

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Unlicensed Activity of:

No. 12F-BD038-SBD

3 **ARIZONA CAR AND TRUCK STORE,
4 LLC d/b/a ARIZONA CAR AND TRUCK
5 STORE AND DORENE BARNHART,
6 MANAGING MEMBER**

**ORDER TO CEASE AND DESIST;
7 NOTICE OF OPPORTUNITY FOR
8 HEARING; CONSENT TO ENTRY OF
9 ORDER**

2148 W. Deer Valley Rd.
Phoenix, Arizona 85027

Respondents.

8 The Superintendent of Financial Institutions for the State of Arizona (the "Superintendent"),
9 makes the following Findings of Fact and Conclusions of Law and enters the following Order
10 pursuant to Arizona Revised Statutes ("A.R.S.") § 6-137.

11 Pursuant to Titles 6 and 41 of the Arizona Revised Statutes and Title 20, Chapter 4 of the
12 Arizona Administrative Code ("A.A.C."), Respondents are hereby notified that they are entitled to a
13 hearing to contest the allegations set forth in this Order. The Request for Hearing shall be filed with
14 the Arizona Department of Financial Institutions (the "Department") pursuant to A.R.S. § 6-137(D)
15 within **thirty (30) days** of service of this Order and shall identify with specificity the action or order
16 for which review is sought in accordance with A.R.S. § 41-1092.03(B).

17 Pursuant to A.R.S. §§ 41-1092.01(D) and 41-1092.03(B), any person may appear on his or
18 her own behalf or by counsel. If Respondents are represented by counsel, the information required
19 by A.R.S. § 41-1092.03(B) shall be included in the Request for Hearing. Upon the filing of a
20 Request for Hearing, the Department shall issue a Notice of Hearing scheduling the matter for
21 hearing in accordance with A.R.S. § 41-1092.05. **Persons with disabilities may request**
22 **reasonable accommodations such as interpreters, alternative formats, or assistance with**
23 **physical accessibility.** Requests for special accommodations must be made as early as possible to
24 allow time to arrange the accommodations. If accommodations are required, call the Office of
25 Administrative Hearings at (602) 542-9826.

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1 Respondents have the right to request an Informal Settlement Conference, pursuant to A.R.S.
2 § 41-1092.06, by filing a written request no later than **twenty (20) days** before the scheduled
3 hearing. The conference will be held within **fifteen (15) days** after receipt of your request. If an
4 Informal Settlement Conference is requested, a person with the authority to act on behalf of the
5 Department will be present (the "Department Representative"). Please note that in requesting an
6 Informal Settlement Conference, Respondents waive any right to object to the participation of the
7 Department Representative in the final administrative decision of this matter, if it is not settled. In
8 addition, any written or oral statement made by Respondents at such informal settlement conference,
9 including written documentation created or expressed solely for purposes of settlement negotiations,
10 is inadmissible in any subsequent administrative hearing. (See A.R.S. § 41-1092.06 for rules
11 regarding informal settlement conferences.) Conversely, any written or oral statement made by
12 Respondents outside an Informal Settlement Conference is not barred from being admitted by the
13 Department in any subsequent hearing.

14 If Respondents do not request a hearing, this Order shall become final. If Respondents
15 request a hearing, the purpose of the hearing shall be to determine if grounds exist for: (1) the
16 issuance of an order pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the
17 violative conduct and to take the appropriate affirmative actions, within a reasonable period of time
18 prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts,
19 practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S.
20 § 6-132; and (3) an order or any other remedy necessary or proper for the enforcement of statutes
21 and rules regulating motor vehicle dealers pursuant to A.R.S. §§ 6-123 and 6-131.

22 **FINDINGS OF FACT**

23 1. Respondent Arizona Car and Truck Store, LLC d/b/a Arizona Car and Truck Store
24 ("Respondent Company") is an Arizona limited liability company that is not and was not, at any
25 time material herein, authorized to transact business in Arizona as a motor vehicle dealer within the
26 meaning of A.R.S. § 44-281 *et seq.*

1 2. The nature of Respondent Company's, at all times material hereto, is that of a motor
2 vehicle dealer within the meaning of A.R.S. § 44-281(3).

3 3. Respondent Dorene Barnhart ("Ms. Barnhart") is the Managing Member of Respondent
4 Company and is not authorized to transact business in Arizona as a motor vehicle dealer within the
5 meaning of A.R.S. § 44-281 *et seq.*

6 4. On or about June 24, 2011, the Department received a Motor Vehicle Dealer License
7 application from Respondent Company, accompanied by an affidavit, which was signed by Ms.
8 Barnhart. In answering Questions 4 of the application, Respondents disclosed the start date of the
9 dealership as February 1, 2004. In answering Question 9 of the application, Respondents listed five
10 (5) companies to whom they sell retail installment contracts.

11 5. On or about August 29, 2011, the Department sent a letter to Respondents, to the address
12 listed on the application, inquiring as to how many vehicles Respondents have sold on a non-cash
13 basis since April 2004 per month or per year.

14 6. On or about August 31, 2011, Ms. Barnhart responded to the Department's inquiry via
15 email, stating that Respondent Company sold approximately 10 to 14 vehicles per month on a non-
16 cash basis since April 2004.

17 7. The website of the Arizona Department of Transportation ("ADOT")
18 <http://www.azdot.gov/mvd/MotorVehicleDealers/LicensedDealers.asp> and its brochure inform
19 applicants that dealers "selling on a non-cash basis may be required to obtain a motor vehicle sales
20 license from Arizona Department of Financial Institutions."

21 8. Although Respondents obtained a license from the ADOT to engage in the business of a
22 used motor vehicle dealer, Respondents failed to obtain a motor vehicle dealer license from the
23 Department.

24 9. These Findings of Fact shall also serve as Conclusions of Law.

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1 CONCLUSIONS OF LAW

2 1. Pursuant to Title 6 and Title 44, Chapter 2.1 of the Arizona Revised Statutes, the Motor
3 Vehicle Time Sales Disclosure Act, A.R.S. § 44-281 *et seq.*, the Superintendent has the authority
4 and duty to regulate all persons engaged in the motor vehicle dealer business and with the
5 enforcement of statutes, rules, and regulations relating to motor vehicle dealers.

6 2. Pursuant to A.R.S. § 44-281(3), a person engages in business of a motor vehicle dealer if
7 that person "in any year sells on a noncash basis three or more motor vehicles at retail."

8 3. The conduct of Respondent Company and Ms. Barnhart, as alleged above, of selling
9 more than three motor vehicles at retail on a noncash basis constitutes the conduct of engaging in the
10 business of a motor vehicle dealer in the State of Arizona without having first applied for and
11 obtained from the Department a motor vehicle dealer license under Chapter 2.1 of Title 44, in
12 violation of A.R.S. § 44-282(A).

13 4. Neither Respondent Company nor Ms. Barnhart meet any of the exemptions to the
14 licensing requirements set forth in A.R.S. § 44-282(J).

15 5. Pursuant to A.R.S. § 6-132, Respondents' violations of the aforementioned statutes are
16 grounds for a civil penalty of not more than five thousand dollars (\$5,000.00) for each violation for
17 each day.

18 6. The violations, set forth above, constitute grounds for: (1) the issuance of an order
19 pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the violative conduct and
20 to take the appropriate affirmative actions, within a reasonable period of time prescribed by the
21 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and
22 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; and (3) an
23 order or any other remedy necessary or proper for the enforcement of statutes and rules regulating
24 motor vehicle dealers pursuant to A.R.S. §§ 6-123 and 6-131.

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1 **ORDER**

2 1. Respondent Company and Ms. Barnhart shall immediately stop all motor vehicle dealer
3 activity in Arizona until such time as Respondent Company and Ms. Barnhart have obtained a motor
4 vehicle dealer license from the Superintendent as prescribed by A.R.S. § 44-282.

5 2. Respondent Company and Ms. Barnhart shall immediately pay to the Department a civil
6 money penalty in the amount of **ten thousand dollars (\$10,000.00)**. Respondent Company and Ms.
7 Barnhart are jointly and severally liable for payment of the civil money penalty.

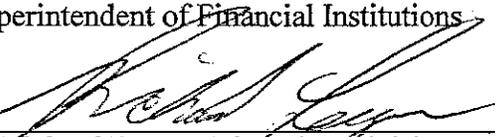
8 3. Respondent Company and Ms. Barnhart shall comply with all Arizona statutes and rules
9 regulating Arizona motor vehicle dealers (A.R.S. § 44-281 *et seq.*).

10 4. The provisions of this Order shall be binding upon respondents, their employees, agents,
11 and other persons participating in the conduct of the affairs of Respondents.

12 5. This Order shall become effective upon service, and shall remain effective and
13 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated,
14 or set aside.

15 SO ORDERED this 1st day of November, 2011.

16 Lauren W. Kingry
17 Superintendent of Financial Institutions

18 By 
19 Richard Fergus, Licensing Division Manager
20 Arizona Department of Financial Institutions

21 **CONSENT TO ENTRY OF ORDER**

22 1. Respondents acknowledge that they have been served with a copy of the foregoing
23 Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the
24 same, are aware of their right to an administrative hearing in this matter, and have waived the same.

25 2. Respondents admit the jurisdiction of the Superintendent and consent to the entry of
26 the foregoing Findings of Fact, Conclusions of Law, and Order.

1 Richard Fergus, Licensing Division Manager
2 ATTN: Paula Calapez
3 Arizona Department of Financial Institutions
4 2910 N. 44th Street, Suite 310
5 Phoenix, AZ 85018

6 AND COPY MAILED SAME DATE by
7 Certified Mail, Return Receipt Requested, to:

8 Arizona Car and Truck Store, LLC
9 d/b/a Arizona Car and Truck Store
10 ATTN: Dorene Barnhart
11 2148 W. Deer Valley Rd.
12 Phoenix, Arizona 85027
13 Respondents

14 Dorene Barnhart
15 46247 N. 43rd Ave.
16 New River, AZ 85087
17 Statutory Agent for Respondents

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19 _____
20 #2364449