

IN THE MATTER OF
CHRYSLER CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9072. Complaint, Feb. 10, 1976—Decision, Jan. 9, 1981

This consent order requires, among other things, Aurora Chrysler-Plymouth, Inc., a Seattle, Wash. automobile dealership, to adopt and adhere to the "Reposessed Vehicle Surplus/Deficiency system" established by Chrysler Corporation pursuant to the disposition of Docket 9072 as to Chrysler Corporation. The firm is further required to establish to the reasonable satisfaction of the Commission that it has paid all surpluses realized from February 10, 1973 from reposessed vehicles returned to the company; corrected all prior erroneous credit reports; and provided credit reporting agencies with corrected information.

Appearances

For the Commission: *Dean Fournier, Bruce D. Carter, Sharon S. Armstrong, David Bricklin and Stevan Phillips.*

For the respondent: *Louis D. Peterson, Hillis, Phillips, Cairncross & Martin, Seattle, Wash.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Chrysler Motors Corporation, Chrysler Credit Corporation, and Aurora Chrysler-Plymouth, Inc., corporations, have violated the provisions of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint.

PARAGRAPH 1. *Respondents.* Respondent Chrysler Motors Corporation ("Chrysler Motors") is a Delaware corporation with its office and principal place of business at 12000 Oakland Ave., Highland Park, Michigan. It is a wholly-owned subsidiary of Chrysler Corporation.

Respondent Chrysler Credit Corporation ("Chrysler Credit") is a Delaware corporation with its office and principal place of business at 16250 Northland Drive, Southfield, Michigan. It is a wholly-owned subsidiary of Chrysler Financial Corporation, which is wholly-owned by Chrysler Corporation.

Respondent Aurora Chrysler-Plymouth, Inc. ("Aurora") is a Delaware corporation with its office and principal place of business

at 13733 Aurora Ave. North, Seattle, Washington. It is a wholly-owned subsidiary of Chrysler Motors Corporation.

Allegations stated below in the present tense include the past tense.

PAR. 2. *Respondents' Business.* Chrysler Motors manufactures, distributes and sells motor vehicles, including automobiles and trucks. It also owns all or part of the voting stock of various retail dealers of its vehicles, whose business operations and policies it controls. It is responsible for the acts and practices of Aurora and its other wholly- or partially-owned dealers.

Wholly- or partially-owned as well as independent retail Chrysler dealers are referred to below as "Chrysler dealers."

Chrysler Credit is a finance company which provides retail financing to customers of Chrysler dealers for their retail installment contract purchases of new and used motor vehicles. It also provides wholesale financing for inventories held by Chrysler dealers.

Aurora is a wholly-owned Chrysler dealer selling new and used motor vehicles.

PAR. 3. *Commerce.* Each of respondents participates in some or all phases of the sale, distribution and repossession of motor vehicles, and in the transmission across state lines of contracts, monies, and other business papers related to the extension and enforcement of credit obligations. Respondents each maintain a substantial course of trade in motor vehicles and motor vehicle credit in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. *Retail Installment Contract Sales.* Aurora and most other Chrysler dealers arrange financing through Chrysler Credit or other lenders for retail sales of motor vehicles to their customers. Most of the sales to be financed by Chrysler Credit are executed on a printed "retail installment contract" form provided by Chrysler Credit, naming the customer as buyer and the dealer as seller. This "retail installment contract" form indicates that the contract is to be assigned to Chrysler Credit for value, that the buyer is to be indebted to the dealer or its assignee, and that the dealer or its assignee is to be a secured party holding security interest in the vehicle sold. In the event the buyer defaults, Chrysler Credit and Aurora and other retail Chrysler dealers have also undertaken the obligation, by express or implied representations in their retail installment contracts, to account to the defaulting buyer for any surplus arising from the resale of repossessed collateral. This obligation is reaffirmed after default in notices sent to defaulting buyers by Chrysler

Credit. These representations have the tendency and capacity to lead buyers to a reasonable expectation that Chrysler Credit will refund any surplus.

PAR. 5. *Statutory Duty to Account for Surplus.* The respective rights and duties of the defaulting buyer and secured party after repossession are defined by state commercial law, derived by almost every state from Article Nine of the Uniform Commercial Code, and the retail installment contract. State law requires the secured party, after repossessing and/or disposing of the collateral, to account to the defaulting buyer for any surplus of proceeds from the sale or disposition in excess of the amount needed to satisfy all secured indebtedness, reasonable expenses of retaking, holding, preparing for sale, selling, and the like, and allowable legal costs and fees.

PAR. 6. *Post-Default Procedures Determined by Master Agreement.* In instances where Chrysler Credit as secured party declares a default, it usually repossesses or causes repossession of the vehicle. The procedures followed by Chrysler Credit and the dealer after repossession are determined by a master vehicle financing agreement between Chrysler Credit and the dealer, as well as by the terms of the assignment of each retail installment contract to Chrysler Credit. A substantial majority of the agreements executed between Chrysler Credit and Chrysler dealers in the United States are repurchase or similar agreements (hereinafter "repurchase" agreements).

PAR. 7. *Repurchase Transfer and Payoff.* Pursuant to the agreements described in Paragraph Six, Chrysler Credit in most instances returns the repossessed vehicle to the repurchase dealer and receives from the dealer a payoff, consisting of the unpaid balance of the retail installment contract adjusted by applicable charges and credits. The dealer then resells the vehicle to a third party.

PAR. 8. *Joint Liability.* Under applicable state law, a dealer who receives a transfer of collateral from a secured party pursuant to a repurchase agreement has a duty to properly dispose of the collateral and to account to the defaulting buyer for any surplus. Chrysler Credit also is obligated to ensure that a proper disposition of the collateral is made and that a proper accounting for any surplus is given to the defaulting buyer. Chrysler Credit shares this obligation jointly with the dealer because (1) it continues to be the secured party and continues to be a fiduciary with respect to the defaulting buyer's equity interest; (2) Chrysler Credit, as assignor of the contractual duties of a secured party, continues to be liable for performance of those duties; (3) Chrysler Credit has dictated, controlled and acted jointly with the repurchase dealer in executing

relevant aspects of the credit transaction; and (4) Chrysler Credit has made representations to buyers, as set forth in Paragraph Four, that these duties would be properly performed.

PAR. 9. *Failure to Account for Surpluses.* In a substantial number of instances Chrysler Credit, Aurora, and other Chrysler repurchase dealers, have (1) failed to institute or follow correct procedures for determining the existence or amounts of surpluses realized from the sale of repossessed vehicles, (2) failed to disclose the existence of these surpluses to defaulting buyers, and (3) wrongfully retained such surpluses in violation of the defaulting buyers' statutory and contractual rights. The failure to identify and disclose surpluses has concealed their existence from these consumers and consequently few have asserted their rights under applicable state law. The failure to remit surpluses has deprived numerous consumers of substantial amounts of money rightfully theirs and has unjustly enriched Chrysler Credit and its repurchase dealers. These practices are therefore unfair and deceptive.

PAR. 10. *Misrepresentation of Right to Deficiency.* Chrysler Credit provides to dealers and Chrysler dealers make use of retail installment contracts which represent that the seller or its assigns shall seek any deficiency due on a retail installment contract. In many instances state law limits or denies this right. These representations have the tendency and capacity to induce defaulting buyers to pay sums to which the dealer, Chrysler Credit, or its assigns is not entitled or otherwise to change their position to their detriment. Therefore, use of these misleading contracts is unfair and deceptive.

PAR. 11. *Failure to Disclose Material Facts Concerning Redemption.* Chrysler Credit and its repurchase dealers fail, in some instances, to inform defaulting buyers of facts necessary to their exercise of the right of redemption granted by state law, including but not limited to (1) the nature and duration of the right to redeem, and (2) the amount required to redeem. This failure to disclose material facts has the tendency and capacity to hinder defaulting buyers in exercising the right to redeem and is therefore an unfair and deceptive act or practice.

PAR. 12. *Owned Chrysler Dealers Using Non-Chrysler Credit Financing.* Aurora and a number of other wholly- or partially-owned Chrysler dealers engage in the acts and practices ascribed to dealers in Paragraphs Nine, Ten and Eleven, in instances where retail installment financing for their customers is obtained from finance institutions other than Chrysler Credit. These acts and practices, for the reasons stated above, are unfair and deceptive.

PAR. 13. *Conclusion.* The acts and practices of respondents set

forth in Paragraphs Nine, Ten, Eleven and Twelve are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER AS TO AURORA CHRYSLER-PLYMOUTH, INC.

The Commission having heretofore issued its complaint charging Aurora Chrysler-Plymouth, Inc. and others with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint together with a proposed form of order; and

Respondent Aurora Chrysler-Plymouth, Inc., its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by said respondent of the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint, and waivers and other provisions in accordance with the Commission's Rules; and

The Secretary of the Commission having thereafter, in accordance with Section 3.25(c) of its Rules, withdrawn this matter from adjudication as to Aurora Chrysler-Plymouth, Inc.; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days; now, in further conformity with the procedure prescribed in Section 3.25(5) of its Rules, the Commission makes the following jurisdictional findings and enters the following order:

1. Respondent Aurora Chrysler-Plymouth, Inc. is a Delaware corporation with its principal place of business at 13733 Aurora Ave. North, Seattle, Washington.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding as to Aurora Chrysler-Plymouth, Inc., and of said respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered. That respondent Aurora Chrysler-Plymouth, Inc., a corporation, and its successors, assigns, officers, agents, representatives and employees, and any corporation, subsidiary, division or

device through which they act directly or indirectly, shall forthwith (A) adopt and adhere to the "Repossessed Vehicle Surplus/Deficiency" system established by Chrysler Corporation pursuant to the disposition of Docket 9072 as to Chrysler Corporation, and (B) deliver a copy of the Repossessed Vehicle Surplus/Deficiency system to all appropriate supervisory personnel.

II.

It is further ordered, That respondent shall, no later than 60 days after service of this Order:

A. Establish to the reasonable satisfaction of the Commission that (1) all surpluses generated from repossessed vehicles returned to respondent between February 10, 1973 and the date of service of this Order have been paid, and (2) for each such surplus, corrected information has been provided to any credit reporting agency to which respondent had previously reported the existence of a deficiency.

B. File with the Commission a written report setting forth in detail the manner and form in which respondent has complied with this Order.

III.

It is further ordered, That respondent notify the Commission at least 30 days prior to any dissolution or other proposed change in the corporate respondent (such as assignment or sale resulting in the emergence of a successor corporation or corporations), or any other corporate change (including the creation or dissolution of subsidiaries) which may affect compliance obligations arising out of this Order.

IN THE MATTER OF
INTERNATIONAL TELEPHONE & TELEGRAPH
CORPORATION, ET AL.

Docket 9000. Interlocutory Order, Jan. 21, 1981

Granting complaint counsel leave to withdraw and dismissing "Motion for Disciplinary Action."

ORDER

On October 15, 1980, complaint counsel in this matter filed a "Motion For Disciplinary Action," asking that the Commission take "appropriate steps" against respondent's counsel for allegedly improper conduct. They asked the Commission to direct Administrative Law Judge Miles J. Brown to make certain findings under Rule of Practice 4.1(e) in a show cause hearing, and they asked the Commission to defer any disciplinary action until it had the results of the ALJ's investigation. The ALJ earlier denied complaint counsel's motion that he conduct such a hearing.

Very briefly, the subject of the requested investigation and the alleged cause for disciplinary action is a sequence of events over the course of discovery in this matter from 1976 to 1980. Those events, described in some detail in the pleadings, generated questions by complaint counsel about a) the thoroughness of respondent's search for and production of documents responsive to a 1976 subpoena and b) the duty of respondent and its counsel to supplement that subpoena response with additional material that was either newly discovered or, as suggested, intentionally withheld.

On December 1, 1980, respondent's counsel filed their "Opposition," accompanied by an affidavit. They denied that there was any improper conduct or any basis for disciplinary action, and they explained the questioned circumstances in detail. They also indicated that they had been engaged in extensive discussions with Bureau of Competition attorneys since the October 15 motion was filed and that the information they had provided would lead complaint counsel to withdraw their motion for disciplinary action. Still, respondent's counsel alleged that charges contained in the motion were made without adequate investigation, that they were incorrect, and that they had received damaging publicity. Therefore, respondent's counsel request that the Commission issue a press release stating its reasons for dismissing complaint counsel's motion.

As respondent's counsel indicated, on December 1, 1980, complaint counsel filed a "Reply" to the "Opposition" in which they withdrew