

John J. McKernan, Jr.
Governor

Susan M. Collins

Commissioner

William N. Lund
Superintendent

Harry W. Giddinge
Deputy Superintendent

Principal Examiners:
Del Pelton
Paul Karass

Outreach/Research:
Michael Brown

Senior Examiners:
Leslie Washburn
Richard Howard
Constance Berthiaume

Examiner:
Douglas Stark



DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF CONSUMER CREDIT PROTECTION
STATE HOUSE STATION 35
AUGUSTA, MAINE 04333-0035
(207)582-8718
Telecopier: 582-5415

ADVISORY RULING #93
JULY 27, 1989

July 27, 1989

Re: Automobile Repossession Accounting/"Overallowance"

Dear

You have asked for clarification regarding the Bureau's position on repossession accounting. The specific situation you pose involves a dealer who sells an automobile, then repossesses that automobile following a default by the consumer. The same dealer then resells the automobile to a second consumer, and the issue relates to the calculation and application of the appropriate credit to be given to the original purchaser when arriving at a deficiency balance or surplus.

Specifically, the accounting at the second sale is often made unclear by the dealer practice of "overallowance". In other words, when the automobile is sold the second time, the second purchaser may trade in a vehicle as part of the purchase process. Although the paperwork may assign a fairly substantial value to the traded-in vehicle, the dealer may argue later, when asked to apply proper credits to the account of the original buyer, that an inflated value has been assigned to the traded-in vehicle in order to encourage the second sale.

After a great deal of thought and deliberation, I have reached the decision that the need for clear accounting outweighs the arguments that such an "overallowance" is necessary for the resale. Beginning September 1, 1989, dealers will be held to the higher of the figure reflected in the resale paperwork, or the actual value of the trade-in automobile. In other words, in most cases the original purchaser's

deficiency balance will be reduced by the full subsequent purchase price of the repossessed car, that price being the sum of cash paid by the subsequent buyer, plus the allowance given that subsequent buyer for his or her trade-in vehicle.

Although this specific issue has not been addressed by Maine courts, precedence can be found in other jurisdictions (see, for example, Harrell Motors, Inc. v. Sweeten, 628 S.W.2d 878 (1982)). In addition, the Bureau in several specific instances has found that the values assigned to the trade-in vehicles have been substantially lower than the amounts received for those same trade-ins when they were subsequently sold on retail used-car lots.

For examinations currently pending, or examinations initiated prior to September 1, 1989, the Bureau will review documentation from the files to determine whether the evidence supports the value assigned to the vehicle by the dealer.

JULY 27, 1989

PAGE 2

The Bureau also notes in passing that resale of repossessed vehicles by dealers is less common than was the case several years ago. The emergence of non-recourse financing, the wide use of large-volume wholesale auctions has changed the course of dealer conduct to a great extent.

I hope this is responsive to your request for the Bureau's opinion in this matter.

Sincerely,

William N. Lund
Superintendent

WNL/bas

Mailed 8/10/89 to

- Advisory Ruling Mailing List
- Sales Finance Companies
- New Car Dealers
- Used Car Dealers