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| | : | SUPERIOR COURT OF NEW JERSEY |
| | : | CHANCERY DIVISION - |
| | : | MORRIS COUNTY |
| NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION, | : | DOCKET NO. |
| | : | <u>CIVIL ACTION</u> |
| Plaintiff, | : | |
| v. | : | VERIFIED COMPLAINT TO ENFORCE |
| | : | FINAL AGENCY ORDER AND TO |
| THE CAR HOUSE, LLC, | : | COLLECT ADDITIONAL CIVIL |
| | : | PENALTIES IN A SUMMARY |
| Defendant. | : | PROCEEDING PURSUANT TO |
| | : | <u>R. 4:67-6 AND R. 4:70</u> |
| | : | |

Plaintiff, New Jersey Department of Environmental Protection ("DEP" or "Department"), by and through its attorney, file this Verified Complaint against defendant The Car House ("Defendant"), and alleges as follows:

STATEMENT OF THE CASE

1. Defendant The Car House is a motor vehicle dealership. In violation of N.J.A.C. 7:27-15.7(a)(3), Defendant permitted the sale of a gasoline-fueled motor vehicle in which the catalytic

converters, which are emissions-control devices that were part of the vehicle's original configuration as manufactured, were removed from the vehicle's exhaust system.

2. Tampered vehicle emissions systems, including those in which system components like catalytic converters have been disabled or removed, can adversely affect the air quality of this State because of increased tailpipe emissions of harmful pollutants.

3. Tailpipe emissions from gasoline-fueled motor vehicles with disabled or missing catalytic converters include increased levels of harmful pollutants like hydrocarbons, nitrogen oxides (NOx), and carbon monoxide. These pollutants can trigger or aggravate human respiratory diseases.

4. N.J.A.C. 7:27-15.7(a)(3), which was promulgated under the authority of the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 to -68, prohibits, among other things, the sale of a gasoline-fueled motor vehicle in which an emissions control device installed by the original vehicle manufacturer has been disconnected, detached, deactivated, or in any other way altered or modified from the original design.

5. On October 8, 2019, the Department issued an Administrative Order and Notice of Civil Administrative Penalty Assessment ("AONOCAPA") to Defendant for violating N.J.A.C. 7:27-15.7(a)(3).

6. The AONOCAPA directed the Defendant to, among other things, undertake certain compliance and remedial measures, and assessed a civil administrative penalty. The AONOCAPA also specifically: (i) informed Defendant that it was entitled to request a hearing; (ii) informed Defendant of the means to do so; and (iii) advised Defendant that if a request for a hearing was not received by the expiration of the stated time period, the AONOCAPA would become a Final Agency Order the following day.

7. Defendant failed to request a hearing to challenge the AONOCAPA or its terms within the stated time period, and, accordingly, it became a Final Agency Order of the Department on November 8, 2019. Defendant also failed to comply with the Final Agency Order.

8. The Department now brings this civil action to enforce the Final Agency Order, pursuant to the authority vested in the Department by N.J.S.A. 13:1D-1 to -19; N.J.S.A. 26:2C-1 to -25.2, and the rules and regulations promulgated pursuant thereto.

THE PARTIES

9. The Department is a principal agency in the executive branch of the State. The Department maintains its principal offices at 401 East State Street, Trenton, Mercer County, New Jersey. Pursuant to the authority vested in the Department by N.J.S.A. 13:1D-1 to -19 and N.J.S.A. 26:2C-1 to -25.2, the

Department is empowered to institute legal proceedings to enforce Final Agency Orders and to recover penalties in summary proceedings in Superior Court.

10. Defendant is a limited liability company registered in the State of New Jersey in February 2017, with a business address of 1434 Route 23 North, Butler, New Jersey 07405.

11. At all times relevant to this Complaint, Defendant has operated a used car dealership located at 1434 Route 23, Butler, New Jersey 07405, under the name "The Car House."

FACTUAL ALLEGATIONS

12. On or about August 8, 2019, Defendant, operating as a motor vehicle dealer, offered for sale a gasoline-fueled, 2006 Nissan 350Z coupe motor vehicle, identified by vehicle identification number ("VIN") JN1AZ34E46M353685 (the "Vehicle").

13. On or about August 8, 2019, Defendant prepared a contract ("Contract") with an individual ("Purchaser") pursuant to which Defendant agreed to sell the Vehicle to Purchaser for valuable consideration. Purchaser is a resident of the State of New York.

14. The Contract was executed by Defendant and Purchaser on August 8, 2019, and Purchaser left a monetary deposit with Defendant as an advance toward payment of the purchase price for the Vehicle.

15. On or about August 13, 2019, Purchaser paid Defendant the balance of the purchase price due for the Vehicle, and took possession of the Vehicle.

16. At the time Purchaser paid Defendant the balance of the purchase price for the Vehicle, and took possession of it, the catalytic converters which were part of the original design configuration of the Vehicle as manufactured, had been removed and were missing from the Vehicle.

17. Purchaser received a hard copy of the title to the Vehicle from the Department of Motor Vehicles of the State of New York ("NYDMV") on or about September 9, 2019.

18. Purchaser brought the Vehicle for NYDMV-mandated inspection on or about September 12, 2019. The Vehicle failed inspection because of, among other things, the Vehicle's missing catalytic converters. The NYDMV instructed Purchaser that she had until September 21, 2019 to replace the missing catalytic converters and undertake the other repairs necessary for the Vehicle to pass inspection, and have the Vehicle re-inspected.

19. Thereafter, in September 2019, Purchaser contacted the Department to report that the Vehicle had failed its NYDMV-mandated inspection because of, among other things, the Vehicle's missing catalytic converters, and to seek the Department's assistance to compel the Defendant to address and rectify the issue of the missing catalytic converters.

20. Thereafter, in September 2019, the Department contacted Defendant regarding the Vehicle's missing catalytic converters. Defendant directed the Department to contact Defendant's attorney concerning the issue.

21. The Department then contacted the individual identified by Defendant as its attorney, provided the attorney with information concerning the issue of the Vehicle's missing catalytic converters, and requested Defendant's position with respect to rectifying the issue.

22. The Department received no response from Defendant's purported attorney.

23. Based on receipts the Purchaser provided to the Department, the Purchaser ordered replacement catalytic converters on or about September 22, 2019, and had them installed on or about September 25, 2019. The total cost to Purchaser for purchasing and installing the replacement catalytic converters, and thus returning the Vehicle's emissions control system to its original configuration, amounted to \$625.46.

24. On October 8, 2019, the Department issued and served on Defendant the AONOCAPA.

25. Enumerated paragraph number 2 of the AONOCAPA, under the heading entitled "FINDINGS," stated,

Pursuant to N.J.A.C. 7:27-15.7(a)(3), no owner or operator of a gasoline-fueled motor vehicle shall cause, suffer, allow, or permit the

sale, lease, or offer for sale or lease, of any motor vehicle with a certified configuration in which any element of design installed on such vehicle has been disconnected, detached, deactivated, or in any other way altered or modified from the design of the original vehicle manufacturer."

26. Enumerated paragraph 2 further stated,

"[O]n August 8, 2019, [The Car House] permitted the sale, lease, or offer for sale or lease of a 2006 Nissan 350Z coupe, VIN# JN1AZ34E46M353685, a gasoline-fueled motor vehicle, in which an element of design installed on the vehicle was disconnected, detached, deactivated, altered or modified from the design of the original vehicle manufacturer. Specifically, the catalytic converters (4) were removed from the [vehicle's] exhaust system."

27. Enumerated paragraph number 3 of the AONOCAPA stated that "[b]ased on the facts set forth in these FINDINGS, the Department has determined that CAR HOUSE has violated the Air Pollution Control Act, N.J.S.A. 26:2C-1, et seq., and the regulations promulgated pursuant thereto specifically N.J.A.C. 7:27-15.7(a)(3)."

28. Enumerated paragraph number 4 of the AONOCAPA, located under the heading entitled "ORDER," ordered the Defendant to (a) immediately cease operation or comply with N.J.A.C. 7:27-15.7(a)(3), and (b) within 30 days of the effective date of the AONOCAPA, remit to the Purchaser the sum of \$625.46, reflecting the reasonable costs expended by the Purchaser to return the

Vehicle's emission control system equipment to the original engine manufacturer certified configuration.

29. Enumerated paragraph number 6 of the AONOCAPA, located under the heading "NOTICE OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT AND NOTICE OF RIGHT TO A HEARING," notified Defendant that "[p]ursuant to N.J.S.A. 26:2C-19 and N.J.A.C. 7:27A-3.1 et seq., and based on the above FINDINGS, the Department has determined that a civil administrative penalty is hereby assessed against CAR HOUSE in the amount of \$2,000.00."

30. Enumerated paragraph number 8, under the same heading, stated,

"Pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 26:2C-14.1, CAR HOUSE is entitled to request a hearing. CAR HOUSE shall, in its request for a hearing, complete and submit the enclosed ADMINISTRATIVE HEARING REQUEST AND CHECKLIST TRACKING FORM along with all required information. Submittal or granting of a hearing request does not stay the terms or effect of this ORDER."

31. Enumerated paragraph number 9, under the same heading, stated that "[i]f no request for a hearing is received within twenty (20) calendar days from receipt of this AONOCAPA, it shall become a Final Order upon the twenty-first (21st) calendar day following its receipt, and the penalty shall become due and payable."

32. Enumerated paragraph number 16, under the heading entitled "GENERAL PROVISIONS," stated,

Pursuant to N.J.S.A. 26:2C-19(b) and N.J.S.A. 26:2C-19(d), any person who violates the provisions of the Act, or any code, rule, regulation or order promulgated or issued pursuant thereto, or who fails to pay an administrative penalty in full, shall be liable to a penalty of up to \$10,000 for the first offense, \$25,000 for the second offense, and 50,000 for the third and any subsequent offense. Each day during which the violation continues constitutes an additional, separate and distinct offense.

33. Defendant received the AONOCAPA on October 18, 2019, as demonstrated by a signed, Certified Mail return receipt.

34. As provided by N.J.S.A. 26:2C-14.1 and set forth in the AONOCAPA, Defendant had until November 7, 2019, to request a hearing. Defendant did not request a hearing within the twenty (20) day period from its receipt of the AONOCAPA.

35. The AONOCAPA became final twenty-one (21) calendar days after Defendant's receipt of it, on November 8, 2019, and all its terms and conditions came into full force and effect as of that date. N.J.S.A. 26:2C-14.1.

36. The Defendant is obligated to comply with the AONOCAPA.

37. To date, Defendant has not complied with the terms of the AONOCAPA. In particular, Defendant has not remitted the amount of \$625.46 to the Purchaser, and has not paid the civil administrative penalty assessed in the amount of \$2,000.00.

38. Under N.J.S.A. 26:2C-19(d), each day the Defendants fail to comply with the requirements of the AONOCAPA, including

reimbursing Purchaser her costs of replacing the catalytic converters on the Vehicle and paying the civil administrative penalty assessed in the amount of \$2,000.00, is a separate and distinct violation, subjecting the Defendant to additional penalties of \$10,000 for the first day, \$25,000 for the second day, and \$50,000 for the third day and each subsequent day.

39. The AONOCAPA is enforceable in the Superior Court of New Jersey as a Final Agency Order upon the filing of a summary action for compliance pursuant to R. 4:67-6, and the Department is authorized to seek the collection of statutory penalties in this action pursuant to R. 4:70.

FIRST COUNT

Non-Compliance with AONOCAPA

40. The Department repeats each allegation of the foregoing paragraphs as if fully set forth in their entirety herein.

41. To date, the Defendant has not complied with the requirements of the AONOCAPA, which by its terms and by law is fully enforceable in Superior Court as a Final Agency Order.

42. Pursuant to R. 4:67-6 and the AONOCAPA, the Department is entitled to summary enforcement of the AONOCAPA, requiring the Defendant to:

- a. Remit to the Purchaser the sum of \$625.46; and

- b. Submit payment of the civil administrative penalty assessed against the Defendant in the amount of \$2,000.00.

WHEREFORE, the Department demands entry of an order against the Defendant:

- a. Finding the Defendant in violation of the Final Agency Order;
- b. Requiring the Defendant to comply with the requirements of the Final Agency Order including remitting payment to the Purchaser in the amount of \$642.46;
- c. Requiring the Defendant to comply with the requirements of the Final Agency Order by submitting payment of the civil administrative penalty assessed against it in the amount of \$2,000.00; and
- d. Granting such other relief as the Court deems just and proper.

SECOND COUNT

Violation of Air Pollution Control Act

43. The Department repeats each allegation of the foregoing paragraphs above, as if fully set forth in their entirety herein.

44. To date, the Defendant has not complied with the requirements of the AONOCAPA, which is a Final Agency Order assessing penalties and other relief for Defendant's violation of

N.J.A.C. 7:27-15.7(a)(3), promulgated under the Air Pollution Control Act, N.J.S.A. 26:2C-1 to -68.

45. Pursuant to N.J.S.A. 26:2C-19(d), the Defendant is subject to a civil penalty of up to \$10,000 per day for the first day that Defendant was in violation of the Final Agency Order, or has failed to pay the assessed civil administrative penalty in full; up to \$25,000 for the second day that Defendant was in violation of the Final Agency Order or failed to pay the assessed civil administrative penalty in full; and up to \$50,000.00 per day for Defendant's third day of violation and any subsequent days Defendant has been in violation of the Final Agency Order or has failed to pay the assessed civil administrative penalty in full. Each day's continuance of Defendant's violation of the Final Agency Order or failure to pay the assessed civil administrative penalty in full constitutes an additional, separate, and distinct offense. N.J.S.A. 26:2C-19(d).

WHEREFORE, the Department demands judgment against the Defendant:

- a. Finding the Defendant in violation of the Final Agency Order;
- b. Finding the Defendant has failed to pay the assessed civil administrative penalty in full;
- c. Imposing upon the Defendant, pursuant to R. 4:70 and N.J.S.A. 26:2C-19(d), additional civil penalties for the

Defendant's failure to comply with the Final Agency Order, including the failure to pay the assessed civil administrative penalty in full; and

- d. Granting such other relief as the Court deems just and proper.

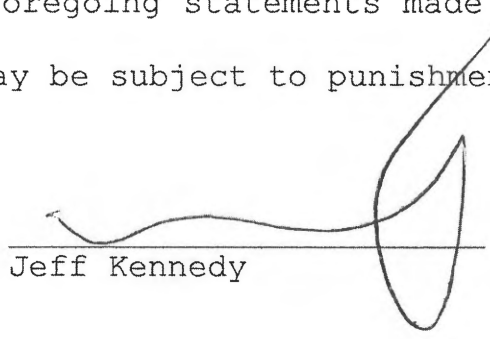
GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff

By: /s Thomas Lihan
Thomas Lihan
Deputy Attorney General

DATED: May 7, 2021

I, Jeff Kennedy, by way of certification, state that:

1. I am employed by the New Jersey Department of Environmental Protection within the Division of Air Quality, Bureau of Mobile Sources.
2. I am the environmental engineer assigned to this case.
3. I have read the Verified Complaint.
4. I certify that the factual allegations contained in the Verified Complaint are true and correct to the best of my knowledge.
5. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.



Jeff Kennedy

DATED:

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Thomas Lihan, Deputy Attorney General, is hereby designated as trial counsel for plaintiff DEP in this action.

CERTIFICATION OF COMPLIANCE WITH RULE 1:38-7(C)

Undersigned counsel further certifies that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff

By: /s Thomas Lihan
Thomas Lihan
Deputy Attorney General

DATED: May 7, 2021

