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From the FTC to the Five Boroughs: Auto Enforcement Goes Local

SPEAKERS

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In this episode of *Moving the Metal: The Auto Finance Podcast*, hosts Brooke Conkle and Chris Capurso break down a recent New York City Department of Consumer and Worker Protection (DCWP) enforcement action against a Bronx dealership, covering the violations that led to nearly $130,000 in civil penalties and consumer restitution, the compliance and litigation takeaways for dealers and lenders, and what the appointment of a former FTC Bureau of Consumer Protection director to lead the DCWP signals for the future of city and state-level auto finance enforcement.

Transcript

Podcast: *Moving the Metal: The Auto Finance Podcast*
Episode: From the FTC to the Five Boroughs: Auto Enforcement Goes Local
Hosts: Brooke Conkle and Chris Capurso
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Brooke Conkle (00:10):
Welcome to *Moving the Metal*, the premier legally focused podcast for the auto finance industry. I'm Brooke Conkle, a partner in Troutman Pepper Locke's Consumer Financial Services Practice Group.

Chris Capurso (00:22):
And I'm Chris Capurso, of counsel in Troutman Pepper Locke's Consumer Financial Services Practice Group.

Brooke Conkle (00:25):
Today, with a serious assist from our summer associate, Lauren Lamp, we'll be discussing a recent New York enforcement action against a dealer in the Bronx. But before we jump in, let me remind you to please visit and subscribe to our blogs. We have two great ones that may be of interest to you: troutmanfinancialservices.com and consumerfinancialserviceslawmonitor.com. And also, we have a bevy of other podcasts that you might find interesting. *The Consumer Finance Podcast*, which as you might guess, is all things consumer finance related. *The Crypto Exchange*, devoted to trends, challenges, and legal issues in Bitcoin, blockchain, fintech, and regtech. *FCRA Focus*, a podcast dedicated to all things credit reporting. And finally, *Payments Pros*, a great podcast focused exclusively on the payments industry. All of these insightful shows are available on your favorite podcast platform, so check them out.

Brooke Conkle (01:19):
And speaking of those platforms, if you like what you hear, please leave us a review and let us know how we're doing. We'd love to hear from you. Alternatively, please feel free to reach out to us directly. Our contact information can easily be found on the firm's website, troutman.com. If you enjoy reading our blogs or listening to our podcasts, please also check out our financial services mobile app. To download, simply go to your iOS or Android app store and search for Troutman Pepper Locke. Not only does our app have all of our blog content and podcast episodes in one handy place, it also has a listing of all of the firm's financially focused attorneys. So check it out and see what you think. For today, as I mentioned, we'll be discussing an enforcement action against a dealership in the Bronx. Chris, tell us what it's about.

Chris Capurso (02:06):
Yeah, Brooke, somewhere in the midst of the New York Knicks' run to the NBA title, which hurts my soul as somebody who pulls for the Indiana Pacers, we had the New York City Department of Consumer and Worker Protection pursue this action against a dealership in the Bronx for several issues which are going to sound familiar to those who listen to us. And whether it's the FTC or state-level enforcement, now we're at the city level. So that's one more thing for everybody to be worried about. Obviously, New York City being kind of the city, but still, it's at the local level, so it's something to be careful about. And the New York DCWP, as it is abbreviated, which is not the easiest one… It'd flow better off the tongue if it was something else. DCWP just doesn't really fit. We've got several specific types of violations that the DCWP has pointed out.

Chris Capurso (03:04):
First, and this is going to sound incredibly familiar: bait-and-switch pricing. Cars advertised at one price but sold at a higher one. Straight out of the notorious 97 dealer letters, straight out of everything the FTC has been looking at, straight out of everything the states are starting to look at. This idea of the price advertised to the broader public is not the one that the broader public will come in and buy the car for. That's been noted several times as a problem. New York City is noting it here. One that we don't see as often, but a big issue: operating without a dealer license. You're probably going to get caught for that one, let's be frank. Missing key paperwork in the buying process. We always kind of point this out from the compliance standpoint as one of those things that are the low-hanging fruit…these model notices, the things that you have to provide consumers.

Chris Capurso (03:55):
In this case, some of that was missing. And it's always, if you're going to be looking at a deal jacket, they're going to have a checklist of the things that should be there. Obviously, not all of those items were checked off. And that is a hidden financing details, being kept in the dark about loan terms and total costs. That's kind of a 1B to the 1A of the bait-and-switch advertising, but it's this idea of not actually disclosing what the consumer is going to be paying. And finally, and this is one we've highlighted a little bit in the past and it's something that the FTC is definitely looking at in other areas, this idea of cancellation traps. The idea that cancellation options and forms for consumers are either difficult to implement, difficult to understand, things like that. The FTC has been specifically looking at this idea of subscription services, and if you make canceling more difficult than signing up, that's a problem.

Chris Capurso (04:49):
Obviously, we don't know the exact specifics of what the specific cancellation processes are. We can guess it's probably related to add-on products, things like that, and making it difficult for somebody to cancel, for example, in

the free-look period where if they cancel in that period, assuming they haven't used it, they can get out of it without any kind of cost. Sounds like there could be some potential issues there, but those are kind of the basic issues being highlighted by the DCWP against this dealership. We've talked about what the basis of the claims are, but as you say, the money is where it talks. What was the exact money penalty here?

Brooke Conkle (05:27):
That's exactly right, Chris. Let's talk dollars. One interesting fact here: the dealership admitted wrongdoing and has agreed to pay just under $130,000 in total. And as part of that, there are civil penalties in the amount of $61,499, but also $68,500 in consumer restitution. And the DCWP, as you said, Chris, rolls right off the tongue, the DCWP found more than 350 violations of New York City's consumer protection laws. And on average, the overcharge per car was just under $3,000, so $2,854. And this is part of really a growing trend with the DCWP. They have investigated 106 used car dealerships over the past five years and have awarded consumer restitution of just under $2 million, but also $6.53 million in civil penalties. And from a litigation standpoint, what makes this enforcement action really powerful, one is frankly the admission of wrongdoing.

Brooke Conkle (06:38):
Oftentimes we will see where a member of the industry will enter into a consent agreement but not necessarily admitting liability. Here we do have an admission of liability. But also 350 discrete violations suggests that investigators with the DCWP were reviewing a very large sample of deal files. This is a lot of information that they were looking at. And Chris, just as you said, the settlement requires what kind of pricing? All-in pricing going forward, a prospective compliance obligation. And then also, we've talked about civil penalties, but restitution for individual customers, $68,500 distributed to identifiable victims. So if we're saying an average of about $3,000 per car, this is a restitution that's going to a sizable portion of consumers. So, Chris, when we look at the enforcement action, what are essentially the compliance takeaways for dealers?

Chris Capurso (07:42):
Even before compliance takeaways, I just want to kind of reference the announcement and some of the players in it and why this is in particular very interesting. First off, Mayor Mamdani actually commented on this, which I think is very interesting. He's in the press release talking about pricing and how we need fair pricing for New Yorkers, those types of things. Anytime the mayor…I mean, this is like, I guess, like the governor signing on to a state announcement, right? It's kind of notable, especially someone like Mayor Mamdani. But the other interesting part is the commissioner of the DCWP is Samuel Levine. And we've been talking about this internally. He came from the FTC. He was the head of the Bureau of Consumer Protection, which is now being headed by Chris Mufarrige, which all the dealer folk know from the webinar about the notorious 97.

Chris Capurso (08:38):
That is the role that Samuel Levine had prior to this. And then before that, he was an advisor to then FTC Commissioner Rohit Chopra. So he's got this line of kind of enforcement, regulatory experience going from being an advisor to then Commissioner Chopra, then Director Chopra, and now Advisor Chopra. He's along the line, but everybody knows who Rohit Chopra is. Then he became the director of the Bureau of Consumer Protection in the last administration, and then he went to New York City. And it's one of those things where we talk about kind of the dandelion and how you blow it and all the seeds go everywhere. It's like with the federal government and the way that folks have left it and gone to the states, in this case, gone to a locality. This is the kind of stuff we were wondering if it would happen where you had all of these people who were in the federal government enforcing a

particular type of agenda, in this case the FTC, and now they're being spread out across the states and, in this case, New York City, and bringing those kinds of enforcement thoughts with them. So it's very interesting that now we have New York looking at auto the same way the FTC has looked at it in the past and is currently looking at it, to be honest. But it's just an interesting kind of outflow of all that. But from a compliance standpoint, it's going to be a lot of the things we've talked about with the pricing. You said it: all-in pricing, which is topic of the day in auto finance world. What exactly is all-in pricing? And we've said it, the FTC said it: it's the price you're going to pay absent the government fees. Made it very clear that's what they think it should be. That's the way you should be approaching it, not only for compliance with what the FTC thinks.

Chris Capurso (10:23):
We've already talked about what some of the states have opined on it, like Massachusetts and Louisiana, and now we have New York City saying the same thing. There needs to be some sort of all-in pricing so that it's not a bait-and-switch kind of advertising. In terms of documents, I said it earlier, it's low-hanging fruit to leave out required notices or required disclosures or to not have everything in a deal jacket that one would expect to be in there. So from a compliance standpoint, this is always number one. You got to make sure everything's there, that the consumer is seeing everything, that the consumer is signing everything is also important. But just that your processes with the deal jacket and getting it completed are buttoned up because it's such an easy thing to identify. When a regulator asks for a deal jacket, they look at it and they're like, "Where's this page? Where's this?

Chris Capurso (11:12):
Why'd they sign this page? Did they look at this?" Those are easy questions for an examiner to ask because it's going to be based on a checklist. And those kinds of things are very important. It's just baseline compliance type stuff that should be there. And obviously that's document, that's operational, that's having everything in order. You also have to have your employees trained so that they know how to present those documents, how to get consent on those documents, how to get eyes on those documents. So you want to have training in place for F&I processes, for dealer sales processes, just so that employees understand, one, how important these documents are. I mean, a lot of them are mandated by federal or state law, and they need to understand these are vital pieces. You can't just kind of leave a document out. But also understand just this is part of the flow, this is how the sale needs to go.

Chris Capurso (12:07):
And it needs to be trained up in all of your employees so that they understand that this is part of a compliance mindset and that you need to have all of this type of stuff in order because regulator comes in and they're going to identify these types of issues. That's kind of the compliance thought. Brooke, what do you think on litigation? What are your thoughts on kind of exposure or just kind of general issues that this New York City action brings up?

Brooke Conkle (12:31):
The thing that really sticks out to me is the civil penalty. Oftentimes we will see restitution that's pretty significant, but also we have a penalty here that is essentially the same amount as the restitution. So if you multiply this across a dealer group or a multi-location operation, then the exposure can grow really quickly. And then additionally, we talked about the admission of wrongdoing. We have that here. You'll see some consent orders where parties do not admit to liability, but this DCWP consent order does include an admission. And that admission could potentially be used in private litigation by consumers who bought cars from this dealership. Along

with that, we have the private plaintiff risk. And we talked about sort of the size of the data pool that the DCWP was working with. So they've already divided it into folks who they think have legitimate claims and folks who maybe don't.

Brooke Conkle (13:28):
But if there are customers out there who purchased vehicles who are not part of this restitution, that may be on their radar as a potential claimant, whether it's arbitration or whether it's civil litigation. And then lastly, the potential downstream impact on lenders or assignees. Auto lenders and indirect finance companies that purchased retail, that purchased retail installment sales contracts may want to look at those and be aware of the potential liability under the holder rule. This illustrates why compliance and dealer onboarding really matters for lenders. If a dealer partner has indications of systemic conduct that raises red flags, then the lender's paper is exposed too. Chris, tell us a little bit about the broader trends of the action and what's coming down the pike.

Chris Capurso (14:19):
At the New York City level, Commissioner Levine made it very clear that he was going to continue this kind of crackdown and noted that in the press release. The past five years, the DCWP…now it's started to roll. DCWP, it feels much better. DCWP has secured 1.97 million for consumers in restitution, scored 6.53 million in civil penalties, and investigated 106 used car dealerships. So over five years, they have investigated 106 used car dealerships. Consider that, and a lot of that was prior to having a former head of the FTC Bureau of Consumer Protection in charge of your city-level consumer protection unit. So just kind of do the math on that. They've already been investigating dealerships quite a bit, vowing to continue the crackdown, and now you've got veteran FTC leadership in charge in New York. So as far as New York City goes, I would be on the lookout for that.

Chris Capurso (15:18):
At the state level, I am a native New Yorker, an upstate New Yorker, which is so much better than downstate. Sorry, Bill Foley. But I think there could be an issue where maybe the state wants to do a little bit more based on what the downstate New York City area is doing. Who knows? But I think these issues, even if they are at the New York City level, are things that are going to permeate, especially in the states where we've been continually talking about whether the states are going to pursue their UDAP authority for these types of issues. And it's just another example that this is a very real concern. But Brooke, what do you see as some of the broader trends on your horizon?

Brooke Conkle (16:00):
For litigation, really, it's monitoring those private plaintiff suits. And additionally, if you are an assignee or a lender, really looking at your FTC holder rule exposure now and reviewing those dealer agreement indemnification provisions and really knowing, if you're an auto finance company, knowing what recourse you have against a dealer who has admitted wrongdoing.

Chris Capurso (16:23):
With that, now that I've alienated the entire tri-state area downstate, I apologize to all of you, but the upstate has to fight for everything and we're a great place. But with that, we're going to wrap it up for today's podcast. Thank you to our audience for tuning in. Don't forget to check out our blogs where you can subscribe to the entire blog or just the specific content you find most helpful. That's the consumerfinancialserviceslawmonitor.com and the troutmanfinancialservices.com blogs. And while you're at it, why don't you head on over to troutman.com and sign

up for our Consumer Financial Services mailing list so you can stay abreast of current issues with our insightful alerts and advisories and receive invitations to our Industry Insider webinars. And of course, please mark your calendars for this podcast, *Moving the Metal*, which we will be releasing every two weeks in 2026. That'll be generally on the second and fourth Tuesdays of each month. And as always, if you have any questions or if we can help in any way, please reach out to us. Until next time.

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