by me are true. I am aware that if any of the statements made by me are willfully false, I am subject to punishment.



James S. Clifford
Chief of Investigations
Security and Investigations Unit
New Jersey Motor Vehicle Commission

enclosure

Signed before me this
22nd day of October 2015

John G. Donnelly
John G. Donnelly
Attorney-at-Law
State of New Jersey



Car dealer who fraudulently sold cars damaged in Hurricane Sandy gets 3 years in prison

Christopher Baxter | NJ Advance Media for NJ.com By Christopher Baxter | NJ Advance Media for NJ.com

Email the author | Follow on Twitter

on December 05, 2014 at 1:11 PM, updated January 02, 2015 at 5:04 PM

TRENTON — A Middlesex County car dealer who used fraudulent vehicle titles to sell cars damaged during Hurricane Sandy was sentenced today to three years in state prison, state authorities said.

View full size

Jonathan Olin, 42, of Manalapan, was sentenced to three years in prison today for orchestrating the creation of false vehicle titles in order to sell cars damaged during Hurricane Sandy, state authorities said. (Courtesy of N.J. Attorney General's Office)

Christopher Baxter | NJ Advance Media for NJ.com

Jonathan Olin, 42, of Manalapan, former operator of D&D Auto Sales in Old Bridge, admitted in August that he obtained fraudulent "clean" titles for eight vehicles, seven of which were sold to unsuspecting customers by Pinky N Brain Corp., doing business as D&D.

One of his associates, Jessie Dinome, 30, of Jackson, a former employee at the Freehold Motor Vehicle Agency, accessed state computers to create the false titles, the state Attorney General's Office said. Dinome was sentenced to probation in October.

The seven vehicles were sold for a total of about \$86,000, authorities said. Olin pleaded guilty to theft by deception and was ordered to pay full restitution to the victims. A third person, Jacob Douek, 40, of Staten Island, N.Y., still faces charges in the scheme.

The case was referred to the Attorney General's Office by the state Motor Vehicle Commission after receiving information from the National Salvage Vehicle Reporting Program and ABC News, which investigated how flooded vehicles ended up on car lots.

Christopher Baxter may be reached at cbaxter@njadvancemedia.com. Follow him on Twitter @cbaxter1. Find **NJ.com Politics on Facebook**.

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SCHILLER & PITTENGER, P.C.

THEODORE E. SCHILLER
PERRY A. PITTENGER
K. JOSEPH VYZAS
DANIEL F. CROWE
JAY B. BOHN[†]
THOMAS G. RUSSOMANO
RICHARD M. COHEN[†]
PAUL C. PAWLOWSKI
ROSS S. KATZ[†]

2015 OCT 23 AM 9:44

STATE COMMISSION OF INVESTIGATION

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1771 FRONT STREET
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OF COUNSEL:

JOHN DE MASSI
JAMES R. KORN
JOSEPH E. MURRAY
FRANK H. BLATZ, JR. (Ret.)

[†] Also admitted in New York

* Approved by the NJ Supreme Court as
a Family Law Mediator pursuant to
R. 1:40-12

S&P FILE NO.

October 22, 2015

Via Overnight Mail

Commissioner Joseph F. Scancarella
Chair, State of New Jersey Commission of Investigation
28 West State Street
P.O. Box 045
Trenton, NJ 08625-0045

Re: Response of Michael Fredrick

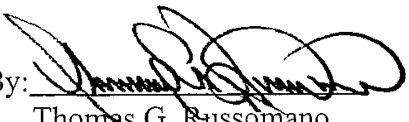
Dear Commissioner Scancarella:

With regard to the above-referenced matter, and pursuant to N.J.S.A. § 52:9M-12.2, please accept the enclosed Certification of Michael Fredrick as his preliminary response to the New Jersey Commission of Investigation's draft report.

If you have any questions, do not hesitate to contact me.

Very truly yours,

SCHILLER & PITTENGER

By: 
Thomas G. Russomano

Encls.

CERTIFICATION OF MICHAEL FREDRICK

MICHAEL FREDRICK hereby certifies:

1. This Certification is submitted in response to the false statements about me and my dealership, After 5 Motors, Inc. ("After 5"), which statements are purportedly going to be published in an upcoming report of the State Commission of Investigation ("SCI").

2. Based upon the facts of which I am aware, and in the context of the limited portion of the SCI Proposed Report (the "Proposed Report") I was given to review, the SCI "investigation" was a sham. The information relied upon by SCI against me and After 5 is hearsay, innuendo or worse. I do not know how it found its way into the report of a governmental agency unless the use of such unreliable information is the only way the SCI can justify the time and expense of it's "investigation." The relevant facts are set forth below.

3. After 5 is a corporation of the State of New Jersey, which was formed on or about 2004.

4. In or about 2004, After 5 obtained its motor vehicle dealer's licence from the then Division of Motor Vehicles.

5. Since 2004, After 5 has conducted its business from Bridgeton, New Jersey.

6. Prior to March of 2014, I had never heard of the SCI.

7. On March 12, 2014, I received a subpoena from the SCI, which contained a general statement of the subject of the investigation, which read:

Whether, and to what extent, elements of the used car industry have been subverted, corrupted or otherwise distorted by questionable sales practices, the intrusion of various criminal elements, lax state oversight and other illicit activity, including unpaid state tax liabilities.

8. I was not aware of any facts relative to the "statement" in the subpoena. Nor was I

aware of any reason why I was being asked to appear before the SCI. That said, I am now aware that the SCI questioned, whether formally or otherwise, a majority of the tenants at Multi-Dealer Facilities in New Jersey.

9. The subpoena required my appearance before the SCI on April 1, 2014.

10. I appeared at the SCI on the requested date and I fully responded to all of SCI's questions.

11. From April 1, 2014 until October 7, 2015, I did not hear anything from the SCI. On October 7, 2015, I received a Notice of Proposed Report from SCI. The notice said the SCI was going to publish a report which would include statements about me and After 5.

12. After reading the contrived excerpt of the Proposed Report I was given, I had no option but to respond.

13. The Proposed Report in the "Rise of the MDLS" section alleges as follows:

Nearly 40 percent of the dealers licensed at these locations over the years have been owned by non-New Jersey residents, primarily New Yorkers, and most of these out-of-staters have been purportedly based at NJDAM, arguably New Jersey's most remote multi-dealer location. Michael Fredrick is one such New Yorker. A Brooklyn resident, Fredrick has operated After 5 Motors, Inc., from the Bridgeton MDL for more than 11 years. He established the business after learning the business from an associate who operated a separate dealership through NJDAM. He stated that his monthly rent includes a range of services provided by the landlord, such as the completion of official licensing paperwork and assistance in dealing with MVC regulators. His annual renewal applications, Fredrick said, are always provided to him with some information pre-completed by NJDAM representatives. Fredrick stated that has been visited by MVC inspectors on only two occasions, once immediately after his dealership was established and again when a customer was involved in an accident with expired temporary tags. He laughed when asked if he is ever at the Bridgeton location during his listed office hours, stating "I live in New York."

14. Initially, I do not know why it is relevant that allegedly forty percent (40%) of dealers are owned by out-of-state residents. There is nothing illegal about an out-of-state person owning a New Jersey corporation, yet the SCI asserts it as if it's a groundbreaking revelation. This assertion alone demonstrates the frivolity of the report. Not even Dr. Seuss would have included this assertion.

15. The only portion that is correct in the Proposed Reports is, as acknowledged above, After 5 has been licensed for eleven (11) years.

16. It is completely false that the rent I am charged includes the completion of official licensing paperwork from NJDAM. That said, this is another ridiculous "fact" alleged by the SCI.

17. Further, SCI's allegation that After 5 has only been visited from the New Jersey Motor Vehicle Commission ("MVC") inspectors on two (2) occasions is also false. I have most certainly been visited by MVC inspectors on more than two (2) occasions while operating After 5 over the past eleven (11) years. In point of fact, the MVC is at Bridgeton on an almost weekly basis.

18. The Proposed Report mis-characterizes my statement regarding the "office hours" of After 5. On the day of the interview, I was asked where I lived. I replied, "I live in New York." The investigator followed my response by asking, "How are you able to get to Bridgeton at eight (8) if you live in New York?" I replied, "Sometimes I am a late. But if I am not there, there is an authorized signatory available, on location." Curiously, the SCI omitted this fact. Perhaps its because the "authorized signatory" is required by N.J.A.C. 13:21-15.4, which provides that either I, or my designated signatory, be at the office during business hours.

19. In the "Legacy of Abuse" section, the Proposed Report alleges, among other things,

that I:

...failed to disclose the full extent of an extensive criminal record dating back to the mid-90's. Replete with multiple aliases and phony birth dates, Fredrick record of undisclosed arrests over the years includes charges of enterprise corruption, criminal possession of stolen property, possession of a forged instrument, possession of forgery devices, a scheme to defraud and conspiracy. Fredrick is also wanted by law enforcement in Georgia in connection with a credit-card fraud scheme.

20. This is contrived. I disclosed all information requested in the MVC application.

Also, I was fingerprinted by the MVC at the time I was licensed.

21. Moreover, the SCI ignores that N.J.S.A. 39:10-19 provides that any person can obtain a motor vehicle dealer license so long as they have not been convicted of a "crime of fraud or misrepresentation in connection with the sale of a motor vehicle."

22. The SCI's mis-characterization of false arrests, as opposed to convictions, is an attempt to defame me and to justify their costly "investigation." This is yet again another example of the SCI trying to make something out of nothing.

23. Further, the allegation that I am "wanted" in Georgia is untrue.

24. The Proposed Report, in the Legacy of Abuse section, further alleges, in relevant part:

Another dealer operating out of NJDAM offered Fredrick the use of his credentials for a fee of \$150. To recoup this investment and more, Fredrick charged others interested in purchasing cars for a cash fee of approximately \$500 apiece to attend the auctions with him.

...Fredrick established a structured system that enabled him to make potentially unreported cash income on the side by renting out his credentials on a regular basis. Over time, his scheme alone has enabled at least 55 unlicensed individuals to attend dealer-only auctions.

25. These allegations are false, misleading and a mis-characterization of the actual

procedure utilized by used motor vehicle dealers. I have never “sold” or “rented” my dealer’s license to anyone. Such an undertaking would be impossible because only a person named on a dealer license can utilize it to purchase vehicles at an auto auction. A dealer can, however, name a “sales representative” who will represent the dealer at the auction and purchase vehicles under the dealer’s license. This is to enable the dealer to attend auctions at different locations or to conduct business while the all important purchase of inventory is being taken care of by the sales representative. It’s a wonder the SCI “investigation” did not address this reality.

25. The false and mis-characterized statements in the proposed report will cause a significant negative impact on my business. Perhaps that is the SCI’s intended effect.

26. Pursuant to N.J.S.A. 52:9M-12.2(c), I request that the SCI consider this response and include it with the proposed report.

I declare under penalty of perjury that the foregoing is true and correct.



MICHAEL FREDRICK

Dated: October 21, 2015

Daria A. Gerard
42 Baily Drive
Burlington, New Jersey 08016

October 19, 2015

State of New Jersey
Commission of Investigation
28 West State Street
PO Box-045
Trenton, New Jersey 09625-0045
ATT: Chadd W. Lackey, Counsel

RECEIVED
2015 OCT 22 AM 10:14
STATE COMMISSION OF
INVESTIGATION

Re: *My Response to Notice of Proposed Report Dated October 7, 2015 received by me on October 13, 2015*
SCI Dissemination Number 15-10-011

Dear Mr. Lackey:

Please herein find responses to the portions of the proposed report which include criticism of my conduct while working at the NJ Motor Vehicle Commission (MVC) .

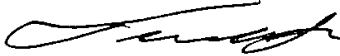
In regard to page 1 (of my portion), stating that a (redacted) person had direct communication with me among others at the MVC, please note that it was not uncommon for lobbyists to directly contact MVC staff (management level and higher) as business groups were for the most part represented by lobbying firms (i.e. car dealerships, auto body shops, private auto inspectors). The MVC had gone through a renaissance in which the multitude of business entities we served, were given a voice at the table in an effort to modernize practices. I have never made a decision based on providing any lobbying firm or their staff favor; nor, did I ever choose to, or obtain personal gain from dealing with any lobbyist.

In regard to page 1 (of my portion), bottom half and top of page 2, there is an allegation that I admonished staff not to disseminate a document in order to keep contact with NJDAM under wraps to avoid possible scrutiny. My recollection is that I was provided with a courtesy copy of a letter of complaint against the MVC that went to, or was going to, a South Jersey legislator (it may have been a draft). It was common practice for legislators to forward constituent letters to the concerned agency for a response. I wanted to prepare for a call or written request from the legislator's office. Since I am the only person who can testify to my state of mind at the time, I can tell you that the allegation of attempting to keep contact with NJDAM under wraps to avoid scrutiny is not warranted.

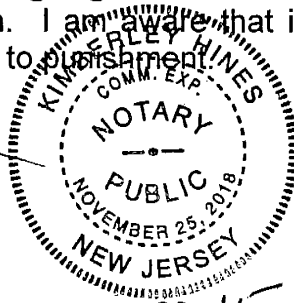
Continued: *My Response to Notice of Proposed Report Dated October 7, 2015 received by me on October 13, 2015*
SCI Dissemination Number 15-10-011

The sentence in italics "Please dot (sic) share this document with others in BLS as it may result in an official investigation" was not a warning to any MVC employee as to what might happen if they shared, but rather a caution to be careful of what they put in writing as the complaints may lead to an official investigation. I would have wanted any written record regarding this matter to include only facts and not supposition.

As required, I hereby certify that the foregoing statements made by me are true to the best of my knowledge and recollection. I am aware that if any foregoing statements made by me are false, I may be subject to punishment.

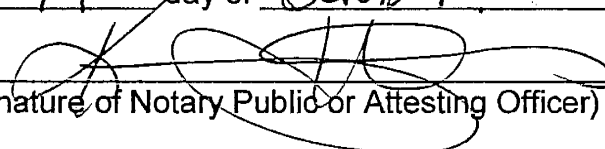


Daria A. Gerard, Deponent



Subscribed and sworn before me

this 19 day of October, 2015



(Signature of Notary Public or Attesting Officer)

My commission expires 11-25-2018

503 2nd Avenue
Bradley Beach, NJ 07720

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2015 NOV -4 PM 8:51

STATE COMMISSION
INVESTIGATION

October 20, 2015

Commissioner Robert J. Burzichelli
NJ State Commission of Investigation
28 West State Street - 10th Floor
P.O. Box 045
Trenton, NJ 08625-0045

Dear Commissioner Burzichelli:

On October 13, 2015, I requested a transcript of my testimony before the Commission on April 17, 2015. Having been advised that a transcript would not be provided, although the pertinent statute would permit it to have been, I make this comment in response to the excerpt provided to me from an anticipated report, with the understanding that I do so without the benefit of a verbatim record.

I was Chief Administrator of the New Jersey Motor Vehicle Commission (MVC) during a time of great transition and activity. I am proud of my service and that of the complement of colleagues who were committed to achieving success at the MVC. It is my recollection that during my testimony I pointed out that our efforts were always directed toward improving customer service for individuals, businesses, the vehicle-buying public, our partners in law enforcement and others. We improved practices and procedures in many areas: creating a safe and secure digital driver license, adopting driver-testing modules and protocols, modernizing scheduling systems, improving access to facilities, implementing the use of credit cards, communicating information to the public, enhancing technology and internet access, and assuring confidence in respect of all of these. To accomplish these objectives often required changing laws, regulations or policies.

One of the issues that seemed to be the focus of my testimony was the licensing of vehicle dealerships and transactions conducted by licensed dealers. The relevant regulations had been designed to ensure that there was accountability by all entities in conducting vehicle transactions. The requirement that every dealer have a physical location, staffed and accessible to consumers, was the very point of our dealer regulatory reform. Any disregard of the dealership protocols is taken out of context.

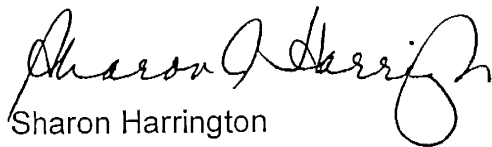
Our discussions highlighted the regulatory revisions addressing dealership procedures to assure customer confidence. The letter I signed concerning transfer of titles at the time of sale was in response to a very specific, real issue. My recollection is that I testified to an acute problem for individuals who wanted to trade a vehicle but, due to mergers, acquisitions and sales of banks and financial institutions had to wait for the actual vehicle documentation – titles and lien documents – which could be difficult to locate. A potential buyer could, theoretically, be held hostage while paperwork was sorted or identified. It was that issue addressed in the letter you propose to reference in your report.

I managed a team of career professionals with whom I was very proud to be associated. As Chief Administrator, I was responsible for the consequences of any actions taken during my tenure. Nevertheless, in hindsight as to the matters raised in your proposed report, I realize that we could have considered other options, such as classifications of dealer licenses. I hope that your report may facilitate discussion to that end.

I affirm that all statements made by me herein are true to the best of my knowledge, information or belief.

Please confirm that this statement will appear in the proposed report, as required by N.J.S.A. 52:9M-12.2c.

Very truly yours,


Sharon Harrington

c: Chadd W. Lackey, Counsel
New Jersey State Commission of Investigation

*Sworn to and subscribed
before me this 20th day of
October, 2015.
Donna L. Jordan*

DONNA L. JORDAN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 3/4/2016

RECEIVED

2015 NOV -5 AM 2:16

STATE COMMISSION OF
INVESTIGATION

Lee Vartan
(212) 513-3513
lee.vartan@hklaw.com

November 4, 2015

BY ELECTRONIC MAIL

Commissioner Joseph F. Scancarella
Chair, State of New Jersey Commission of Investigation
28 West State Street
P.O. Box 045
Trenton, New Jersey 08625-0045

Re: Response of C. Richard Kamin

Dear Commissioner Scancarella:

Pursuant to N.J.S.A. § 52:9M-12.2, please accept the enclosed declaration from my client, C. Richard Kamin, as his response to the Commission of Investigation's draft report. We thank the Commission for extending our time to respond.

Sincerely yours,

HOLLAND & KNIGHT LLP

Lee Vartan

DECLARATION OF C. RICHARD KAMIN

C. RICHARD KAMIN hereby declares under oath:

1. I have devoted a significant portion of my professional life to public service – nearly 25 years in all. For ten years, I proudly represented Morris County in the New Jersey State Assembly. Thereafter, I was honored when Governor Christine Todd Whitman appointed me to serve as the Director of the New Jersey Division of Motor Vehicles (now, the Motor Vehicle Commission (“MVC”)).

2. In 2005, I became a partner at MBI-GluckShaw, New Jersey’s largest public affairs firm. My clients include some of the biggest companies inside and outside of New Jersey. As well, for nearly a decade, I have represented New Jersey Dealer’s Auto Mall (“NJDAM”) located in Bridgeton, New Jersey.

3. On November 21, 2014, I received a subpoena from Chadd Lackey, Counsel to the State Commission of Investigation (“SCI”). The subpoena included a general statement of the subject of the investigation, which read: “Whether, and to what extent, elements of the used car industry in New Jersey have been subverted, corrupted or otherwise distorted by questionable sales practices, the intrusion of various criminal elements, lax state oversight and other illicit activity, including unpaid state tax liabilities.”

4. The subpoena was exceedingly broad, requesting “all documents, records and materials” for the period January 1, 2005 through September 30, 2014, relating to a number of topics, including “[a]ny and all communication records made in connection with services provided for NJDAM, including correspondence, notes, directives, memoranda, progress reports, status reports, e-mail communications, telephone messages, diaries, calendars, meeting notes, meeting agendas and meeting minutes.”

5. After receiving the subpoena, I contacted Mr. Lackey and explained that I had no knowledge of the “intrusion of [] criminal elements” or “other illicit activity” in the used car industry in New Jersey. Mr. Lackey nonetheless directed me to comply with the subpoena, and I did. In fact, I spent hours gathering responsive documents, and ultimately produced hundreds of pages of documents to Mr. Lackey and the SCI.

6. Originally, Mr. Lackey told me both during a telephone conversation and in a letter dated November 21, 2014, that if I produced responsive documents to the SCI, I would not have to provide in-person testimony. Mr. Lackey did not keep that promise. I was summoned to testify before the SCI on April 10, 2015, and I complied. With my attorney present, Mr. Lackey, an investigator, and Commissioner Burzichelli questioned me for several hours. After my interview, I requested a copy of the interview transcript, but was refused; Mr. Lackey explained that SCI rules prohibit disclosure of a witness’ interview transcript to anyone outside of SCI, even to the witness himself.

7. After my testimony, my attorney was in regular contact with Mr. Lackey about the report Mr. Lackey was drafting, the findings of that report, and whether I would be included in that report in any significant way. While Mr. Lackey demurred on sharing the findings of the report, he did state – repeatedly and across several conversations – that I had done nothing wrong and would be treated fairly in the final report.

8. Several times, my attorney asked that a footnote be included in the SCI’s final report stating, in sum and substance, that I had done nothing improper in lobbying the Motor Vehicle Commission on behalf of my client, NJDAM. Ultimately, Mr. Lackey explained that the SCI would consider a footnote in the final report, but wanted to delay any discussion of the proposed footnote until after my attorney and I reviewed the draft report. My attorney and I

understood this as an implicit acknowledgement that our suggested footnote would not be necessary because the report would treat me fairly – as Mr. Lackey had promised – and not seek to wrongly impugn me in any way. We were mistaken.

9. While the SCI only provided me with the 14 pages of the draft report that mention me, the primary finding of the report is clear – the Motor Vehicle Commission ignored its own regulations, which allowed NJDAM (referred to as “Bridgeton” in the draft report) and other multi-dealer locations to remain in business contrary to the law.¹ The proffered reason for the Motor Vehicle Commission doing so: “behind-the-scenes pressure from Trenton lobbyists,” *i.e.*, me. Draft Report at 1.

10. The draft report and its conclusion are simply wrong. To understand why, it is important to understand what NJDAM is and is not.

11. New Jersey Dealer’s Auto Mall has been in business since 1994. While it does provide office space and general administrative support services for used car dealers, NJDAM’s tenants are not “typical” used car dealers. That is, their end customers are not off-the-street consumers, but rather used car dealerships. NJDAM’s tenants are more properly labeled “wholesale dealers” rather than “used car dealers,” but because New Jersey law does not provide for a wholesale dealer’s license, NJDAM’s tenants are forced to apply for used car dealer licenses and comply with associated regulations.² This is a crucial fact to understand.

12. The regulations surrounding used car dealer licenses carry a host of requirements, from minimum office space requirements, to requirements that all sales be consummated at the used car dealer’s office, to minimum business hours during which the licensee or an “authorized

¹ A copy of the draft report provided to me is attached to this declaration as Exhibit A.

² The New Jersey Legislature has authorized only two forms of dealer licenses: a new car dealer license and a used car dealer license. Because wholesale dealers buy and sell used cars, the MVC has attempted to shoehorn them into the only license type that facially applies – used car dealer licenses.

signatory” must be present at the business. These regulations make good sense for used car dealers selling cars to the public. They make less sense for the wholesale dealers occupying New Jersey Dealer’s Auto Mall, who generally sell cars to used car dealerships for later sale to the public.

13. Wholesale dealers typically purchase cars at automobile auctions in New Jersey and neighboring states, making it near impossible for them to comply with the Motor Vehicle Commission’s minimum business hour requirement. Likewise, wholesale dealers sell the cars they purchase at auction to used car dealerships throughout the State, making it near impossible for them to comply with the requirement that sales be consummated at their business location.

14. As the State’s chief regulator of used car licensees, the Motor Vehicle Commission had three possible responses to the structural inconsistency between the business model of wholesale dealers located at NJDAM and other multi-dealer locations and the MVC’s regulatory framework: (A) advocate for the State Legislature to create a wholesaler dealer license distinct from the used car dealer license that recognizes the real differences between used car dealers and wholesale car dealers; (B) enforce the regulations as written and thereby shutdown the wholesale market in New Jersey; or (C) interpret the regulations in a way that allows wholesale dealers to remain in business while still meeting MVC’s obligation to regulate its licensees.

15. As I understand it, the MVC has previously advocated for creation of a wholesale dealer license, but the State Legislature, for whatever reason, has not yet passed legislation creating such a license.

16. Enforcing the regulations as written would largely eliminate the wholesale used car market in New Jersey and leave thousands unemployed; New Jersey Dealer’s Auto Mall

itself provides office space for several hundred wholesale dealers. And, of course, NJDAM and other multi-dealer locations are important to the tax bases and general economic vitality of the local communities in which they sit; NJDAM, for example, is one of Bridgeton's largest, homegrown businesses.

17. I was retained by New Jersey Dealer's Auto Mall to be certain that the MVC understood NJDAM's business and did not interpret its regulations in a way harmful to that business or worse, in a way that ended that business altogether. In short, I was NJDAM's lobbyist, no different than the hundreds of lobbyists – many with previous State government experience – who work in Trenton and advocate on behalf of their clients. The draft report portrays me as something far different, however. According to the draft report, I am a Svengali, “intimately familiar with the inner workings of New Jersey's motor-vehicle regulatory bureaucracy” and able to exert “behind-the-scenes pressure” on that bureaucracy to bend it toward my client's will. Draft Report at 1. I wish that were the case. It is not.

18. The hundreds of pages of documents I provided to the SCI make clear that the Motor Vehicle Commission disagreed with my position as often as it agreed. When the MVC agreed, it was not due to Dick Kamin or any personal or professional relationships I have with the employees at the MVC; indeed, the suggestion that career employees at the Motor Vehicle Commission failed to enforce agency regulations out of deference to me is not only unsupported by the record, but an affront to the countless professionals at the MVC who have dedicated their careers to State service.

19. Rather, when the MVC agreed with NJDAM and me it was because we offered a solution to the central problem confronted by the Motor Vehicle Commission in the used car dealer space: how could the MVC apply its used car dealer regulations in a way that allowed

wholesale dealers to continue to operate without abandoning MVC's regulatory obligations? An important example – and one that the SCI spends some time discussing in its draft report – is the definition of “authorized signatory” in N.J.A.C. § 13:21-15.4(c).

20. That regulation requires the licensee or an “authorized signatory” to be present at the licensee's office during business hours. As noted above, this regulation makes good sense where a used car dealer is selling cars directly to the public. The consumer needs someone to speak with, negotiate with, and where appropriate, discuss complaints or concerns. The same, of course, is not true for a wholesale dealer who is generally not interfacing with the public and, in order to conduct his business, must be outside of the office at automobile auctions in New Jersey and beyond.

21. The draft report notes that the regulation “if properly enforced, would threaten the survival of entities like NJDAM,” draft report at 4, strongly implying that NJDAM and multi-dealer locations generally – and the thousands of jobs they represent – are not worth preserving. I disagree, and so too did the Motor Vehicle Commission. On behalf of NJDAM, I suggested that “authorized signatory” be defined to include employees of NJDAM who are always present during their wholesale dealer-tenants' business hours. By doing so, wholesale dealers, who are generally one person operations, could remain in business, while the MVC, through NJDAM employees, could have on-demand access to the books and records of the wholesale dealer licensees MVC regulates.

22. Contrary to the draft report, MVC employees were not “pressure[d],” draft report at 4, by NJDAM or me to define “authorized signatory” in the way that I suggested. In fact, as the draft report itself notes, MVC employees initially expressed concerns with my proposed definition. *See* Draft Report at 5. It was only after several conversations and meetings that the

MVC became satisfied that my definition both preserved jobs and MVC's ability to effectively regulate wholesale dealer licensees.

23. But the draft report considers and discusses none of this. Instead, it trumpets regulatory purity, even if regulatory purity comes at the cost of thousands of jobs. Equally frustrating, the State Commission of Investigation appears to have abandoned the original subject of its investigation – “intrusion of [] criminal elements” or “other illicit activity” in the used car industry in New Jersey – and instead decided that it can interpret the MVC's regulations better than the MVC can. This is sheer hubris. Even the New Jersey Supreme Court gives deference to agencies in interpreting their own regulations. “We defer to an agency's interpretation of a regulation, within the sphere of its authority, unless the interpretation is plainly unreasonable. We do so because a state agency brings experience and specialized knowledge to its task of administering and regulating a legislative enactment within its field of expertise.” *US Bank, N.A. v. Hough*, 210 N.J. 187, 200 (2012).

24. Finally, the SCI and draft report make no mention of Governor Christie's Executive Order Number 2, which affirmatively requires agencies to be flexible in interpreting their regulations. Just days into his first administration, Governor Christie signed Executive Order Number 2 to “creat[e] an environment that is an attractive venue for entities doing, or seeking to do, business in the State” and to “energize and encourage a competitive economy to benefit businesses.” Executive Order Number 2. There is nothing less energizing to business than to shutter a business, and strict adherence to the Motor Vehicle Commission's statutes and regulations would do precisely that to NJDAM. In short, the MVC chose jobs and the economy over regulatory purity. It is not the job of the SCI to question the choice of the Governor and the Motor Vehicle Commission.

25. Nor is it the job of the SCI to attempt to wrongly sully my good reputation. Yet the draft report does precisely that, and I believe I know why. When I was an assemblyman, I, along with a number of other legislators, attempted to de-fund the SCI; we believed that the SCI's mission was duplicative of that of the Attorney General and county prosecutors, and de-funding the SCI would result in significant savings for New Jersey taxpayers.

26. The SCI has not forgotten that. In fact, immediately after my testimony before the SCI on April 10, my attorney sat with Mr. Lackey in Mr. Lackey's offices. During that conversation, my attorney stated, in sum and substance, that since the SCI agreed I had done nothing wrong, the SCI should avoid extensive mention of me in the final report. Mr. Lackey disagreed, stating in sum and substance, that I was an important part of his investigation. More significantly, he reminded my attorney of how I had attempted to de-fund the SCI as an assemblyman years earlier. When my attorney questioned whether that fact was now coloring Mr. Lackey's view of me, Mr. Lackey quickly retreated and said it was not. But clearly my work in the Assembly was very much at the front of Mr. Lackey's mind when he drafted his report.

27. There is no other explanation for my treatment in the SCI's report. Why does a report that purports to focus on the "intrusion of [] criminal elements" or "other illicit activity" in the used car industry in New Jersey pause to remind the reader of a wholly unrelated SCI report from 13 years earlier? *See* Draft Report at 2, footnote 1. It is gratuitous, and clear evidence that Mr. Lackey and the SCI have a long memory.

28. Equally gratuitous are the pages that Mr. Lackey and the SCI spend parsing through my filings with the New Jersey Election Law Enforcement Commission ("ELEC"). Again, what do my ELEC filings have to do with the "intrusion of [] criminal elements" or "other illicit activity" in the used car industry in New Jersey?

29. And without getting into an extended debate about my ELEC filings, I would make two points. First, much of the e-mail correspondence between the MVC and me involved “routine, ministerial matter[s],” and therefore fell outside of the definition of lobbying according to ELEC. *See* New Jersey Election Law Enforcement Commission Lobbying Manual at 6-7. Second, the SCI report faults me for not disclosing lobbying work done on behalf of NJDAM’s tenants. But as I made clear to Mr. Lackey and the SCI, I was never retained by or even met any NJDAM tenant. I considered any requests or issues I passed along to the MVC on behalf of NJDAM’s tenants to be within the scope of my work for NJDAM. Finally, I would note that it is hypocritical for the SCI to claim that I should have reported to ELEC lobbying done on behalf of NJDAM’s tenants when in its draft report, the SCI commends the MVC’s recent decision not to communicate with me about tenants since I am not an “identified representative.” Draft Report at 12. If I am not an “identified representative” for any NJDAM tenants, what reporting obligations do I have with respect to those tenants?

30. While the State Commission of Investigation clearly has a long memory and is unafraid to bully perceived enemies, I am equally unafraid to say that I was right those many years ago – the SCI should be de-funded. Mr. Lackey and the SCI spent years investigating the used car industry in New Jersey and wasted countless taxpayer dollars to conclude that the MVC should ignore the Governor’s Executive Order Number 2 and be inflexible in interpreting its regulations, even if that means putting thousands out of work. I hope and trust that the Governor, the New Jersey Legislature, and the public will do with the SCI’s report the only thing they can – ignore it and the recommendations that would do real harm to the wholesale used car industry in New Jersey and the thousands of New Jerseyans employed by that industry.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Trenton, New Jersey
November 4, 2015


C. RICHARD KAMIN

Fax Cover Sheet RECEIVED

2015 OCT 23 AM 8:21

DATE: October 22, 2015

TO: Chadd W. Lackey

STATE COMMISSION
INVESTIGATION

FAX NUMBER: 609-633-7366

FROM: Hector M. Maldonado **PHONE NUMBER:** 609-777-1690
Manager, Motor Vehicle Commission, Business Licensing
Services Bureau

Number of pages including cover sheet (3)

Hello Mr. Lackey,

Per the Notice Of Propose Report Dissemination Number 15-10-019, attached is my response to report.

Thank you.

State of New Jersey, Commission of Investigation
Notice of Proposed Report Dissemination Number 15-10-019, Dated October 7, 2015
Release # 15-10-019

Date: October 22, 2015

Re: Response to excerpt of draft report

Statement:

"Hector Maldonado, the Licensing Bureau's current Manager, described them as housing dealers that can be "havens" for wrongdoing, including tax evasion."

Points of clarification:

1. The above statement was obtained from me during informal discussions and not during sworn testimony. I never provided sworn testimony to the SCI.
2. I have been the MVC Business Licensing Services Bureau (BLS) Manager since October 12, 2012, or for approximately 3 years. Since becoming the Manager, in addition to my other responsibilities, I have participated in increased efforts to reduce non-compliant behavior from the used car dealer industry in the ways discussed below.
3. When I used the term "wrongdoing" I was specifically referring to non-compliant regulatory behavior by dealers, as captured in the bureau's compliance reports, and was not intending the term to refer to criminal activity.

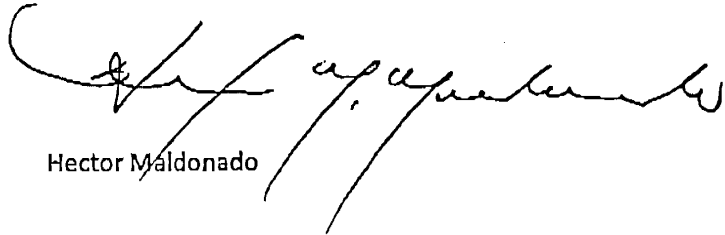
Ongoing efforts

Since becoming Manager of the BLS Bureau, MVC Senior Management, the Bureau staff and I have increased efforts to reduce non-compliant behavior from the used car dealer industry in the following manner:

1. Implemented an on-demand system for electronic temporary tags, which allowed for increased oversight of vehicle transaction activity and better identification of non-compliant dealer actions based on
 - a. Comparison of the record of a dealer's eTemp plates issued to related sales records and title transactions to identify where a dealer is under-reporting sales and thus avoiding payment of sales tax.
 - b. No reported sales, which often signals that a dealer is attempting to pass off the sales as casual (non-dealer) sales to avoid sales tax.
 - c. High volumes of non-resident eTemp issuance which may signal brokering of brokering or eTemp tags which have a street value of \$150 to \$300.
 - d. Auto exporting eTemps (no bona fide sale)
2. Re-established ongoing investigative partnerships and training initiatives with the Division of Taxation, Consumer Affairs, Community Affairs and the Department of Labor, to validate data, assist with actual gross sales, tax assessments, and complaints and licensing definitions.

- 3. Organized a committee to propose dealer regulatory changes.
- 4. Released a resource needs report to Senior Administration to increase investigatory staffing.

The foregoing statements by me are true. I am aware that if the foregoing statements by me are willfully false I may be subject to punishment.



Hector Maldonado

RECEIVED

October 19, 2015

Steven Robertson
[Home Address Withheld]
Philadelphia, PA 19128

2015 OCT 21 AM 10: 01

STATE COMMISSION
INVESTIGATION

Via UPS Overnight

Joseph F. Scancarella - Chair
Robert J. Burzichelli - Commissioner
Rosemary Iannacone - Commissioner
State of New Jersey
Commission of Investigation
28 West State Street
PO Box – 045
Trenton, New Jersey 08625-0045

RE: Notice of Proposed Report - Dissemination Number 15-10-010

Dear Chair, Commissioners:

I am in receipt of an October 7, 2015 letter from State Commission of Investigation (“SCI”) counsel, Chadd Lackey, concerning the SCI’s forthcoming report on the results of the SCI’s investigation of criminal intrusion into used car dealerships.¹ Mr. Lackey indicates in his letter that portions of a forthcoming SCI report intend to criticize conduct by me while serving as Director of the Legal, Regulatory and Legislative Affairs Office within the New Jersey Motor Vehicle Commission (“MVC”). Please accept this letter, signed under affirmation and oath as required, as my written response to those portions of the SCI’s forthcoming report that describe my conduct in a critical context.

At the outset, I believe that it is important for me to address footnote 2 on page 3 of the seven (7) report pages included with Mr. Lackey’s letter.² In the context of the limited and redacted pages of the report that I received, I interpret footnote 2 as an attempt to portray me as unwilling to participate in the SCI’s investigation.

Footnote 2 briefly mentions my initial interview with SCI investigators, with whom I willingly met during my workday at my workplace, despite not being advised of the nature of their investigation or inquiry. The footnote then describes how following that interview, the SCI contacted me via email “to arrange a formal appearance before the SCI[.]” The footnote then declares that I “rejected this request to testify under oath” and quotes an incomplete portion of my email response to the SCI’s “request.” Fairness and accuracy dictate that both the SCI’s email request and my full email response be included in the report. Both are set forth in their entirety below, excluding phone numbers:

From: Lackey, Chadd [mailto:clackey@sci.state.nj.us]
Sent: Tuesday, September 02, 2014 2:17 PM
To: Steven Robertson
Cc: RMursheno@sci.state.nj.us; Massa, Phil
Subject: Multi-Dealer Locations

¹ My receipt of this letter occurred on October 10, 2015.

² References to page numbers are to those page numbers appearing in the portions of the SCI report that I received. It appears clear that the final SCI report page numbers will be different from those cited in this response.

Mr. Robertson,

As the counsel responsible for this inquiry, I wanted to personally thank you for taking time to discuss the multi-dealer locations with Agents Richard Mursheno and Phil Massa. The information you provided furthers our assessment of these locations, therefore I would like to speak with you about appearing before the Commission in Executive Session. Your confidential appearance in Executive Session will enable one of our Commissioners to hear about your experiences with these locations and your ideas to address this issue. I can be reached in the office at [number redacted] or by cell at [number redacted].

Thanks again,
Chadd
Chadd W. Lackey, Esq.
Counsel

From: Steven Robertson [mailto:Steven.Robertson@Phila.gov]
Sent: Tuesday, September 09, 2014 8:25 AM
To: Lackey, Chadd
Subject: RE: Multi-Dealer Locations

Mr. Lackey:

Good morning . . . I apologize for the delay in responding, but I have been away from the office for a few days.

It was certainly my pleasure to speak with Agents Mursheno and Massa, I applaud their, your and the Commission's efforts in examining the issues associated with multi-dealer locations in New Jersey, and so I was glad to assist with their questions where I could.

The information that I provided to Agents Mursheno and Massa in response to their questions constitutes the extent of what I can recall about my experiences addressing multi-dealerships while in my position at the MVC. As you're likely aware, I am no longer employed by the MVC or the State of New Jersey. I have not been involved in multi-dealer issues, or, for that matter, exposed to any used car dealer issue(s), for over 2 years now. ***So, I am quite honestly finding it difficult to see how I can be of any further assistance in your inquiry?*** [(Emphasis added.)]

From my perspective, in order for my appearance before one of your Commissioners to be meaningful, I would need to refresh my memory quite a bit about the history and details related to the MVC's efforts dealing with multi-dealer locations over the years during my time there. I am not inclined at this point to take on that kind of effort, especially given that my responsibilities in my current [position] consume much of my time. I feel strongly that without such preparation, I would not have much to offer beyond what I have already shared with your agents.

As far as I know, many of the attorneys and investigators that I worked with while at the MVC are still employed there and, I imagine, continue to address multi-dealer licensing issues on a continuing basis. It seems to me that your inquiry and your Commissioners would be better served hearing from the folks who continue today to confront multi-dealer location issues in New Jersey rather than hearing from me, someone who has been separated from such matters for an extended period of time. I am certainly no longer as well-versed in the current state of the used car industry and regulatory framework in New Jersey as those still employed with the MVC who presently have responsibility for dealer licensing matters.

I regret that I cannot be more immediately amenable to appearing in an Executive Session, but I have already spent a couple of hours with your investigators reporting everything that I can recall. ***If there is some aspect of your request to appear in Executive Session that I have overlooked, then please let me know.*** [(Emphasis added.)]

Thank you.

- Steve Robertson

As is clear from my full response, I interpreted the SCI's "request to appear in Executive Session" as an invitation to simply repeat what I had previously shared with SCI investigators. Indeed, the SCI request specifically states that the information I provided to the SCI investigators furthered the SCI's assessment of multi-dealer locations and that my appearance in Executive Session was for the purpose of enabling

“one of the SCI Commissioners to hear about [my] experiences with these locations and [my] ideas to address this issue.”

Plainly, when read in context with the SCI’s request, it is not the case, as characterized in footnote 2, that I flatly “rejected [a] request to testify under oath”. My full response clearly reflects only my understanding and reaction to what the SCI specified in its request as the purpose for my appearance in Executive Session. If the SCI’s request for me to appear was solely for the purpose of an SCI Commissioner hearing about my experiences with multi-dealer locations and listening to my ideas about how to address multi-dealer location issues, it was my sincere belief that the SCI would be better served eliciting that information from someone at the MVC who was still confronting multi-dealer location issues in New Jersey. As I explain in my full response, at the time of the SCI’s request, I had not been involved in such matters for an extended period.

At least twice in my response I leave open an opportunity for the SCI to offer further explanation as to how or why my experiences or ideas would be of any further value in their inquiry (see highlighted portions of my response, *supra*). The SCI omits both these opportunities from the selective portion of my email quoted in the report at footnote 2.

I received no reply to my response. Instead, some three months later, in December 2014, I received a subpoena to appear before the SCI. Unlike the stated purpose in SCI’s informal email “request”, the SCI subpoena indicated the purpose of my appearance as follows:

[T]o testify and give evidence as a witness at a private hearing to be held in connection with an investigation [of] . . . [w]hether and to what extent, elements of the used car industry in New Jersey have been subverted, corrupted or otherwise distorted by questionable sales practices, the intrusion of various criminal elements, lax state oversight and other illicit activity, including unpaid state tax liabilities.”

Quite obviously, the import of SCI’s initial, informal email request stands in stark contrast to the purpose expressed in the SCI’s subpoena. If the SCI had disclosed in its initial “request” the true scope of what it sought to accomplish with my appearance in Executive Session, I am sure that my reaction and response would have been completely different.

Footnote 2 concludes by stating, “[u]ltimately the SCI perfected service of process on Robertson through the Clerk of New Jersey’s Supreme Court. As an attorney licensed to practice in New Jersey, he was subject to service under the New Jersey Court rules that designate the Clerk of the Supreme Court as a New Jersey lawyer’s agent for service of process under certain circumstances.” Footnote 2 is silent on the actual “circumstances” that the SCI relied on as support for its use of the Clerks’ Office process for service of the SCI subpoena. The New Jersey Court rule governing use of the of the Clerk’s process for service on an attorney not domiciled in New Jersey expressly limits resort to the process for service in “any actions, including disciplinary actions, that may arise out of the [attorney’s] practice of law and activities related thereto.” R. 1:21-1(a)(1). Quite clearly, the SCI’s investigation, as described in either its informal email request or its subpoena, in no way pertains to an underlying action arising out of my practice of law or activities related thereto in the State of New Jersey.

As noted above, I received the SCI subpoena in December 2014 attached to a letter sent via regular mail from the New Jersey Supreme Court Clerk’s Office. The Clerk’s letter cited the New Jersey Court Rule and its role as the designated agent for service of process in forwarding the SCI’s subpoena.

Despite my doubts about the propriety of the SCI’s use of the Clerk’s Office process to properly effect service of its subpoena, I appeared at the SCI offices in Trenton as required on the return date, January

6, 2015. I traveled by train from Philadelphia to Trenton at my own expense after arranging to be away from my office in Philadelphia for the day. Upon arrival at the SCI offices, I was met by SCI Counsel, Chadd Lackey. Mr. Lackey informed me that the SCI was not prepared to take my testimony. Mr. Lackey's explanation for the SCI not being prepared to take my testimony on the return date of its subpoena was simply that the SCI "didn't think that I would show up."

Why would it be that after the SCI "ultimately perfected service of process on [me]" through the Clerk's office, as is claimed in footnote 2, the SCI would not be prepared to take my testimony on the return date of its subpoena because they "didn't think" that I would show up? I believe the answer is revealed by what happens next.

Although the SCI was not prepared to take my testimony on January 6, 2015, I was nonetheless made to wait for a significant period, apparently to allow SCI staff time to prepare and then personally serve me with a new subpoena. Thus, I can only conclude that the SCI did not trust that service had been properly effectuated as it now claims in footnote 2 of the forthcoming report.

To be clear, the SCI served me with a completely new subpoena – this was not simply an adjournment of the original subpoena return date. I would find out later, as the second, new subpoena return date approached, the SCI readily advises of an adjournment with a simple phone call or email.³

³ The following email exchange occurred on the evening before the new subpoena return date:

From: Lackey, Chadd <clackey@sci.state.nj.us>
Sent: Sun 1/25/2015 6:32 PM
To: Steven Robertson

Please call me at [(phone number redacted)] regarding your executive session scheduled for tomorrow.
Thanks.

Chadd

From: Steven Robertson
Sent: Sun 1/25/2015 9:21 PM
To: Lackey, Chadd <clackey@sci.state.nj.us>;

Mr. Lackey:

I did call your number and reached your voicemail. I am assuming that perhaps you are getting in touch because of the forecast for tomorrow? Can you please advise if the session [is] being adjourned?

Thank you.

- Steve Robertson

From: Lackey, Chadd <clackey@sci.state.nj.us>
Sent: Sun 1/25/2015 10:03 PM
To: Steven Robertson

Sorry I missed your call. Yes the Commissioner is concerned about the weather therefore the session is being adjourned. I [will] contact you with the new day and time.

On January 6, 2015, the return date of the SCI's original subpoena, I traveled by train from Philadelphia to Trenton only to be told that the SCI was not prepared to take my testimony because the SCI did not think that I would show up, even though the SCI claims it "perfected service" of its subpoena. I am personally served with an entirely new subpoena while standing in the SCI outer office. I travel by train from Trenton back to Philadelphia, having lost over a half day of work. The evening before the new subpoena return date, January 26, 2015, that date is adjourned due to anticipated bad weather (see footnote 3, *supra*). The new return date is February 9, 2015. I schedule my absence with my current employer for a third time in a month, and I once again travel by train from Philadelphia to Trenton to appear at the SCI offices.

Despite these additional facts surrounding my cooperation in the SCI investigation, the most the SCI is compelled to include in its report about my participation is an incomplete portion of my response to the SCI's initial, informal email "request" to appear; a characterization of my reply as flatly rejecting the SCI's "request to testify under oath"; a vague reference to a discussion between me and an unidentified former MVC coworker wherein I reference "jurisdiction"; and the SCI's assertion that it ultimately perfected service on me through the Clerk of New Jersey's Supreme Court.

If the SCI intends to limit its version of my participation in its investigation to what is included in footnote 2, then I respectfully request that it remove the entire footnote before release of the final report. As presented, the facts in footnote 2 are incomplete, and, as such, wholly misleading and unfair.

Beginning on page 2, the report refers to what the SCI characterizes as an "informal memorandum prepared by the [MVC]'s Legal, [Legislative] and Regulatory Affairs Office (MVC Legal)." The SCI describes the "preparation and handling of this document" as "unusual in a number of respects" and theorizes that MVC "officials seemed preoccupied with keeping the memorandum from being disclosed." (Page 2 - 3). As support for its characterization and theory related to the memorandum, the SCI cites to language it says I incorporated into the memorandum "asserting the importance of maintaining the document's confidentiality and severely restricting its distribution." (Page 3).

The report, as far as I can tell, intends to neither include a full version of the memorandum nor set forth the language attributed to me. I urge the SCI to include the full memorandum in its forthcoming report with the language that it asserts somehow constitutes a preoccupation with keeping the memorandum from being disclosed. Discussion about the memorandum without the benefit of being able to evaluate it on its face and in context constitutes an incomplete, and therefore unfair and inaccurate, representation of the both the meaning of the memo and its significance. Inclusion of the memorandum is important for two reasons.

First, the language incorporated into the memorandum that is attributed to me can be clearly seen for what it is – boilerplate. Or, as described in the SCI report on page 3, the language is simply "*indicia* of an official memo from MVC Legal[.]" To be sure, although the SCI may consider the language "unusual" or "severely restrictive", such language in my experience appeared regularly in MVC Legal memoranda prepared strictly for internal MVC use only. I specifically recall nearly identical, if not exact, language regularly incorporated in internal memoranda that the MVC Legal staff prepared as guidance to agency personnel who were attempting to resolve identification issues for driver license applicants. I also specifically recall similar language appearing in internal memoranda prepared by other state departments and agencies.

Second, an objective reading of the memorandum clearly conveys its intent, which, despite the SCI's interpretation, is not to amend regulations or rules. (Page 4). Although the SCI's report imprecisely uses several interchangeable labels for the memorandum – substitute regulations (page 2), alternative guidelines (page 2, 3, and 5), guidelines (page 4 and 5), and amended rules (page 4) -, the memorandum, as I recall, on its face purports only to establish guidelines. My recollection of seeing the memorandum in Executive Session is that it clearly attempts to provide guidelines for how to deal with ongoing difficulties

enforcing multi-dealer location licensing requirements. This memorandum is not and was never deemed by me (or, to my knowledge, anyone else on the MVC Legal Staff) to be anything other than guidelines.

The SCI report, on page 3, refers to an email in which I purportedly admonish "MVC personnel . . . to refrain from making any written reference to the existence of "alternative guidelines"". I recall being offered a review of this email when I appeared in Executive Session. I recall that this so-called "admonishment" was not directed at references to the existence of "alternative guidelines" and, as such, was not therefore directed at the memorandum (which I do not recall even being mentioned in the email itself). Rather, as I recall, the email sought to address continued references to "alternative regulations." I recall that the email urges members of the Licensing Bureau to stop referring to "alternative regulations" because no such regulations existed, and, if asked to produce these alternative regulations, the MVC would not be able to do so.

Again, here, I urge the SCI to include in its report the full version of the email so that its content and timing with respect to the creation of the memorandum are clearly evident. The SCI report characterizes the email as me amplifying a manufactured theme by admonishing MVC personnel. However, even without the benefit of having the email now, I nonetheless recall that the email is clear that I was urging personnel to stop making reference to "alternative regulations," it is also clear why I was asking them to do so, and it is equally clear that this request was completely unrelated to the memorandum. If my recollection is inaccurate, the reproduced email shall bear this out.

Beginning on page 6, the SCI report references me telling two unidentified recipients on June 9, 2008 "in a terse email without explanation that ' . . . I have no problem with accepting the Agreement as proof of employment.'" Once again, I urge the SCI to reproduce this email in its entirety in the SCI report, comprised of the entire thread or exchange between sender(s) and recipient(s). The SCI characterizes this email, out of context, as "terse" and "without explanation," despite that, the ellipsis in the quote clearly indicates omitted content and the reference to "the Agreement" clearly demonstrates understanding among the email participants, an understanding which can only be based upon apparently omitted previous discussion. Such characterization in the absence of the full email exchange is tantamount to misrepresentation of the facts. The report is either attempting to portray the truncated text of my email as a direct response to the submission of a letter from NJDAM's attorney that refers to a "contract of employment", which is mentioned in the immediately preceding sentence of the report, or, the report seeks to represent the email as an uninformed, unsupported decision made by me in a vacuum. Either scenario could not be further from the truth.

Foremost, except for a vague reference to submission of the NJDAM attorney letter coinciding with MVC officials "abruptly" agreeing to require proof of employment for dealer signatories as suggested by an unidentified MVC employee in an April 7 email, the report makes no mention of the date of the NJDAM attorney letter nor indicates to whom the letter is addressed. Yet, the report attempts to suggest a direct link between the NJDAM letter and my June 9, 2008 email. So that the facts are clear concerning my email, the SCI is obligated to include the entire exchange leading up to my email and to include a full copy of the NJDAM letter, or, at least identify the date of the letter and to whom it is addressed. Highlighting the need for such context and clarity, at least with respect to chronology, is the sworn testimony of an NJDAM administrative staff member that the SCI cites in footnote 3 on page 7.

In footnote 3, the SCI cites the testimony of a NJDAM administrative staff member who explains, "prior to 2013 we did sign off as signatories . . . but ***we didn't have an employment contract.***" (Page 7)(Emphasis added). The footnote, quoting the same NJDAM employee testimony, continues, "[i]n 2013, 'we did the employment contracts because we were trying to adhere to motor vehicles (MVC) because they were questioning the fact that we were signatories, but not employees.'" (Page 7). If my "terse" email of June 9, 2008 constitutes some tacit, unsupported lone approval for accepting employment agreements or

contracts as proof of employment, as the SCI report attempts to suggest, how can that inference be reconciled with the testimony of this NJDAM employee? If, as the employee testified, NJDAM employees did not have employment contracts prior to 2013, and only “did the employment contracts” beginning in 2013, how is it that a “terse” email from me five years earlier on June 9, 2008 can constitute the decisive approval or announcement of accepting employment agreements or contracts? Moreover, if the NJDAM employee testimony is accurate, that they “did the employee contracts” beginning in 2013, this would have occurred a year after I left the MVC in 2012.

Even without the benefit of the having the entire email exchange leading to my “terse” email, it is clear from the truncated text that I am responding to some discussion about the employment agreements. In no situation would I send an unprompted, unexplained email constituting the sole statement reflecting agency officials’ abrupt agreement on a matter of importance, such as the subject of the employment agreements or contracts used by NJDAM. I do not make decisions without discussion and input as necessary. In fact, as I recall, and as I believe I shared in Executive Session, the employment agreements or contracts were the subject of much discussion among the Legal Staff and representatives of the Attorney General’s office.⁴

Seemingly, to cement the theory that a sole “terse” email from me somehow decided the issue of MVC accepting employment agreements or contracts as proof of employment, the SCI report refers to an email from (name redacted) seeking guidance for MVC investigators trying to perform their inspection responsibilities. (Page 7). The email cited on page 7 includes no date as to when it was sent. The date and all recipients should be included in the report so that there is absolute clarity surrounding this exchange and to be sure that the “proof of employment” mentioned in the email is indeed a reference to employment contracts or agreements and not some other type of proof of employment.⁵

⁴ The Attorney General is “generally charged by law to be the sole legal adviser, attorney or counsel for all officers, departments, boards, bodies, commissions and instrumentalities of State Government . . . and to represent them in all proceedings or actions of any kind which may be brought for or against them in any [New Jersey] court . . . and to interpret for them all constitutions, statutes, laws and legal documents . . . and otherwise control their legal activities, [and] to act as their exclusive legal representative[.]” Florio Executive Order No. 6, Mar. 14, 1990. See also *N.J.S.A.* 52:17A-11. The Attorney General provides legal representation to the MVC “to the same extent as representation is provided to other State agencies[.]” *N.J.S.A.* 39:2A-25.

In the limited report pages that I received, the SCI makes no mention of the advice and counsel that the MVC Legal Staff sought and received from the Attorney General’s Office concerning ongoing litigation and multiple issues related to the enforcement of dealer regulations involving the NJDAM facility. The MVC Legal Staff communicated regularly with its assigned representatives in the Attorney General Office, who evaluated, advised and counseled the MVC on all of the used car dealer-related issues referenced in the SCI report, including the employment agreements, negotiation and settlement of the consent order (page 2), and the guidelines memorandum (pages 2 - 5).

⁵ On page 5, the report cites an email exchange in “late March 2008.” In the first, undated email, the unidentified writer states, in part, “[w]e (Legal) suggest asking for proof of employment (for example, pay stubs or other proof showing employer/employee relationship)[.]” This statement is important for two reasons. First, it indicates that the types of proof of employment discussed within MVC at the time were not limited to employment contracts or agreements. Second, although the writer is unidentified, the email is clearly from a member of the MVC Legal Staff (“we (Legal)”). Thus, the email exchange, in particular the statement quoted above, clearly refutes the SCI’s assertion on page 6 that agency officials “abruptly agreed” to requiring proof of employment as suggested in the April 7 email cited on page 6. Also equally clear then is that agency officials’ “abrupt” agreement did not coincide with nor relate to the submission of the NJDAM attorney letter some three months later in June as the SCI report also suggests. Clearly, as the March exchange demonstrates, agency officials were discussing requiring proof of employment at least weeks before the April 7 email suggesting the same, and certainly well before the NJDAM attorney letter is reportedly submitted.

Failure to include in the report the entire email and connected emails that prompted my June 9, 2008 email, and the absence of any mention of the fact that the MVC sought advice on the employment agreements from the Attorney General's office, distorts the facts. In fairness and out of respect for accuracy, the SCI should disclose in its report every email related to the employment agreements, the full contents of the NJDAM letter, and reference to relevant portions of testimony describing the advice that the MVC sought from the Attorney General's Office.

As to the actual content of the email on page 7, its writer asks:

Now that we have accepted the proof of employment [(the email does not specify whether "the proof of employment" is indeed a reference to an employment agreement or contract - see footnote 5)], are [signatories supposed] to be operating out of the [dealer's] office or do we have to go to the main complex office and ask them to go to the [dealer's] office(?) Since they are not familiar with each [dealer's] day to day operations and cannot respond to questions regarding complaints, do we write them up accordingly(?)

Do we need the proof of employment [(again here, the email does not specify whether "the proof of employment" is indeed a reference to an employment agreement or contract - see footnote 5)] from each dealership (for which) their names appear as the signatory?

With respect to my response to this email, the SCI report concludes that my "response notably did not address [name redacted]'s explicit concern about exactly where the signatories were supposed to be - inside the dealer cubicles or in NJDAM's general reception area[.]" (Page 7). An objective interpretation reveals that the portion of my response set forth in the report that squarely addresses the "explicit concern" in the email is as follows:

"Someone needs to be there during the posted hours, you don't need to go looking for them." (Page 7).

The "there" in my response clearly refers to the dealer's office or cubicle. In other words, the signatories need to be at the dealer's office or cubicle during posted hours. My response cannot be reasonably interpreted to mean that the signatory needs to be anywhere else or in the main complex office during a dealer's posted hours. Otherwise, the second phrase, "you don't need to go looking for them" makes no sense. And, the second phrase, "you don't need to go looking for them" can only mean that investigators did not need to go to the main complex office to look for signatories if they were not at the dealer's office or cubicle. The writer's email only asks whether investigators needed to go to the main complex office to look for the signatories and my response clearly advises that they did not.

I believe my response is clear and concisely addresses the "explicit concern" in the writer's inquiry. There does not appear in the limited portions of the report that I received any indication that the writer did not understand my response or that he/she felt that my response did not address his/her "explicit concern." As far as I can tell from the limited pages of the report that I received, the writer did not email again asking for further clarification, which I would have surely provided if asked.

In closing, I am compelled to include a statement that relates to who I am so that readers of the SCI's final report have more than the abstract, piecemeal portrayal of me represented in the SCI report. I served the State of New Jersey for 12 years, first as a Deputy Attorney General and then as the Director of Legal, Legislative and Regulatory Affairs for the New Jersey Motor Vehicle Commission. During my years of public service, my responsibilities required me to make many decisions, from mundane every day decisions to significant far-reaching decisions. I made no decisions lightly, and made all only after the requisite due consideration for the particular matter at hand.

I stand behind decisions that I make. I stand behind the decisions that I made at the MVC and I stand behind the MVC Legal Staff decisions that I supported. Myself and those on the MVC Legal Staff strived to make every decision only after considering all applicable legal principles, the advice and guidance of the Attorney General's Office, the interests of the agency and the public we served, and the equally important interests of affected business licensees, including used car dealers, operating in industries that the MVC regulates. I do not expect that an outside observer evaluating such decisions many years after the fact will necessarily agree with every decision that the legal staff or I made. To the contrary, as a public servant I have come to expect criticism and disagreement from many places – other attorneys, Administrative Law Judges, Superior Court Judges, legislators, industry representatives, colleagues, the public, and agencies such as the SCI, which are charged with, among other things, conducting fact-finding investigations to bring facts to the attention of the public.

After many years of public service, I learned that I need to make room for the possibility that every decision I make is susceptible to future scrutiny, criticism and challenge by someone evaluating that decision in hindsight. When that occurs, I expect such criticism or disagreement to be expressed in a fair and accurate reporting of the facts surrounding that decision.

What I make no room for, and will never make room for, is a suggestion by anyone that any decision I made is somehow the result of improper influence, "lateral drilling," or merely because my name appears in someone's contact list. (Page 1). Even from the limited pages that I received of the forthcoming report, it seems clear that the SCI intends to infer or outright conclude that decisions made by me and/or members of the MVC Legal Staff relating to the MVC's regulatory oversight of multi-dealer locations were somehow the result of some unspecified influence. If such an inference or conclusion is an end result of the SCI's forthcoming report, it would be neither fair nor accurate.

When stripped of its innuendo and surmise, the disjointed narrative running through the portions of the SCI report that I received reveal only the honest efforts of a legal staff endeavoring, as best it could, to do its job.

As such, I want it formally known as part of this response that I reject and dispute any such inference or conclusion to the contrary.

Thank you.

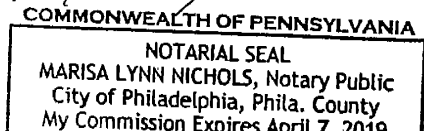
I certify and affirm that all the foregoing statements are true to the best of my knowledge and belief. I understand that if any of the above statements are willfully false, I am subject to punishment.

Respectfully submitted,



Steven Robertson

on this 20th day of October, 2015, Steven Robertson personally appeared before me and signed above and attests the above information is true and correct.





New Jersey Motor Vehicle Commission

P.O. Box 160
Trenton, New Jersey 08666-0160

STATE OF NEW JERSEY

Chris Christie
Governor

Kim Guadagno
Lt. Governor

Raymond P. Martinez
Chairman and Chief Administrator

October 22, 2015

Via Hand Delivery
Chadd W. Lackey, Esq.
Commission of Investigation
28 West State Street
PO Box 045
Trenton, New Jersey 08625-0045

RECEIVED
2015 OCT 22 PM 3:42
STATE COMMISSION OF
INVESTIGATION

Dear Mr. Lackey:

Re: Notice of Proposed Report,
Dissemination Number 15-10-008

I am in receipt of your letter dated October 8, 2015 enclosing a 12-page excerpt from a report of the New Jersey State Commission of Investigation ("SCI") regarding its "investigation involving criminal intrusion into used car dealerships." I have read the report excerpts and provide the following response.

The SCI report contains a significant misquote and several significant mischaracterizations of my testimony and various emails and memos that I wrote and SCI reviewed.

1. Before detailing the first significant mischaracterization, as a preliminary and overarching matter, I reject any implication by the SCI that I have an improper relationship with any outside consultants or any individuals advocating on behalf of New Jersey Dealers Auto Mall ("NJDAM"). I endeavor to provide prompt, appropriate, and courteous customer service whenever I receive any inquiry. I act conscientiously to obtain information from my subordinates and colleagues when necessary so that I can evaluate any issues and determine the appropriate response. However, I do not disclose confidential or non-public information to individuals outside the New Jersey Motor Vehicle Commission (the "MVC").

The April 23, 2013 and April 29, 2013 emails referenced by the SCI reflect my approach to customer service. In those emails I gathered facts, evaluated the issues and agreed with my colleague that no substantive information should be provided. The emails reflect nothing more than that.

2. The SCI report inappropriately construes my actions, along with the MVC's various regulatory actions, over the years as examples of the MVC failing to act, inappropriately relaxing its regulations, or acting inconsistently. That is not the case. The actions cited were all to bring MDLs into compliance with the licensing statutes and regulations. A complete and chronological review of the memoranda and other documents cited by the SCI, along with an understanding of the applicable law, demonstrate that the MVC was taking various approaches to bring the MDLs into compliance and to protect the public from fraudulent title practices. Some background is necessary to put this in context.

I joined the MVC in 2007 as the Director of Business and Government Operations. One of my responsibilities is the supervision and management of the MVC's Business Licensing Services Bureau (the "BLS"). The BLS is responsible for monitoring compliance with the statutes and regulations governing dealer licenses. Ultimately, the MVC is bound and limited by statutes and case law. Under current law, multi-dealer locations ("MDLs") are not illegal and dealers are free to use MDLs as their place of business. The MVC cannot make them illegal or unduly constrain their ability to do business. Over the past eight years, the MVC and I have engaged in numerous attempts to interpret MVC regulations in a manner that allow the MVC to simultaneously bring the businesses located in MDLs into compliance, protect the public and not unduly restrict the business of those dealers located in MDLs.

The MVC's dealer licensing regulations were extensively amended effective March 6, 2006. Additional amendments were made effective August 6, 2007. At that time several dealer license enforcement matters for businesses located at MDLs were pending in the OAL in 2007. The matters were concluded by Consent Order consistent with a June 2007 MVC memorandum detailing how to interpret and enforce the regulations as to the dealers located at MDLs. The consent order and memo set forth a means of applying the regulations to dealers located at MDLs that did not unduly preclude them from doing business.

- a. The SCI report's discussion of the May 24, 2013 memorandum includes quotes taken out of context, generalizations, and inferences that are not supported by the memorandum or other events. The SCI's discussion of this memorandum begins by incorrectly paraphrasing the third paragraph of page two of the memorandum by stating that I "described the MDLs as a 'new business model' that existing statutes and regulations 'did not contemplate'". The SCI then alleges that my position is contradictory because the MVC established rules governing dealer licenses in 2006. The full quote is as follows: "The MVC executive management team decided in 2008 that, since the statutes in place for the licensure of motor vehicle dealers did not contemplate this new 'business model', some flexibility should be applied." (emphasis added). Neither this quote, nor any portion of the same paragraph, makes any reference to regulations. Reference to the "statutes"

is to the underlying dealer licensing statutes first enacted in 1940¹. The use of the term “new” modifying business model was a means of reminding the knowledgeable readers inside the MVC that the dealer business models are likely not the same as they were in 1940.

Similarly, the SCI mischaracterizes the May 24, 2013 memorandum as supporting and/or providing excuses for the MDLs. My description of NJDAM’s proposal regarding signatories was not intended to be an endorsement of NJDAM’s proposal. Moreover, no portion of my memorandum states or implies that, as the SCI report states: “MDL dealers could not help but fail to comply with the regulations” or that “the MVC had no choice but to provide advance notice of such inspections.”

The MVC’s regulations do not require audits to be announced or unannounced. As explained above, the MVC’s goal is to audit the MDLs for regulatory compliance and to bring them into compliance with the dealer licensing statutes and regulations. In aid of this, the MVC has tried both unannounced and announced audits, to determine which method is most effective in allowing the MVC to audit the MDL’s records. The purpose of my memorandum is to present the issues surrounding MDLs for further consideration by individuals charged with interpreting the MVC’s regulations and establishing the MVC’s policies. Further, the June 20, 2013 email response to the May 24, 2013 memorandum cited by the SCI reflects the MVC’s consideration of the practical and policy issues surrounding conducting announced or unannounced audits.

- b. The SCI report incorrectly refers to my June 5, 2014 memorandum as a “complete reversal of course by the MVC on the matter of what constitutes a legitimate dealer signatory.” The SCI report claims that “Licensing Bureau investigators . . . were never officially informed of any such revision in the agency’s policy on signatories. The SCI report’s criticism of the MVC for taking a position that contradicts the memorandum is unfounded. The investigators were not informed as to an official change in policy, because there was not an official change in policy. The purpose of the June 2014 memorandum is to highlight ways that the MVC could amend its regulations to enhance enforcement and MDL compliance, without waiting for statutory changes. The memorandum was not intended to provide any interpretation of the regulations or set forth a new policy to be followed by my subordinates. The memorandum includes suggested regulatory amendments, questions, and discussion points, for further consideration by my supervisors and other regulatory staff within the MVC. To create a new policy, as outlined in the memorandum, the MVC would first have to amend its existing regulations.

¹ The dealer licensing statutes have only been updated to add new types of businesses subject to the licensing requirements (mobile home sellers, leasing dealers), to add the fingerprinting requirement, and to give the Chief Administrator the discretion to extend licenses. The basic structure of the statute remains unchanged.

- c. Along with different approaches to enforcement, the MVC has been exploring both potential regulatory and statutory means of bringing MDLs into compliance with the overarching purpose of the dealer licensing statute which is to avoid title fraud. The March 15, 2010 draft document titled "Recommendations For Changes to Dealer Statutes/Regulations," sent to the newly appointed Chief Administrator, shows this exploration.

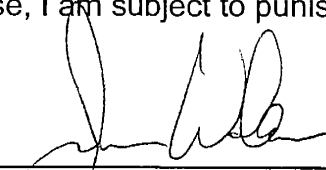
The SCI report misconstrues the purpose of the draft and criticizes the MVC for suggesting the creation of a wholesale dealer license as a proposal "that the MVC pursue an option to keep such dealers in business under a different framework." The recommendation for creating new categories of dealer licenses, including a wholesale dealer license, was a result of the MVC's research and analysis into dealer licensing practices in other jurisdictions. Many other jurisdictions, including New York and Delaware, issue wholesale dealer licenses that allow oversight of wholesale dealers while acknowledging that they pose less of a danger of fraud to the general public. The SCI fails to acknowledge that the MVC's proposal for different categories of dealer licenses includes limits on dealer privileges. For example, the proposal for wholesale dealer licenses includes limits on dealer license plates and the ability to issue temporary registrations.

- d. Similarly, the SCI report criticizes the email I sent to the Chief Administrator along with the draft memo outlining possible statutory and regulatory changes, as being incomplete for not including the MVC's exploration of enforcement positions concerning the authorized signatories at dealers located at MDLs. As explained above, the various positions were aimed at allowing the MVC to determine which approach provided the most effective access to dealer records for audits, enabling the MVC to bring dealers into compliance with the regulations that directly impacted title fraud, and not, as SCI states, "accommodating a request from NJDAM itself for a loophole."

In sum, I would like to emphasize that I and the MVC staff are involved with the regulation of over 20,000 businesses from many industries, including motor vehicle dealers. I strive to serve the public to the best of my ability. I and others at the MVC have worked over the years as an agency, and with other agencies such as the Division of Taxation and the Division of Consumer Affairs, to address many regulatory issues and improve the regulation of them on behalf of the public. We continually work to make improvements to technological tools, Title 13 of the New Jersey Administrative Code, and operational policies and procedures. Some of the internal improvements include: a) implementation of a web-based system for the issuance of temporary vehicle registrations that enables the MVC to better track their issuance and greatly reduce the opportunity for instances of inappropriate dealer issuance; b) implementation of a tracking database for consumer complaints and licensee audits to allow easy access to the history of enforcement matters and the gathering of valuable metrics to aid in enforcement; c) improvements to the business portal website to enable a more efficient process of handling certain types of license requests; d) issuance of enhanced field equipment to assist regulatory compliance officers in more efficiently carrying out their duties; and e) changes to the New Jersey Administrative Code in an effort to address the ever-changing industry practices of the businesses that the MVC regulates. The ongoing analysis of these industries and the many adjustments that the MVC has made (and continues to make) are part of an evolving process. I welcome constructive feedback from the public and private sectors in

order to continue to evolve these operations and to better enforce the laws and regulations in the public's interest.

I certify that the foregoing statements by me are true. I am aware that if any of the statements made by me are willfully false, I am subject to punishment.



James Walker
Director, Business & Government Operations
New Jersey Motor Vehicle Commission



State of New Jersey
Commission of Investigation
609-292-6767
www.state.nj.us/sci