

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Unlicensed Activity of:

No. 12F-BD036-SBD

3 **MICHELLE'S AUTO SALES, LLC AND**  
4 **HECTOR J. GARCIA, MANAGING**  
5 **MEMBER AND PRESIDENT**  
3381 E. Co. 15th Street  
Somerton, AZ 85350

**CONSENT ORDER**

6 Respondents.

7 On August 20, 2011, the Arizona Department of Financial Institutions ("Department") issued  
8 an Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of Order,  
9 alleging that Respondent had violated Arizona law. Wishing to resolve this matter in lieu of an  
10 administrative hearing, Respondents consent to the following Findings of Fact and Conclusions of  
11 Law, and consents to the entry of the following Order.

12 FINDINGS OF FACT

13 1. Between October 21, 1998 and June 23, 2005, Hector J. Garcia dba Michelle's Auto  
14 Sales was licensed by the Department to transact business in Arizona as a sales finance company,  
15 license number SF-0902594, within the meaning of A.R.S. § 44-281, *et seq.* The license was closed  
16 on June 23, 2005, when the company received a new license under its LLC name.

17 2. Between June 15, 2005 and September 17, 2008, Respondent Michelle's Auto Sales,  
18 LLC ("MAS") was authorized to transact business in Arizona as a motor vehicle dealer, license  
19 number MVD-0907317, within the meaning of A.R.S. § 44-281, *et seq.* On September 17, 2008, the  
20 license was closed by the Department due to non-renewal.

21 3. Between June 15, 2005 and September 16, 2008, Respondent MAS was authorized to  
22 transact business in Arizona as a sales finance company, license number SF-0907319, within the  
23 meaning of A.R.S. § 44-281, *et seq.* On September 16, 2008, the license was closed by the  
24 Department due to non-renewal.

25 4. Respondent Hector J. Garcia ("Mr. Garcia") is the Managing Member and President of  
26 MAS.

1           5. Since September 17, 2008, MAS and Mr. Garcia (hereinafter collectively referred to as  
2 “Respondents”) are not, and were not, at any time material herein, authorized to transact business in  
3 Arizona as a motor vehicle dealer within the meaning of A.R.S. § 44-281, *et seq.* The nature of  
4 Respondents’ business is that of a motor vehicle dealer within the meaning of A.R.S. § 44-281(3).

5           6. Since September 17, 2008, Respondents are not and were not, at any time material herein,  
6 authorized to transact business in Arizona as a sales finance company within the meaning of A.R.S.  
7 § 44-281, *et seq.* The nature of Respondents’ business is that of a sales finance company within the  
8 meaning of A.R.S. § 44-281(12).

9           7. Neither MAS nor Mr. Garcia are exempt from licensure as a motor vehicle dealer or sales  
10 finance company within the meaning of A.R.S. § 44-282(J).

11           8. On July 1, 2011, Respondents submitted to the Department a notarized Motor Vehicle  
12 Dealer License Application (the “MVD Application”), which was completed and signed by Mr.  
13 Garcia, and notarized on June 30, 2011. Respondents answered “yes” to Question 8 of the MVD  
14 Application, which asks, “If the applicant is a dealer, do you hold any part of your own installment  
15 contracts?” Question 8 further asks, “if yes, state the dollar amount” to which Respondents  
16 answered, “\$50,000.” Respondents’ answer to Question 9 of the MVD Application disclosed that  
17 Respondents sell retail installment contracts to five (5) banks and finance companies.

18           9. On August 1, 2011, the Department sent a letter to Respondents, requesting further  
19 information and documentation by September 8, 2011, required in order to complete the MVD  
20 Application. Specifically, the letter stated, “Based on the application answer to #8 A Sales Finance  
21 license is also required.” Further, the Department requested that Respondents provide a written  
22 statement of the number of vehicles sold monthly on a non-cash basis since September 17, 2008.

23           10. On August 31, 2011, the Department received from Respondents a written statement  
24 listing the number of vehicles sold monthly on a non-cash basis by MAS from September 2008  
25 through July 2011.

26           11. The written statement disclosed that from September 2008 through July 2011, MAS sold

1 four hundred eighteen (418) motor vehicles on a non-cash basis. Specifically, MAS sold at least  
2 three (3) or more motor vehicles on a non-cash basis annually, while unlicensed as a motor vehicle  
3 dealer, as follows:

Year	Number of Vehicles Sold on a Non-Cash Basis
2008	22
2009	160
2010	145
2011	91

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10 12. On September 1, 2011, the Department sent two letters to Respondents regarding the  
11 MVD Application. One letter advised Respondents that the MVD Application was placed on hold  
12 pending the Department's review for possible unlicensed activity. The second letter advised  
13 Respondents that based upon their answer to Question 8 of the MVD Application, they are also  
14 required to submit a Sales Finance Company Application to the Department.

15 13. On September 29, 2011, the Department received from Respondents an updated listing of  
16 the motor vehicles directly financed by MAS from December 2, 2008 through September 15, 2011,  
17 including the dates sold and the dollar amounts financed.

18 14. The information provided disclosed that Respondents sold and directly financed a total of  
19 eighty-eight (88) motor vehicles during the years of 2009, 2010 and 2011 that exceeded a total  
20 aggregate outstanding indebtedness of twenty-five thousand dollars (\$25,000), while unlicensed as a  
21 motor vehicle dealer or a sales finance company, as follows:

TIME PERIOD	VEHICLES SOLD	AMOUNT FINANCED
2009	19	\$ 117,836.12
2010	25	\$ 150,708.49
2011	44	\$ 241,313.10



1 license and sales finance company licenses under Chapter 2.1 of Title 44, in violation of A.R.S.  
2 § 44-282(A).

3 5. Neither MAS nor Mr. Garcia meet any of the exemptions to the licensing requirements  
4 set forth in A.R.S. § 44-282(J).

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

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

### 15 ORDER

16 1. MAS and Mr. Garcia shall immediately stop the violations set forth in the Findings of  
17 Fact and Conclusions of Law.

18 2. MAS and Mr. Garcia shall immediately stop all motor vehicle dealer activity and sales  
19 finance company activity in Arizona until such time as MAS and Mr. Garcia have obtained a motor  
20 vehicle dealer license and a sales finance company license from the Superintendent as prescribed by  
21 A.R.S. § 44-282.

22 3. MAS and Mr. Garcia shall immediately pay to the Department a civil money penalty in  
23 the amount of **six thousand five hundred dollars (\$6,500.00)**. MAS and Mr. Garcia are jointly and  
24 severally liable for payment of the civil money penalty.

25 4. MAS and Mr. Garcia shall comply with all Arizona statutes and rules regulating Arizona  
26 motor vehicle dealers and sales finance companies (A.R.S. § 44-281, *et seq.*).



1 that he is the Managing Member and president, and that, as such, has been authorized by Mesa Auto  
2 Sales, LLC to consent to the entry of this Order on its behalf.

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

5 DATED this 31 day of October, 2011.

6 By   
7 Hector J. Garcia, Individually and as  
8 Managing Member and President of  
9 Michelle's Auto Sales, LLC

10 ORIGINAL of the foregoing filed this 4th  
11 day of November, 2011, 2010, in the office of:

12 Lauren W. Kingry  
13 Superintendent of Financial Institutions  
14 Arizona Department of Financial Institutions  
15 Attn: Sabrina Hampton  
16 2910 N. 44th Street, Suite 310  
17 Phoenix, AZ 85018

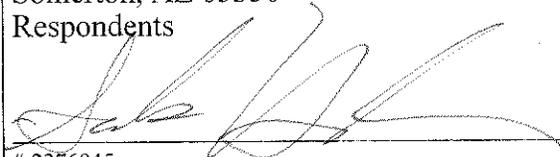
18 COPY of the foregoing mailed/delivered same date to:

19 Craig A. Raby, Assistant Attorney General  
20 Arizona Attorney General's Office  
21 1275 West Washington  
22 Phoenix, AZ 85007

23 Robert D. Charlton, Assistant Superintendent  
24 Tammy Seto, Senior Examiner  
25 Arizona Department of Financial Institutions  
26 2910 N. 44th Street, Suite 310  
Phoenix, AZ 85018

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

Hector J. Garcia, Managing Member and President  
Michelle's Auto Sales, LLC  
P.O. Box 615  
Somerton, AZ 85350  
Respondents



# 2376045