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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, UNION COUNTY
DOCKET NO.: UNN-L-2078-23

MATTHEW J. PLATKIN, Attorney General of the State of New Jersey, and ELIZABETH M. HARRIS, Acting Director of the New Jersey Division of Consumer Affairs, [1]

Plaintiffs,

v.

FEDERAL AUTO BROKERS, INC. d/b/a BM MOTOR CARS, individually and as owners, officers, directors, shareholders, founders, members, managers, agents, servants, employees, representatives and/or independent contractors of FEDERAL AUTO BROKERS, INC.,

Defendant.

Civil Action

[PROPOSED] ORDER GRANTING FINAL JUDGMENT, VOLUNTARY DISMISSAL, AND FEE APPLICATION

THIS MATTER was opened to the Court on the application of plaintiffs Matthew J. Platkin**,** Attorney General of the State of New Jersey, and Elizabeth M. Harris, Acting Director of

[1] In accordance with R. 4:34-4, the caption has been revised to reflect the current Acting Director of the Division of Consumer Affairs.

the New Jersey Division of Consumer Affairs (collectively "Plaintiffs"), by way of Complaint filed on June 14, 2023, alleging that defendant Federal Auto Brokers, Inc. d/b/a BM Motor Cars ("Defendant" or "BM Motor Cars") have, directly or through others, engaged in conduct in violation of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-11 to -229 ("CFA"), the Regulations Governing Motor Vehicle Advertising Practices, N.J.A.C. 13:45A-26A.1 to -A.5 ("Motor Vehicle Advertising Regulations"), and the 2018 Consent Order.

On April 10, 2025, the Court entered an Order granting summary judgment in favor of Plaintiffs on Counts II through IV and denying summary judgment as to Count I. Plaintiffs subsequently filed a Motion for Final Judgment, Voluntary Dismissal, and Fee Application on July 30, 2025 seeking entry of injunctive and monetary relief for violations of the CFA (Count II), the Motor Vehicle Advertising Regulations (Count III), and the 2018 Consent Order (Count IV), voluntary dismissal of Count I without prejudice, and entry of attorneys' fees and costs.

THIS COURT NOW FINDS THAT:

A. The Court has jurisdiction over the subject matter of this action and over the named Defendants.

Based upon the evidence submitted by Plaintiffs in their January 31, 2025 Motion For Summary Judgment and papers in support thereof and Plaintiffs' Motion for Final Judgment, Voluntary Dismissal, and Fee Application pursuant to R. 4:37-1, Defendant has engaged in conduct which comprises 511 violations of the CFA, the Motor Vehicle Advertising Regulations, and the 2018 Consent Order with the following breakdown: (a) Violations of the CFA by Defendant for violations of state and federal law (N.J.S.A. 56:8-4(b)) – 485 violations total; (b) violations of the Motor Vehicle Advertising Regulations for failure to make required disclosures (NJAC 13:45A-26A.5(a)(2)) – 12 violations total; and (c) violations of the 2018 Consent Order

(N.J.S.A. 56:8-13) - 14 violations total.

The Court having considered the papers timely submitted in support of and in opposition to the motions and the arguments of counsel, if any; and for good cause shown:

IT IS on this 20th day of January, 2026;

1. **ORDERED** that Plaintiffs' Count I is hereby dismissed without prejudice.

2. **IT IS FURTHER ORDERED** that **JUDGMENT** is hereby entered in favor of Plaintiffs as to liability against Defendant on Counts II through IV.

3. **IT IS FURTHER ORDERED** that the acts and practices of Defendant BM Motor Cars constitute 511 instances of unlawful practices in violation of the CFA, N.J.S.A. 56:8-11 to -229, the Motor Vehicle Advertising Regulations, N.J.A.C. 13:45A-26A.1 to -A.5, and the 2018 Consent Order.

4. **IT IS FURTHER ORDERED** that, pursuant to the CFA, N.J.S.A. 56:8-8, Defendant BM Motor Cars is prohibited from engaging in any unfair or deceptive acts or practices in the conduct of its business in the State and requiring Defendant to comply with all applicable State and/or Federal laws, rules and regulations, as now constituted or as may hereafter be amended, Including, the CFA and the Motor Vehicle Advertising Regulations.

5. **IT IS FURTHER ORDERED** that, pursuant to the CFA, N.J.S.A. 56:8-13, Defendants shall pay to the Division civil penalties in the total amount of **$793,500.**

6. **IT IS FURTHER ORDERED** that, pursuant to the CFA, N.J.S.A. 56:8-11, Defendant shall reimburse Plaintiffs for their investigative costs in the total amount of **$14,740.24**.

7. **IT IS FURTHER ORDERED** that, pursuant to the CFA, N.J.S.A. 56:8-19, Defendant shall reimburse Plaintiffs for all attorneys' fees incurred in the prosecution of this action in the total amount of **$34,536.00**. *

A copy of this Order shall be served upon all counsel of record within _____ days of the date hereof.

John G. Hudak
HON. JOHN G. HUDAK, J.S.C.

_x___ Opposed

____ Unopposed

*Please see Court's Statement of Reasons attached to this Order hereto.

State of New Jersey v. Federal Auto Brokers d/b/a/ BM Motor Cars

Docket No. UNN-L 2078-23

STATEMENT OF REASONS

BACKGROUND

Approximately five years before this complaint was filed, the state of New Jersey's Division of Consumer Affairs entered into a Consent Order with BM Motor Cars (hereinafter "Defendant"), a used motor vehicle dealership located in Rahway, New Jersey. The Consent Order, issued in 2018, was the result of an investigation into Defendant's deceptive advertising and sales practices. The state's investigation found that Defendant had failed to clearly disclose "Gray Market Motor Vehicles", improperly advertised its vehicles, failed to provide or properly disclose warranty information, and conducted a deceptive promotional program promising consumers a TV set with the purchase of a car that was not delivered as promised.

The 2018 Consent Order required Defendant to improve certain business practices and imposed specific obligations upon the dealership, including the need to provide clear disclosures regarding Gray Market Motor Vehicles and to advertise in compliance with New Jersey's Motor Vehicle Advertising Regulations. The Consent Order also stipulated enhanced civil penalties for any future violations of the New Jersey Consumer Fraud Act, the Motor Vehicle Advertising Regulations, or of the Consent Order itself.

Despite these requirements, Defendant continued to allegedly engage in deceptive practices after the entry of the 2018 Consent Order. Since then, the Division received 31 additional consumer complaints about Defendant's business conduct and proceeded to conduct another investigation. The complaint details ongoing violations, such as failing to itemize charges, improperly advertising vehicles, failing to provide mandated disclosures, selling products or

services that were useless or duplicative, and requiring unlawful waivers of certain legal protections from consumers.

Partial summary judgment was granted to the State on April 10, 2025, and a voluntary stipulation of dismissal for the remaining count of the complaint was entered into on August 1, 2025. The State seeks entry of final judgment as to all Counts in the Complaint and an award of reasonable attorneys' fees.

LEGAL ARGUMENTS

The State's Motion for Entry of Final Judgment and Award of Reasonable Attorneys' Fees

In its motion for final judgment, the State seeks entry of final judgment against Defendant, on Counts II, III, and IV of the complaint, following the Court's grant of partial summary judgment. The State also requests voluntary dismissal of Count I, which alleged unconscionable and deceptive business practices under the CFA, noting that both parties have stipulated to its dismissal in order to preserve judicial resources. The remaining counts for final judgment involve Defendant's violations of various statutes and regulations.

The State argues that it is entitled to significant civil penalties for Defendant's repeated violations, citing statutory provisions such as the CFA, which allows for penalties of up to $10,000 for the first offense and $20,000 for each subsequent offense. The State emphasizes that Defendant's conduct reveals bad faith, prior regulatory violations, and substantial harm to the public. These factors support the imposition of maximum penalties. Additionally, the State seeks recovery of attorneys' fees and investigative costs as authorized by law, amounting to $126,018.24, and requests injunctive relief to prohibit Defendant from further unlawful conduct. The State

concludes that these remedies are appropriate given Defendant's record of noncompliance and the need to deter future violations and protect consumers.

Defendant's Opposition

Defendant argues that the State has presented virtually none of the analysis of the factors for an assessment of a civil penalty award. The State essentially parrots a request for the maximum award possible, which would aggregate to over $7 million in civil penalties (more than any award ever rendered by a court). Defendant engages in the *Kimmelman* factors for each ODS violation, deficient advertisements, and gray market warnings. After evaluating those factors, Defendant requests that the Court award a civil penalty of $19,400.

Regarding attorneys' fees, Defendant argues that the State has not demonstrated a legal or factual basis for such an award. Defendant challenges the State's claimed entitlement under the governing statutes or case law, suggesting that the requested fees are unwarranted and unsupported. Defendant also argues, where applicable, that the amount sought by the State is excessive or inadequately documented, and that any award of fees would be inappropriate absent a clear showing of bad faith, frivolous litigation, or other statutory grounds. To conclude, the Defendant argues that the Court should award $32,940 in reasonable attorneys' fees in this matter.

The State's Reply

The State clarifies that Defendant incorrectly calculated the number of violations, failing to account for 117 violations of the New Jersey Motor Vehicle Certificate of Ownership Law. Altogether, the State asserts there are 511 CFA violations, justifying the imposition of penalties at

or near the statutory maximum. The State further argues that the factors set forth in Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123 (1987), support the imposition of substantial penalties.

The State also contends that it is entitled to reasonable attorneys' fees and investigative costs under the CFA's fee-shifting provisions. The State rejects Defendant's arguments for excluding or reducing these costs, pointing to statutory provisions that authorize recovery and to the reasonable nature of the hours and rates submitted. The State maintains that the work performed was necessary, the fees requested are below market rates, and the degree of litigation success further justifies a full fee award. In conclusion, the State asks the court to grant its requested relief for civil penalties and costs.

LEGAL STANDARD

RPC 1.5. Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) whether the fee is fixed or contingent.

Generally, each litigant is required to bear his or her own counsel fees. *See* NJDPM v. New Jersey Dept. of Corr., 185 N.J. 137, 152 (2005). That said, there are many circumstances in

litigation, governed by R. 4:42-9 and R. 5:3-5, in which a court may award an attorney's fee against the adverse party. Thus, fees may be awarded in actions where counsel fees are expressly permitted by statute. *See* Cox v. Sears Roebuck & Co., 138 N.J. 2, 24-25 (1994) (holding that an award of attorneys' fees is mandatory when proving an unlawful practice under the Consumer Fraud Act).

In any event, an attorney cannot collect from a third party, by means of a court award, an inflated or excessive fee. *See* Helton v. Prudential Property & Cas. Ins. Co., 205 N.J. Super. 196, 200-01 (App. Div. 1985). To support a fee request from a litigation adversary, an attorney must submit an affidavit of services in accordance with R. 4:42-9(b). The affidavit must be sufficiently detailed to permit the court to make specific findings with respect to the reasonableness of the attorney's billing rate and the hours devoted to the matter. *See* Aquino v. State Farm Ins., 349 N.J. Super. 402, 411-12 (App. Div. 2002). In general, minor deficiencies in the affidavit will not preclude a fee award, as long as the applicant shows the number of hours worked and the type of services performed. *See* Elizabeth Bd. Of Educ. V. NJT, 342 N.J. Super. 262, 272-73 (App. Div. 2001).

Kimmelman Factors for Assessing Civil Penalties

(1) The good or bad faith of defendant.
(2) Defendant's ability to pay.
(3) Amount of profits obtained from illegal activity.
(4) Injury to the public.
(5) Duration of the conspiracy.
(6) Existence of criminal or treble damages actions.
(7) Past violations.

In determining the scope of an appropriate civil penalty assessment, lower courts are instructed to rely on the guidance provided by the New Jersey Supreme Court in the seminal case of

Kimmelman v. Henkels & McKoy, Inc., 108 N.J. 123 (1987), which "determined the scope and applicability of the civil remedies set forth in N.J.S.A. 56:9-10(c) for violations of the New Jersey Antitrust Act." Like the CFA, the Antitrust Act "does not mandate that any particular penalty be imposed for a given violation. Rather, the statute merely establishes the maximum penalty permissible and allows a court considerable discretion in determining the penalty appropriate in each case." *Id.* at 136. In addition to any other factors deemed appropriate, the Kimmelman Court delineated the following factors for courts to consider in setting civil penalties: "(1) the good or bad faith of defendant"; "(2) defendant's ability to pay"; "(3) amount of profits obtained from illegal activity"; "(4) injury to the public"; "(5) duration of the conspiracy"; "(6) existence of criminal or treble damages actions"; and "(7) past violations." *Id.* at 137-39.

CONCLUSION

Civil Penalties

Having reviewed the motion papers and the parties' submissions, the Court is presented with a request for final judgment, including civil penalties and an award of attorneys' fees. At the outset, the Court must correct Defendant's erroneous calculation of the total violations. Defendant's opposition asserts only 368 violations of the CFA for odometer disclosure failures, 12 violations of the Motor Vehicle Advertising Regulations, and 14 violations of the 2018 Consent Order. This calculation is incomplete. As the State correctly notes in its papers, the Court's Order and Opinion of April 10, 2025, granted summary judgment not only for violations related to the Odometer Law but also for violations of the state Motor Vehicle Certificate of Ownership Law. These 117 violations constitute separate violations of the CFA pursuant to N.J.S.A. 56:8-4(b).

Therefore, the Defendant dealership is liable for 511 violations of the CFA, and any assessment of penalties must be based on the correct number of violations.

The Court has broad discretion in setting civil penalties under N.J.S.A. 56:8-13, which allows for up to $10,000 for a first violation and up to $20,000 for each subsequent violation. The factors outlined in Kimmelman v. Henkels & McCoy, Inc. provide a useful framework for evaluating the appropriateness of a penalty. An analysis of these factors in this case yields the following. 108 N.J. at 137-39

First, the Court will evaluate the good or bad faith of the defendant. The sheer volume of 511 documented violations over a two-month period is not emblematic of isolated errors. It reflects a pattern of non-compliance that borders on unconscionable commercial practice under the CFA. This systematic failure to adhere to consumer protection laws, particularly after the entry of a prior Consent Order, demonstrates a lack of good faith and observance of fair dealing.

Defendant itself has conceded the second factor, which relates to defendant's ability to pay, is "neutral or does not apply here." No evidence has been presented to suggest an inability to pay a financial penalty, and the Court will not consider it as a potential mitigating factor.

As the State acknowledges, it is difficult to ascertain specific profit directly gained from these violations. This factor does not weigh strongly for either party.

Defendants miss the mark as it relates to how its conduct is injurious to the public. While the dealership correctly notes a lack of specific consumer complaints in the record, the injury here is to the public trust and the integrity of the marketplace. The purchase of an automobile is a significant, complex transaction for consumers. Laws governing odometer disclosures, advertising clarity, and "gray market" warnings are designed to level the playing field between sophisticated dealership and presumably unsophisticated consumer. A dealership's widespread failure to comply with these legal protections diminished consumer confidence and generates disrepute for the industry as a whole (and car dealerships' reputation is not too stellar in the public eye to begin

with). The purpose of the CFA is to protect consumers, and the injury is in the creation of a risk of harm and the degrading of the marketplace.

The conspiracy lasted for about a two-month period. This is a relatively contained duration, which favors the Defendant in this context. However, this must be balanced against the high volume of violations within that period and the existence of a prior consent order.

There is no indication of past criminal proceedings or other civil actions that would make a civil penalty here unduly punitive. This factor does not apply.

The last factor weighs heavily in favor of the State. This is a significant aggravating factor. Defendant was subject to a 2018 Consent Order with the DCA. The current action involves, in some part, violations of the very same Consent Order. The Defendant dealership previously agreed to specific measures to correct their conduct and then breached them. This indicates a reluctant attitude toward legal compliance and strongly supports the need for a deterrent penalty.

To serve the deterrent purpose of the CFA without imposing a disproportionate financial burden, it is recommended that the civil penalty be enhanced to a level that is not completely unprecedented. For the first violation of each category of offense, the Court will exercise its discretion and assess a penalty of $500. For each subsequent violation, the Court will award an enhanced penalty of $1,500 per violation. This structure acknowledges the seriousness of the violations and the number of infractions, while resulting in a total penalty that is related to the nature of the offenses and other awards that have been rendered by courts in this state. The total award under this calculation would be $793,500, a sum that is substantial enough to punish and deter, but not so astronomical as to be entirely unjust.

Attorney's Fees

The State seeks an award of $111,278.00 in attorneys' fees. Defendant opposes this application, arguing the hours billed are excessive, duplicative, and include clerical or administrative work, and proposes a total award of $32,940. Having conducted a careful, critical examination of the fee petition and the parties' submissions, the Court finds that Defendant's objections are largely well-founded. While the State is the prevailing party and entitled to fees, the lodestar must be calculated based on hours reasonably expended. *See* Rendine v. Pantzer, 141 N.J. 292, 335 (1995); *RPC* 1.5(a).

The Court finds the State's proffered hourly rates to be reasonable and below prevailing market rates for similar civil enforcement litigation. No adjustment to the rates is warranted. The central dispute concerns the number of hours claimed. Defendant's detailed analysis convincingly demonstrates excessive time for routine tasks, and a lack of billing judgment. For example, there is excessive time on dispositive motions. The State claims147.5 hours to prepare their summary judgment motion, supporting certification, and statement of facts. For a case involving the CFA's regulatory violations well within the State's expertise, this is emblematic of excessive billing. The time includes significant duplication, with multiple attorneys "reviewing" and "redacting", and tasks that should be considered overhead. A substantial reduction is justified from what the State proffered in its billing submission.

There is also excessive and duplicative time on discovery and depositions. The billing entries reveal a pattern of dedicating excessive hours to routine discovery tasks and the unnecessary deployment of multiple attorneys to singular events. For example, the State billed for two attorneys to attend straightforward depositions of corporate representatives and the State's own investigator,

effectively "double-teaming" these events and duplicating fees. Time spent preparing for these depositions also appears inflated relative to their simplicity.

A significant number of time entries (89.55 hours) contain redacted descriptions in the "Narrative" column, providing only generic activity codes. This lack of specificity prevents the Court from assessing whether these hours were reasonably expended on legal work, as required. *See* Webb v. County Bd. of Educ., 471 U.S. 234, 238 n.6 (1985). These hours cannot be awarded. Time entries for activities like "case strategy meetings," "supervision," and "redacting" by attorneys and a law assistant often represent secretarial work, which is not properly billable to an adversary. *See* Blakely v. Continental Airlines, Inc., 2 F. Supp. 2d 598, 605 (D.N.J. 1998).

Adopting the reasonable hourly rates but applying a rigorous assessment of the hours reasonably expended, the Court accepts the core of Defendant's revised calculation. The record supports a finding that the legal work in this matter should have been performed principally by lead counsel, Sara Koste, with limited, specific assistance. Ms. Koste's rate of $200/hour is reasonable. Based on a review of the billing records and Defendant's objections, the hours reasonably expended by Ms. Koste for legal work (excluding excessive, duplicative, and clerical time) total 160.2 hours. Jesse Sierant's rate of $200/hour is also reasonable. His compensable time is limited to a total of 9.6 hours. All other time billed by Mr. Sierant for supervision, administration, or duplicative attendance at events is excluded. The Court will exclude the time billed for other timekeepers in the State's submissions. Their work was predominantly duplicative, supervisory, or clerical. No hours for these individuals are deemed reasonably expended for which Defendant should be charged.

Defendant also argues that the State should not recover for pre-litigation investigatory costs. N.J.S.A. 56:8-11 provides that "in any action or proceeding brought under the provisions of this

act, the Attorney General shall be entitled to recover costs for the use of the State[,]" and further provides "the court shall also award reasonable attorneys' fees and reasonable costs of suit." The plain language of the statute allows the State to be reimbursed for its investigative costs and fees incurred in the prosecution of this action. Therefore, the State is statutorily entitled to recover these costs in their entirety, amounting to $14,740.24.

In total, the calculated lodestar should be $34,536.00. This award compensates the State for the successful prosecution of their claims based on hours competently and reasonably expended by necessary legal personnel, while excluding fees for excessive or non-legal work. As the New Jersey Supreme Court once enunciated, "hours that are not properly billed to one's client also are not properly billed to one's adversary.'" *See* Rendine, 141 N.J. at 335. When adding both the investigatory costs and the reasonable attorneys' fees together, Defendant shall reimburse the State for a total of $49,276.24.