

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Unlicensed Activity of:

No. 08F-005 -SBD

3 C.R.I. AUTOMOTIVE, INC. DBA PRE-
4 OWNED CAR CO. AND KERRY L. KELLY,
PRESIDENT

5 5014 North 27th Avenue
6 Phoenix, Arizona 85017

ORDER TO CEASE AND DESIST;
NOTICE OF OPPORTUNITY FOR
HEARING; CONSENT TO ENTRY OF
ORDER

7 Respondents.

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

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

18 Pursuant to A.R.S. §§ 41-1092.01(D) and 41-1092.03(B), any person may appear on his or
19 her own behalf or by counsel. If Respondents are represented by counsel, the information required
20 by A.R.S. § 41-1092.03(B) shall be included in the Request for Hearing. Upon the filing of a
21 Request for Hearing, the Department shall issue a Notice of Hearing scheduling the matter for
22 hearing in accordance with A.R.S. § 41-1092.05. **Persons with disabilities may request**
23 **reasonable accommodations such as interpreters, alternative formats, or assistance with**
24 **physical accessibility.** Requests for special accommodations must be made as early as possible to
25 allow time to arrange the accommodations. If accommodations are required, call the Office of
26

1 Administrative Hearings at (602) 542-9826.

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

15 If Respondents do not request a hearing, this Order shall become final. If Respondents
16 request a hearing, the purpose of the hearing shall be to determine if grounds exist for: (1) the
17 issuance of an order pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the
18 violative conduct and to take the appropriate affirmative actions, within a reasonable period of time
19 prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts,
20 practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-
21 132; (3) the suspension or revocation of Respondents' license pursuant to A.R.S. § 32-1053; and (4)
22 an order or any other remedy necessary or proper for the enforcement of statutes and rules regulating
23 collection agents pursuant to A.R. S. §§ 6-123 and 6-131.

24 **FINDINGS OF FACT**

25 1. Respondent C.R.I Automotive, Inc. dba Pre-Owned Car Co. ("CRI") is an Arizona
26

1 corporation that is not and was not at any time material herein authorized to transact business in
2 Arizona as a motor vehicle dealer or sales finance company within the meaning of A.R.S. §§ 44-281,
3 *et seq.* The nature of CRI's business is that of a motor vehicle dealer within the meaning of A.R.S. §
4 44-281(3) and a sales finance company within the meaning of A.R.S. § 44-281(12).

5 2. Respondent Kerry L. Kelly ("Mr. Kelly") is the President of CRI Mr. Kelly is not
6 and was not at any time material herein authorized to transact business in Arizona as a motor vehicle
7 dealer or a sales finance company within the meaning of A.R.S. §§ 44-281 *et seq.*

8 3. Neither CRI nor Mr. Kelly is exempt from licensure as a motor vehicle dealer or a
9 sales finance company within the meaning of A.R.S. § 44-282(G).

10 4. On December 28, 1995, CRI was approved by the Department as a Motor Vehicle
11 Dealer, license number 0016347. On July 7, 1999, CRI was approved by the Department as a Sales
12 Finance Company, license number 0902995. On September 17, 2002, CRI's Motor Vehicle Dealer
13 license and Sales Finance Company license were closed due to non-renewal.

14 5. On December 12, 2006, the Department received an unsigned notarized Arizona
15 Department of Financial Institutions Sales Finance/Motor Vehicle Dealer Application from CRI.
16 CRI's application revealed four (4) banks or finance companies to which CRI sells retail installment
17 contracts. CRI's application revealed the start date of dealership as February 25, 2005.

18 6. On January 31, 2007, Joanne Medina ("Ms. Medina"), Customer Service
19 Representative for the Department, sent a letter informing CRI that their application was submitted
20 notarized but without a signature. Ms. Medina also requested that CRI provide to the Department a
21 list of vehicles, including the dollar amount, sold on a non-cash basis since February 2005 to the
22 present. Ms. Medina referenced a previous telephone call to Mr. Kelly, in which Mr. Kelly stated
23 that CRI's license with the Arizona Department of Transportation was the only license CRI needed
24 in order to sell vehicles on a non-cash basis and Ms. Medina provided Mr. Kelly with the
25 information to apply for a Motor Vehicle Dealer license. Ms. Medina inquired in her January 31
26

1 letter whether CRI had started the application process.

2 7. On January 31, 2007, the Department received page two (2) of CRI's Arizona
3 Department of Financial Institutions Sales Finance/Motor Vehicle Dealer Application, signed by Mr.
4 Kelly and notarized.

5 8. On February 15, 2007, the Department received a letter from Mr. Kelly that stated
6 one hundred twenty three (123) vehicles were sold on a non-cash basis and the amount financed by
7 CRI was nine hundred thirty four thousand, eight hundred dollars (\$934,800.00).

8 9. On April 19, 2007, during a telephone conversation, Ms. Medina was informed by
9 Mr. Kelly that all one hundred twenty three (123) vehicles were sold on a non-cash retail basis and
10 the amount of nine hundred thirty four thousand, eight hundred dollars (\$934,800.00) is the total
11 amount financed.

12 10. These Findings of Facts shall also serve as Conclusions of Law.

13 CONCLUSIONS OF LAW

14 1. Pursuant to Title 6 and Title 44, Chapter 2.1, of the Arizona Revised Statutes, the
15 Superintendent is charged with the duty to regulate all persons engaged in the motor vehicle dealer
16 business and the sales finance company business and with the enforcement of statutes, rules and
17 regulations relating motor vehicle dealers and sales finance companies.

18 2. CRI's and Mr. Kelly's conduct, as alleged above, constitutes engaging in the conduct
19 of a motor vehicle dealer and sales finance company in Arizona without having first applied for and
20 obtained a motor vehicle dealer license and sales finance company license under Chapter 2.1 of Title
21 44, in violation of A.R.S. § 44-282(A).

22 3. CRI and Mr. Kelly do not meet any of the exemptions to the licensing requirements
23 set forth in A.R.S. § 44-282(G).

24 3. The violations set forth above constitute grounds for: (1) the issuance of an order
25 pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the violative conduct and
26

1 to take the appropriate affirmative actions, within a reasonable period of time prescribed by the
2 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and
3 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; and (3) an
4 order or any other remedy necessary or proper for the enforcement of statutes and rules regulating
5 collection agencies pursuant to A.R.S. §§ 6-123 and 6-131.

6 **ORDER**

7 1. CRI and Mr. Kelly shall immediately stop all motor vehicle dealer activity and sales
8 finance company activity in Arizona until such time as CRI has obtained a motor vehicle dealer
9 license and a sales finance company license from the Superintendent as prescribed by A.R.S. § 44-
10 282.

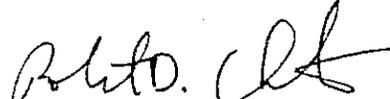
11 2. CRI and Mr. Kelly shall pay to the Department a civil money penalty in the amount
12 of **ten thousand dollars (\$10,000.00)**. CRI and Mr. Kelly are jointly and severally liable for
13 payment of the civil money penalty.

14 3. The provisions of this Order shall be binding upon CRI and Mr. Kelly, their
15 employees, agents and other persons participating in the conduct of the affairs of CRI.

16 4. This Order shall become effective upon service, and shall remain effective and
17 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated
18 or set aside.

19 SO ORDERED this 25 day of July, 2007.

20 Felecia A. Rotellini
Superintendent of Financial Institutions

21 By 
22 Robert D. Charlton
23 Assistant Superintendent

24 **CONSENT TO ENTRY OF ORDER**

25 1. Respondents acknowledge that they have been served with a copy of the foregoing
26

1 Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the
2 same, are aware of their right to an administrative hearing in this matter, and have waived the same.

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

5 3. Respondents state that no promise of any kind or nature has been made to induce
6 them to consent to the entry of this Order, and that they have done so voluntarily.

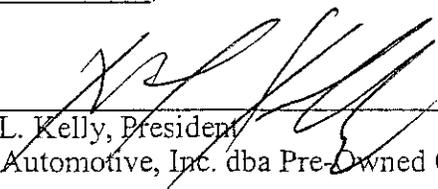
7 4. Respondents agree to cease from engaging in the violative conduct set forth above in
8 the Findings of Fact and Conclusions of Law.

9 5. Respondents acknowledge that the acceptance of this Agreement by the
10 Superintendent is solely to settle this matter and does not preclude this Department, any other agency
11 or officer of this state or subdivision thereof from instituting other proceedings as may be
12 appropriate now or in the future.

13 6. Mr. Kerry L. Kelly, President of C.R.I. Automotive, Inc. dba Pre-Owned Car Co.,
14 represents that he is the President and as such, has been authorized by C.R.I. Automotive Inc. DBA
15 Pre-Owned Car Co. to consent to the entry of this Order on its behalf.

16 7. Respondents waive all rights to seek judicial review or otherwise to challenge or
17 contest the validity of this Cease and Desist Order.

18 DATED this 34 day of AUG, 2007.

19
20 By: 
Kerry L. Kelly, President
C.R.I. Automotive, Inc. dba Pre-Owned Car Co.

21 ...
22 ...
23 ...
24 ...
25 ...

1 ORIGINAL of the foregoing filed this 25 day
of July, 2007, in the office of:

2 Felecia A. Rotellini
3 Superintendent of Banks
4 Arizona State Banking Department
5 ATTN: June Beckwith
6 2910 N. 44th Street, Suite 310
7 Phoenix, AZ 85018

8 COPY mailed same date to:

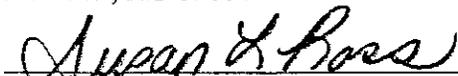
9 Erin O. Gallagher
10 Assistant Attorney General
11 Office of the Attorney General
12 1275 West Washington
13 Phoenix, AZ 85007

14 Robert D. Charlton, Assistant Superintendent
15 Richard Fergus, Division Manager
16 Tammy J. Seto, Senior Examiner
17 Arizona Department of Financial Institutions
18 2910 N. 44th Street, Suite 310
19 Phoenix, AZ 85018

20 AND COPY MAILED SAME DATE by
21 Certified Mail, Return Receipt Requested, to:

22 Kerry L. Kelly, President
23 C.R.I. Automotive, Inc. DBA Pre-Owned Car Co.
24 5014 North 27th Avenue
25 Phoenix, AZ 85017
26 Respondents

C-R-I Automotive Inc., Statutory Agent for:
C.R.I. Automotive, Inc. dba Pre-Owned Car Co.
5014 N. 27th Avenue
Phoenix, AZ 85017

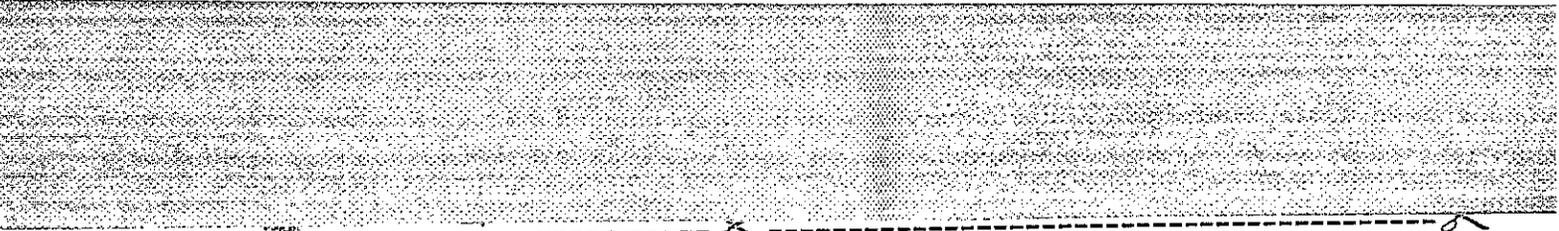


20030, CPA07-157

8-27-07 (Pre-owned Car Co.)
 Arizona Department of Financial Institutions No 113535
 Date Received 8/24/07 Received from C.R.I. Automotive, Inc.
 As payment for the following statutory fees: Cash Check No. 3203

<u>New</u>	<u>Renewal</u>	<u>FEE TYPE</u>	<u>AMT. PAID</u>	<u>CO. TYPE</u>
<input type="checkbox"/>		Application Fee - H.O.	\$ _____	ALB <input type="checkbox"/> Advanced Fee Loan Broker
<input type="checkbox"/>		Application Fee - BR/AD. (x _____)	\$ _____	BA <input type="checkbox"/> Bank
<input type="checkbox"/>	<input type="checkbox"/>	License Fee - H.O.	\$ _____	CA <input type="checkbox"/> Collection Agency
<input type="checkbox"/>	<input type="checkbox"/>	License Fee - BR/AD. (x _____)	\$ _____	CBK <input type="checkbox"/> Commercial Mortgage Banker
# cards _____		Fingerprint Fee (x \$29)	\$ _____	CL <input type="checkbox"/> Consumer Lender
		Examination/Annual Assessment	\$ _____	CU <input type="checkbox"/> Credit Union
		Name/Address Change/Dup. License	\$ _____	DM <input type="checkbox"/> Debt Management
		RI/AM Change	\$ _____	DPC <input type="checkbox"/> Deferred Presentment Company
		Travel Reimbursement	\$ _____	EA <input type="checkbox"/> Escrow Agent
		Test Fee	\$ _____	MT <input type="checkbox"/> Money Transmitter
		Penalties		BK <input type="checkbox"/> Mortgage Banker
		<input type="checkbox"/> Late - Exam	\$ _____	MB <input type="checkbox"/> Mortgage Broker
		<input type="checkbox"/> Late - Renewal	\$ _____	MVD <input checked="" type="checkbox"/> Motor Vehicle Dealer
		<input type="checkbox"/> Rate Deviation / Other	\$ _____	PF <input type="checkbox"/> Premium Finance Company
		<input checked="" type="checkbox"/> Civil Money <u>ULA</u>	\$ <u>10,000</u>	PN <input type="checkbox"/> Pre-Need Funeral Trust
		Quarterly Payments		SF <input type="checkbox"/> Sales Finance Company
		<input type="checkbox"/> Escrow - Real Property	\$ _____	TC <input type="checkbox"/> Trust Company
		<input type="checkbox"/> Escrow - Other	\$ _____	TDB <input type="checkbox"/> Trust Department (Banks)
		OTHER _____	\$ _____	<input type="checkbox"/> OTHER
		TOTAL PAID	\$ <u>10,000</u>	

Received in Accounting
 Received By: [Signature]
 2nd Initials for CASH: _____



Please detach and return with payment

July 25, 2007

To:
 C.R.I. Automotive, Inc.
 dba Pre-Owned Car Co.
 Kerry L. Kelly, President
 5014 North 27th Avenue
 Phoenix, AZ 85017

Payment Due: 08/24/2007 #MVD-0909378
 License Type: Motor Vehicle Dealer
 Payment For: Civil Money Penalty
 Amount: \$10,000.00

Please return to: Arizona Department of Financial Institutions
 Accounting Department
 2910 N. 44th Street, Suite 310
 Phoenix, AZ 85018

Jackie

RECEIVED

AUG 24 2007

DEPT. OF FINANCIAL INSTITUTIONS

Lang & Baker, PLC
ATTORNEYS

Mark S. Diekemper
mdiekemper@lang-baker.com
Ext. 105

8767 Via de Commercio
Suite 102
Scottsdale, Arizona 85258
Telephone 480-947-1911
Fax 480-970-5034

August 24, 2007

Via Hand Delivery

June Beckwith
Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

RE: *ULA #0909378/MVD*
C.R.I. Automotive, Inc. Dba Pre-Owned Car Co. and
Kerry L. Kelly, President
Docket Number: 08F-BD005-SBD

Dear Ms. Beckwith:

Enclosed is the original Assessment with the signed Consent to Assessment and a check in the amount of Ten Thousand Dollars (\$10,000.00) for the Civil Money Penalty.

It is my understanding that C.R.I. has applications pending for both dealer's and sales finance licenses. The applications were submitted in December of 2006; and the Department cashed the checks for the license fees. In light of the payment enclosed, please advise when we can expect the licenses to be issued.

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

Sincerely,

LANG & BAKER, PLC



Mark S. Diekemper

MSD:smh
Enclosures
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