

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Unlicensed Activity of:

No. 12F-BD078-SBD

3 **DRIVE NOW AUTO SALES, LLC AND**
4 **BARRY NICKS, MEMBER**
700 White Mountain Road
5 Show Low, AZ 85901

CONSENT ORDER

6 Respondents.

7 On May 30, 2012, the Arizona Department of Financial Institutions (“Department”) issued an
8 Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of Order, alleging
9 that Respondent had violated Arizona law. Wishing to resolve this matter in lieu of an administrative
10 hearing, Respondents consent to the following Findings of Fact and Conclusions of Law, and
11 consents to the entry of the following Order.

12 FINDINGS OF FACT

13 1. Respondent Drive Now Auto Sales, LLC (“Drive Now”) is an Arizona limited liability
14 company that is not and was not at any time material herein authorized to transact business in
15 Arizona as a motor vehicle dealer within the meaning of A.R.S. § 44-281(3) or a sales finance
16 company within the meaning of A.R.S. § 44-281(12).

17 2. Respondent Barry Nicks (“Mr. Nicks”) is the 100 percent (100%) Member of Drive Now,
18 and is not and was not, at any time material herein, authorized to transact business in Arizona as a
19 motor vehicle dealer within the meaning of A.R.S. § 44-281(3) or as a sales finance company within
20 the meaning of A.R.S. § 44-281(12).

21 3. Drive Now and Mr. Nicks (collectively, “Respondents”) are not exempt from licensure as
22 a motor vehicle dealer or as a sales finance company within the meaning of A.R.S. § 44-282(G).

23 4. On February 24, 2012, the Department received a Motor Vehicle Dealer Application
24 from Respondents. On February 29, 2012, the Department received an Amended Motor Vehicle
25 Dealer Application. The Motor Vehicle Dealer Application and Amended Application (“MVD
26 Application”) revealed that the start date of the dealership was on December 22, 2008. The MVD

1 Application stated that Respondents hold their own installment contracts, in the total dollar amount
2 of one hundred thousand dollars (\$100,000.00). The MVD Application disclosed that Respondents
3 do not sell their retail installment contracts to banks, finance companies or persons. Further, the
4 MVD Application disclosed that Respondents will engage in secondary motor vehicle finance
5 transactions, aka title loans or sale lease-back transactions.

6 5. On February 29, 2012, the Department received a Sales Finance Company Application
7 which revealed the same information listed on the Motor Vehicle Dealer Application.

8 6. On March 12, 2012 and March 14, 2012, the Department sent identical letters to
9 Respondents requesting additional information, including "a written statement of how many vehicles
10 have been sold [by Respondents] on a non-cash basis since December 2008 by month per year to the
11 current date." The letters also requested that Respondents provide to the Department information as
12 to the number of vehicles they have financed since 2008. The letters asked Respondents to provide
13 the requested information by May 4, 2012, and stated, "Remember that you cannot engage in the
14 business until the Department issues the license."

15 7. On March 22, 2012, the Department received a letter from Jane Seymore, Legal
16 Assistant, of Brown & Brown Law Offices, P.C., with the requested information attached, including
17 a written statements of the number of vehicles sold by Respondents on a non-cash basis, per month
18 from December 2008 to the current date, and the number of vehicles financed by Respondents per
19 month from December 2008 to the current date. From 2009 through 2012, Respondents sold vehicles
20 on a non-cash basis and financed vehicles as follows:

- 21 a. In 2009, twenty-one (21) vehicles were sold on a non-cash basis and financed;
- 22 b. In 2010, sixty-one (61) vehicles were sold on a non-cash basis and financed;
- 23 c. In 2011, forty-three (43) vehicles were sold on a non-cash basis and financed; and
- 24 d. In 2012, twenty-seven (27) vehicles were sold on a non-cash basis and financed.

25 8. On March 26, 2012, the Department sent a letter to Respondents, regarding both the
26 Motor Vehicle Dealer and Sales Finance Company Applications, informing them that their

1 Applications were forwarded to management for review, for possible unlicensed activity, and placed
2 on hold until the matter is resolved.

3 9. On March 30, 2012, the Department received a letter from attorney F. Morgan Brown, of
4 Brown & Brown Law Offices, P.C., which stated, in part, "My client wants to make it clear that
5 these vehicles were financed with payments over time, however, interest was not charged. It was
6 [client's] understanding, that as long as there was no interest charged, the license was not required.
7 I have since informed [client] of the statutes and if he sells more than three (3) cars a year the license
8 is required."

9 10. Respondents sold at least three (3) or more motor vehicles on a non-cash basis annually,
10 while unlicensed by the Department as a motor vehicle dealer.

11 11. Respondents created or held retail installment contracts exceeding a total aggregate
12 outstanding indebtedness of twenty-five thousand dollars (\$25,000.00), while unlicensed by the
13 Department as a sales finance company.

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

18 13. These Findings of Fact shall also serve as Conclusions of Law.

19 CONCLUSIONS OF LAW

20 1. Pursuant to Title 44, Chapter 2.1 of the Arizona Revised Statutes A.R.S. § 44-281 *et seq.*,
21 the Motor Vehicle time Sales Disclosure Act, the Superintendent has the authority and duty to
22 regulate all persons engaged in the motor vehicle dealer and sales finance company business and
23 with the enforcement of statutes, rules, and regulations relating to motor vehicle dealers and sales
24 finance companies.

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

1 3. Pursuant to A.R.S. § 44-281(12)(b), a person engages in business of a sales finance
2 company if, among other things, that person “engage[s], in whole or in part, in the business of
3 creating or holding retail installment contracts that exceed a total aggregate outstanding indebtedness
4 of twenty-five thousand dollars.”

5 4. The conduct of Respondents, as alleged above, constitutes that of engaging in the
6 business of a motor vehicle dealer and a sales finance company in the State of Arizona without first
7 having applied for and obtained from the Department a motor vehicle dealer license and a sales
8 finance company license pursuant to Chapter 2.1 of Title 44, in violation of A.R.S. § 44-282(A).

9 5. Respondents do not meet any of the exemptions to the licensing requirements set forth in
10 A.R.S. § 44-282(J).

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

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

21 **ORDER**

22 1. Respondents shall immediately stop the violations set forth in the Findings of Fact and
23 Conclusions of Law.

24 2. Respondents shall immediately stop all motor vehicle dealer activity and sales finance
25 company activity in Arizona until such time as Respondents have obtained a motor vehicle dealer
26 license and a sales finance company license from the Superintendent as prescribed by A.R.S.

1 § 44-282.

2 3. Respondents shall immediately pay to the Department a civil money penalty in the
3 amount of **five thousand dollars (\$5,000.00)**. Drive Now and Mr. Nicks are jointly and severally
4 liable for payment of the civil money penalty.

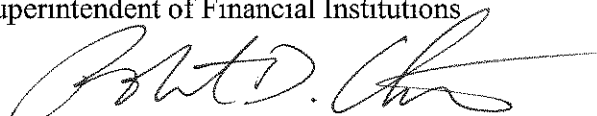
5 4. Respondents shall comply with all Arizona statutes and rules regulating Arizona motor
6 vehicle dealers and sales finance companies (A.R.S. § 44-281, *et seq.*).

7 5. The provisions of this Order shall be binding upon Respondents, their employees, agents,
8 and other persons participating in the conduct of the affairs of Respondents.

9 6. This Order shall become effective upon service, and shall remain effective and
10 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated,
11 or set aside.

12 SO ORDERED this 3 day of August, 2012.

13 Lauren Kingry
14 Superintendent of Financial Institutions

15 By: 
16 Robert D. Charlton
17 Assistant Superintendent of Financial Institutions

18 **CONSENT TO ENTRY OF ORDER**

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

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

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

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

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

2 Barry Nicks, Member
3 Drive Now Auto Sales, LLC
4 700 White Mountain Road
Show Low, AZ 85901
Petitioners

5 F. Morgan Brown, Esq.
6 BROWN & BROWN LAW OFFICES, P.C.
7 P.O. Box 3128
Pinetop, AZ 85935
Attorneys for Petitioners

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