

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON CONSUMER AFFAIRS

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March 1, 2012
Start: 10:15 a.m.
Recess: 11:45 a.m.

HELD AT: Council Chambers
City Hall

B E F O R E:
DANIEL R. GARODNICK
Chairperson

COUNCIL MEMBERS:
Council Member Charles Barron
Council Member Leroy G. Comrie, Jr.
Council Member Julissa Ferreras
Council Member G. Oliver Koppell
Council Member Karen Koslowitz
Council Member Michael C. Nelson

A P P E A R A N C E S (CONTINUED)

Marla Tepper
General Counsel
Department of Consumer Affairs

Stuart Rosenthal
Vice President
Greater New York Automobile Dealers Association

CHAIRPERSON GARODNICK: Good

morning, everyone, and welcome to the New York City Council Committee on Consumer Affairs.

Today's date is Thursday, March the 1st. Happy March. My name is Dan Garodnick, and I have the privilege of chairing this Committee. I want to welcome all of you to today's legislative hearing on three bills related to the used car industry.

Last April, this Committee held an oversight hearing on the business practices of used car dealers. At the hearing, the Department of Consumer Affairs, which I will refer to as DCA, for the remainder of this hearing, testified regarding its efforts to enforce applicable consumer protection laws, and to educate New Yorkers regarding their rights when considering a used car purchase. Despite those efforts, however, we have found that there are used car dealers who flout the law. For example, dealers may employ deceptive and illegal advertising schemes; require prospective buyers to sign partially blank contracts, to which unwanted fees are added without the buyer's consent or knowledge; sell a car without providing the car's

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2 title or registration; or negotiate a contract in
3 a language other than English, but then require
4 the prospective buyer to sign an English language
5 contract, which of course can in some
6 circumstances present a problem. Following the
7 April 2011 used car dealer hearing, this Committee
8 drafted a package of legislation that we believe
9 would better protect consumers from unscrupulous
10 practices in the industry. The first of three
11 bills on today's agenda relates to used car dealer
12 contracts. Intro 674-A would require dealers to
13 use a model contract, which would include at a
14 minimum the make and model of a car, an itemized
15 list of all costs associated with the car, the
16 total number and cost of any monthly installments,
17 and that the buyer has a right to receive a copy
18 of the final signed contract. DCA would be
19 charged with creating the model contract in
20 several languages. Dealers wishing to use their
21 own contract would be permitted to do so, as long
22 as the contract contains all of those provisions
23 specified in the model contract and is written in
24 the language used to negotiate the sale. The
25 second bill on today's agenda, Intro 675-A, would

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2 require dealers to disclose used car buyers'
3 rights. Buyers' rights would need to be posted in
4 used car dealerships, as well as distributed to
5 prospective buyers. DCA would again be charged
6 with creating the list of buyers rights in several
7 languages, and would need to include at a minimum
8 that prospective buyers may obtain a dealer's
9 complaint history by phoning 311; that they are
10 not obligated that purchase dealer recommended
11 options or add-ons; that they may secure their own
12 financing; and that they are not obligated to
13 accept the dealer's financing offer. The last
14 bill on today's agenda is Intro 787, which would
15 require dealers to maintain in electronic form, a
16 record of all used car sales and purchases.
17 Currently, used car dealers record this
18 information on paper, in a police logbook. Given
19 that we are in the 21st Century and that
20 spreadsheet software is readily available, in fact
21 probably used by most dealers themselves, it is
22 reasonable to require dealers to record data in a
23 format that would allow City agency inspectors to
24 more efficiently analyze used car purchase and
25 sale data. This Committee anticipates testimony

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2 from DCA, as well as from used car dealers and
3 advocates, and we look forward to hearing from
4 them. I want to note that we're joined by Council
5 Member Ferreras and Council Member Comrie, thank
6 you. And with that, I want to welcome the
7 Department of Consumer Affairs to the witness
8 stand and ask whoever will be testifying today to
9 introduce yourself, Marla, and whenever you're
10 ready, please get started. But not yet.

11 MARLA TEPPER: Thank you. Good
12 morning, Chairman Garodnick and Committee Members,
13 I'm Marla Tepper, General Counsel for the
14 Department of Consumer Affairs. Commissioner
15 Mintz asked me to thank you for the opportunity to
16 appear before you at this hearing. Because the
17 Department testified at length on second hand auto
18 dealers last April, our remarks are brief today,
19 focusing on the bills at hand, and suggesting some
20 additional important reforms. Overall, the
21 Department believes there is merit in all three
22 bills and commends the Council for bringing these
23 bills up for a hearing. We have the following
24 comments and suggestions on the specific
25 legislation. 0674-A 2011. This bill requires

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2 second hand auto dealers to use a model contract
3 created by the Department of Consumer Affairs.
4 Our long history of mediating and resolving
5 consumer complaints in this arena underscores how
6 crucial this protection is for prospective used
7 car buyers. Hundreds of the complaints we receive
8 target hidden costs and unclear language. In
9 fact, many of those complaints could have been
10 avoided by a standard, straightforward contract.
11 As an example, one secondhand auto dealer engaged
12 in a pattern of deceptive practices which included
13 having the consumer sign blank or partially blank
14 contracts, inserting unrequested add-ons and
15 illegitimate fees, and failing to give necessary
16 documents to consumers at the time of the
17 transaction. Sometimes the written contracts were
18 supplemented by unwritten side agreements, like
19 promises on the part of the dealer to refinance at
20 a better rate after the consumer made several
21 payments for the vehicle, and then reneging on
22 such an agreement. To simplify and clarify the
23 contract, we suggest truncated, truncating it into
24 two parts: first, the terms of transaction which
25 would describe what the consumer is paying for;

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2 and second, the terms of payment, which would
3 describe how the consumer is paying for it. The
4 transaction terms would include but would not be
5 limited to what is listed in the bill, but remove
6 the options listed in subsection two, and replace
7 them with dealer installed accessories and
8 services such as window etching, undercoating,
9 alarms and extended warranties. It would require
10 that all those terms be individually listed with
11 their costs on a single page. The consumer would
12 select and initial each item. Often, we see these
13 charges buried in different sections of a contract
14 or comingled with a myriad of official fees. The
15 purchase terms in the contract would reflect
16 different language for leased and purchased
17 vehicles. As an additional important consumer
18 protection, we suggest adding a provision that
19 would prevent the contract from taking effect if
20 the financing terms change. Often, contracts are
21 signed for the purchase price of the vehicle, and
22 when the separate financing agreement is
23 completed, the terms are different than what was
24 agreed to. We suggest that the bill include a
25 provision giving the consumer the right to void

1 the contract under such a scenario. In the
2 penalty section, we strongly suggest that fines be
3 included, and that the Department be enabled to
4 recover legal and investigatory costs, as these
5 cases are most often very labor intensive and time
6 consuming. We recommend the following, which will
7 help foster compliance and deter and punish
8 wrongdoing. A) add that violation of the
9 provisions of the subchapter be punished in
10 accordance with provisions of Title I of the Code,
11 which provides for suspension and revocation; B)
12 amend the bill to make secondhand car dealers
13 subject to a civil penalty of \$750 for each
14 violation, except that the knowing violation of
15 any provision of this subchapter would be subject
16 to a civil penalty of \$1,000 per violation. C)
17 add that if a secondhand car dealer is found to
18 have committed repeated, multiple or persistent
19 violations of any provision of this subchapter,
20 the dealer would be responsible for the cost for
21 legal and investigative costs. We would suggest
22 the addition of this penalty provision to each of
23 the new bills. Due to the complexity of drafting
24 a model contract, translating it into seven
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2 languages and disseminating the documents to
3 approximately 1,000 licensed secondhand auto
4 dealers, we suggest an effective date of the law
5 to be 90 days after DCA promulgates its rules.
6 0675-2011. This bill would require posting and
7 distributing second hand automobile buyers'
8 rights. The Department supports this effort but
9 views the document as a hybrid rights/tip sheet.
10 In addition to the rights set forth in this bill,
11 we would add the following tips or rights: that
12 it is important to have the car inspected by an
13 independent mechanic; that the consumer is under
14 no obligation to accept the financing terms from
15 the dealer if it is not what was agreed to; and
16 that the consumer is entitled to receive a
17 completed contract, including all prices and terms
18 before signing a binding document. We suggest
19 creating a two day return option on secondhand
20 vehicles. And automobile is a big purchase for
21 most people, and the shopping experience at many
22 dealerships does not appear to be designed to help
23 consumers make informed, thoughtful decisions.
24 High pressure sales tactics can leave consumers to
25 make poor decisions. Whether one is baited and

1 switched to a car one didn't want, or couldn't
2 afford, or has had one's mechanic discover an
3 expensive repair, that the dealership didn't
4 disclose, a two-day return option would protect
5 consumers and could discourage businesses from
6 employing some of the less ethical tactics that
7 our mediators deal with every day negotiating the
8 consumer complaints we receive. To protect
9 dealers from the potential for abuse, the State of
10 California has instituted a system in which
11 consumers are required to purchase the return
12 option, a good idea, particularly on an as-is
13 vehicle: drive the car less than 250 miles,
14 return the car in the same condition as when it
15 was driven off the lot, and pay a restocking fee.
16 To allay concerns that a consumer could disrupt a
17 business by buying and returning multiple
18 vehicles, a dealership would only be required to
19 offer a purchase option once to each consumer. If
20 there is an appetite for including this return
21 option, we suggest that it be included in a
22 buyers' rights document. The bill calls for the
23 buyers' rights document to present, to be
24 presented when a contract is given to the consumer
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2 for signature. At which point the consumer may
3 have several hours invested in the negotiations
4 process, and may be wary and weary of dragging it
5 out any further. Consumers should be provided
6 with this document as soon as they start shopping.
7 We are also concerned that the amount of
8 information would be overly cumbersome for a
9 poster; instead, perhaps some simple signage could
10 refer customers to the buyers' rights document.
11 0787 2012. DCA wholly agrees with the requiring
12 the creation of electronic records, but strongly
13 suggests that the requirements extend beyond the
14 police book, to include such records as the
15 consumer's entire deal jacket: contracts, finance
16 agreements, documentation of the dealer's
17 advertising, and the dealership's policies and
18 procedures--documents to be identified by rule.
19 False advertising and deceptive marketing
20 techniques such as bait and switch tactics, have
21 long been a staple of a disturbing number of
22 dealerships. Our last major enforcement sweep in
23 2010 resulted in fines for 90 percent of the
24 dealerships we investigated, with less than half
25 the cars advertised actually available for sale

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2 when the ads were placed. In fact, two-thirds of
3 the businesses cited for this deceptive practice
4 in 2009 were recidivists in 2010. Requiring that
5 these records be kept electronically would aid our
6 informant--enforcement efforts and facilitate the
7 receipt and review of voluminous documents. We
8 are pleased to continue to work with the Consumer
9 Affairs Committee and with the Council to help
10 protect consumers in their interactions with
11 secondhand auto dealers. I'll be happy to answer
12 your questions.

13 CHAIRPERSON GARODNICK: Thank you
14 very much, Ms. Tepper. And before I jump into
15 some questions, I just want to note that we've
16 been joined by Council Member Koslowitz, the past
17 Chair of this Committee, welcome. And we
18 appreciate very much your support of all three
19 bills on today's agenda, and for your thoughtful
20 suggestion as to how we might be able to make them
21 better. But--

22 MARLA TEPPER: Thank you.

23 CHAIRPERSON GARODNICK: --as to
24 those suggestions, I just want to probe a little
25 further if you don't mind.

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MARLA TEPPER: Sure.

CHAIRPERSON GARODNICK: Let's start with 674-A, which is the model contract. You started by suggesting that we truncate the contract into two parts, which of course is fine, but as the bill is written as, within the responsibility of the Department of Consumer Affairs, correct?

MARLA TEPPER: That's correct.

CHAIRPERSON GARODNICK: Okay, so this is your, what you're stating here is your preference as to how you all would do it, if you were given the power to do it, is that right?

MARLA TEPPER: That's correct.

CHAIRPERSON GARODNICK: Okay. So, and then on the Section 2, your suggestion on subsection, I guess, 2(i), where currently it requires that the model contract include, in the present draft, an itemized list of costs associated with an automobile, including options such as air conditioning, audio systems, power assisted brakes, heated seats, rear window defroster, power mirrors and alarm systems, you suggest removing those and replacing them with

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dealer installed accessories and services like window etching, undercoating, alarms and extended warranties. Why do you think that we should not have the options that we currently have listed in the bill?

MARLA TEPPER: My understanding is that those are not the common add-ons that we see in the course of our consumer mediation, and the suggestions we have here are more, are updated to reflect what we're seeing at the current time.

CHAIRPERSON GARODNICK: So, in other words, the items that we have in the bill are not the, they're usually inherent to the structure of the car, as opposed to something that a dealer could on, is that, is that right?

MARLA TEPPER: That's correct.

CHAIRPERSON GARODNICK: Okay. So, your view is, and not to limit your own ability to include others that you may in the future see as appropriate, you're looking to have in that provision the, the extra items that are added on at the, at the end of the period here.

MARLA TEPPER: Yeah, this provision is intended to tackle the problem of pernicious

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2 add-ons that the consumer is unaware of during, or
3 doesn't want, during the negotiation process. And
4 make sure the consumer knows exactly what they're
5 getting, or refuse to pay for it.

6 CHAIRPERSON GARODNICK: Mm-hmm.

7 Okay. [pause] The provisions that we currently
8 have in the bill, as to what is required to be in
9 the model contract, are mostly about disclosure.
10 Is that accurate?

11 MARLA TEPPER: That's correct.

12 Yes.

13 CHAIRPERSON GARODNICK: Now, one of
14 your suggestions in your testimony was to add a
15 provision that actually would prevent the contract
16 from taking an effect, taking effect, if the
17 financing terms change. Now, that's a different
18 sort of provision than what has been contemplated
19 already in the bill, not to say that there's, that
20 that's a bad suggestion, it may be a very good
21 suggestion. But is that something that you
22 believe that we have the power to do to actually
23 put into the contract, the substantive term?

24 MARLA TEPPER: Yes, I believe that
25 contracts can include substantive terms as well as

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2 disclosures, and that is the place to do it. So
3 that both parties are aware of the rights or
4 obligations and in this, in this regard, both
5 parties are signing off to it, so I think it's a
6 perfect place to put that.

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CHAIRPERSON GARODNICK: Well, no,
8 no, there's no question that contracts can include
9 substantive terms. We can agree on that.

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MARLA TEPPER: Yes.

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CHAIRPERSON GARODNICK: But can we
12 as the legislative body of the City, require that
13 substantive term to be in the contract? I mean,
14 what if we decided that we wanted to say that, you
15 know, the contract must be voided if the financing
16 terms change by more than five percent, or three
17 percent, or ten percent? Could we do that?

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MARLA TEPPER: Let me address the
19 first question as to what we've proposed. I think
20 it is squarely within the Council's authority to
21 include that provision. As to the second one, I,
22 I probably would say that you could do that, as
23 well, but that you would, but that we would
24 probably be sued over that. So, I think the one,
25 the first one is, is definitely fair, it provides

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2 both sides with notice as to the obligations and
3 the consequences for not complying with those
4 obligations. And as I said, I think that it's
5 within the Council's authority.

6 CHAIRPERSON GARODNICK: So the
7 contract is, is not valid, if--so your point is,
8 if the financing terms change, the terms of the
9 contract have changed, and therefore either party
10 would have the right, and presumably the consumer
11 would have the right to walk away from the
12 contract. Is that right?

13 MARLA TEPPER: That's correct.

14 CHAIRPERSON GARODNICK: Okay.

15 MARLA TEPPER: Yeah.

16 CHAIRPERSON GARODNICK: So then,
17 what you're saying is, now that I understand it
18 better, that you're really looking to include a,
19 disclo--another disclosure element to this bill,
20 which is that you have the right to walk away, if
21 the financing terms change. Is that right?

22 MARLA TEPPER: Well, once you have
23 signed the contract, it requires a little bit more
24 than walking away from it, it requires an
25 affirmative act to have it rescinded. But the

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contract would, would give the consumer that right.

CHAIRPERSON GARODNICK: Okay. And you believe we have the, we have the--

MARLA TEPPER: Yes.

CHAIRPERSON GARODNICK: --power to do that. Okay. You also suggested that, and I'm going to ... bypass the, the penalty section, at least for now, and we will certainly take that under advisement, and certainly would want to hear from the, the reps from the Automobile Dealers Association on that, and all points here. But one of the rules that you suggested, actually one of the provisions you suggested changing was giving you a little more time: 90 days after you promulgate the rules, as the effective date. And it's currently set out as a 120 days after the enactment of the bill. You know, obviously 90 days after you promulgate your rules, you know, could put this into a time period that is entirely undetermined, 'cause you all can put out your rules whenever you want to put out your rules. Is there a reason why you think we should not give a fixed time period after the date of enactment,

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2 even if you felt, if you feel like you need more
3 time?

4 MARLA TEPPER: Well, I think that
5 the, the Department has a strong interest in, in
6 implementing rules that really work. And crafting
7 a contract that's effective and protects
8 consumers, and that is a complicated process. And
9 as the one who probably will be doing it, I
10 [laughs] I know that we'll put the effort into it
11 that's required to make it worthwhile for
12 consumers and for the Department, and the people
13 of the City of New York. So, I think that time is
14 warranted. Our testimony also underscores the,
15 that we will also be translating the contract into
16 seven languages. That's also a time consuming
17 process, it's also more expensive for the City if
18 we do it on an expedited basis. So those two
19 concerns, the work that will be required and the
20 expense, warrant that amount of time.

21 CHAIRPERSON GARODNICK: How much
22 time do you think you need?

23 MARLA TEPPER: 90 days after DCA
24 promulgates its rules. [laughs]

25 CHAIRPERSON GARODNICK: And how

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much time do you need to promulgate your rules?

MARLA TEPPER: I'm not sure of the statutory timeframe for that. I'm turning to my colleagues here.

CHAIRPERSON GARODNICK: You have a long period of time to do that. Right. So, what, what I'm really asking you, and by the way, this is your chance to guide us as to what the amount of time is that you need, 'cause otherwise, we may just keep it in as 120 days after enactment. So, please share with us any insights that you might have on how long it actually would take, so we can actually take a look at this and, and we understand that it takes time, and it's work for you, so we want to be reasonable here, but to leave it completely open-ended 90 days after you all decide to make a rule on the subject is far too, far too extensive and undetermined a period for my tastes.

MARLA TEPPER: Okay, I, well, we appreciate your enthusiasm about the bill, obviously, and we want to work with you on that. I think that it would be appropriate for me to confer with my colleagues and we'll get back to

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2 you with that.

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CHAIRPERSON GARODNICK: That's
4 fine. Let's talk about the automobile buyers'
5 rights, what you describe as a hybrid rights/tip
6 sheet. One of the tips that you suggest is adding
7 that it is important to have the car inspected by
8 an independent mechanic. Now, how often does a
9 prospective used car buyer have an independent
10 mechanic inspect a car before they buy it? And
11 I'll tell you the reason I ask, 'cause if it's a
12 tip, coming from the City, which says you really
13 ought to do this, and that adds cost for a
14 consumer, and it is also something which nobody
15 actually ever does, and I don't, I don't know the
16 answer to this, then we, we may be flagging
17 something for them which may be so beyond, so far
18 beyond what anybody would be inclined to do, that
19 it may be ineffective.

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MARLA TEPPER: Well, I, I think
21 there are two answers here. First, consumers
22 don't do that often enough, and that's why we want
23 to guide them to do that. Several years ago, the
24 Department invited to the office an expert in car
25 repairs, actually a trained mechanic who was an

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2 expert. And this was his number one tip: get the
3 car inspected before you buy it. And it is a
4 really worthwhile thing for consumers to do, they
5 don't do it, as you've pointed out, and they
6 should, and this will encourage them to do so.
7 And the expense that they put in at the front end,
8 as with many types of measures, is well worth it,
9 perhaps it will prevent them from buying a car
10 that isn't road worthy. Perhaps that brief
11 interaction with a mechanic will remind them of
12 problems that they didn't know about, or to ask
13 other questions. It may also stimulate
14 negotiations. We also have asked for a return
15 option, which is pretty much on, it addresses some
16 of those same concerns, that for consumers who
17 don't take that step, the two day return option
18 provides them with an additional way to make sure
19 that they have gotten a vehicle that actually
20 works. And obviously, what a consumer wants in a
21 car is a vehicle that works.

22 CHAIRPERSON GARODNICK: Right,
23 that, that provision I thought was very
24 interesting, although you suggested adding it into
25 the bill that's just a, a bill that requires

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disclosure of rights or tips. So, now does that belong in that particular piece of legislation?

MARLA TEPPER: You're correct on that, we, what we say in the testimony is we suggest creating a two day return option, so we've--

CHAIRPERSON GARODNICK: So not in this bill, though.

MARLA TEPPER: We have to add that elsewhere. Perhaps--

CHAIRPERSON GARODNICK: Okay.

MARLA TEPPER: Perhaps to the contract.

CHAIRPERSON GARODNICK: Now, do you, is that an existing right under any law today that you have a two day return option on a secondhand car?

MARLA TEPPER: Yes, as a matter of fact, the State of California has that provision, and we have modeled our proposal based on what California currently has.

CHAIRPERSON GARODNICK: Right, but today, it's not an obligation of a, of any used car dealer to, to offer two day return option for,

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for any consumer, is that right?

MARLA TEPPER: Not in New York State.

CHAIRPERSON GARODNICK: Okay. And ... you think that we have the jurisdiction to do that in New York City in a way that the State of California did?

MARLA TEPPER: Absolutely.

CHAIRPERSON GARODNICK: Why is that?

MARLA TEPPER: I don't see any reason why, under the Administrative Code, this wouldn't be permitted. There's no, there's no bar to this. The, and, I actually can't think of a reason why, so I, yes. [laughs]

CHAIRPERSON GARODNICK: Okay. Well, if you can't think a reason there may not be a reason.

MARLA TEPPER: Yeah, right.

CHAIRPERSON GARODNICK: So, okay. Let's talk about Intro 787 for a moment. This of course is the one which requires the creation of electronic records. And really as proposed, the bill was targeted at what currently is kept in the

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police book.

MARLA TEPPER: That's correct.

CHAIRPERSON GARODNICK: Which is, today, a written document only, which can be scrutinized in person, if it exists, and we proposed updating that, so that it would be able to be sorted through in a more effective manner by regulators, and even by the, the dealers themselves. Now, you have proposed [beeping] We're going to see if we have a fire drill or fire situation here, before we proceed. So let's just hold on for a moment. [Announcement regarding fire alarm testing, then pause, background noise] Well, we may have made it through the, the fire safety tests, and if we haven't, we'll take another brief pause. Thank you, everybody, for your patience. Let's just go back to the police book. As I was describing, it's currently in written form only, we wanted to make an electronic record. Now, you proposed, Ms. Tepper, to include a number of additional records that are not currently required by law. Is that right?

MARLA TEPPER: A number of records that are cur--are currently maintained by dealers

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2 routinely in the course of doing business. What,
3 what this was focused on, really, was making sure
4 that, that when dealers write contracts, when they
5 have financing agreements, when they run ads,
6 they maintain those electronically. And the
7 purpose of that is to allow us to investigate
8 their practices.

9 CHAIRPERSON GARODNICK: Right, I, I
10 understand, and I'm, I'm sympathetic to the
11 thought, although I am also sympathetic to the, to
12 the burden that this may be placing on them.
13 Like, for example, [coughs] excuse me, you suggest
14 "documentation of the dealer's advertising and the
15 dealership's policies and procedures." If we were
16 to include that, well presumably they have that in
17 some sort of a, already an electronic form, but--
18 for the policies, but not for the advertising.
19 You know, the advertising may be done through a,
20 you know, a newspaper itself, they may just pay a,
21 a fee have an ad run, you know, once a week. It
22 may change, maybe they send over, you know, a new
23 image or two of a car that may be on the lot. But
24 that seems to me to be a pretty considerable--even
25 though, by the way, I recognize that that's the

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2 issue that you have found most significantly with
3 used car dealers--is that not a significant burden
4 for them to have to keep in electronic form
5 onsite?

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MARLA TEPPER: I think that we've
7 identified various documents here, that they
8 currently maintain and may maintain
9 electronically. As to the, the documentation of
10 the dealer's advertising, it could be quite simply
11 that they maintain one of their template ads and
12 they maintain documents listing the dates and
13 location of such ads. And we--

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CHAIRPERSON GARODNICK: But the
15 template--I'm sorry to interrupt you, but the
16 template ad really doesn't help DCA too much,
17 right, because if you have a template, and the
18 issue is that periodically there are cars that
19 appear in this advertisements which actually
20 aren't on the lot, the template itself doesn't
21 really help you all in your enforcement efforts,
22 right?

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MARLA TEPPER: That, that, you're,
you're probably right on that. I, I think that
our, our view is that, as you said when you opened

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2 this hearing, businesses, this is the modern age,
3 businesses routinely maintain documents
4 electronically, to the extent that newspapers are
5 running those ads for them or other media, they
6 can email them to them and/or produce them on a
7 disk. It does not seem overly burdensome. The
8 model I gave you of documentation may work for
9 some dealers who run less ads. So there are,
10 there are ways to address different types of
11 advertising practices.

12 CHAIRPERSON GARODNICK: The
13 contracts, finance agreements, all in your view
14 should be kept in electronic form, is that right?

15 MARLA TEPPER: Absolutely. I think
16 that, among other things, it would ensure that
17 those documents are actually maintained and
18 maintained properly. So that when we investigate
19 a business, they have them and they have them
20 readily available. Second, it's important for us
21 to get the documents in a searchable manner, which
22 is possible with electronic documents. With many
23 businesses that we deal with, they prefer to
24 maintain their documents electronically. It's
25 often cheaper, it takes up less space, and allows

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2 for the parties to exchange them easily. So, I
3 think that many dealers might welcome this.

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CHAIRPERSON GARODNICK: Oaky, well
5 we will hear from them shortly. Last, perhaps
6 lastly, let's see. [pause] Well, I've got a
7 couple more questions here. Just back to the
8 model contract for a moment. Today, what
9 provisions, if any, are used car dealers required
10 to include in their contracts?

11

MARLA TEPPER: There are, there any
12 many obligations they're required to include by
13 dint of state and federal law. There are truth in
14 lending act provisions. There are also provisions
15 required by state law. I don't have them with me,
16 but we can certainly provide them. What we're
17 contemplating is that those that are mandatory we
18 will obviously include in this form that we come
19 up with, and it will simplify everything.

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CHAIRPERSON GARODNICK: Okay. On
21 the log book again.

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MARLA TEPPER: Yes.

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CHAIRPERSON GARODNICK: And I'm
24 sorry I'm jumping around a little bit, but I'm
25 doing a little cleanup on all of the things that I

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wanted to talk to you about.

MARLA TEPPER: Sure,

CHAIRPERSON GARODNICK: So, the bill as contemplated does not require replacing the log book with an electronic record; in fact, it actually would require dealers to record the same information on both paper and electronically. Question for you is--oh, and by the way, let me recognize the fact that we've been joined by Council Member Barron, welcome [background comment]--

MARLA TEPPER: Good morning.

CHAIRPERSON GARODNICK: --with multiple hearings, I know, I have--will you tell them that I'm otherwise occupied here, and that I will be up in a little while? Thank you. The ... is there any reason, let's say we were to change this law to require electronic records, is there any reason from your perspective, for there to continue to a written paper record, as well?

MARLA TEPPER: I, I believe there's a state requirement for secondhand dealers to maintain a written logbook. We have the authority to add to it an electronic version of that, but I

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don't think that we can replace the, the paper one.

CHAIRPERSON GARODNICK: Would, would you support State law changed to eliminate the requirement of the paper book, if we were to convert to an electronic framework?

MARLA TEPPER: I think that this, this particular provision is used most widely by the police department, so that I would want to know whether that elimination of the paper book addresses their concerns, but I do believe that they would be supportive of that.

CHAIRPERSON GARODNICK: I mean, if it's the same information--

MARLA TEPPER: Yeah, I don't see a reason not to.

CHAIRPERSON GARODNICK: Okay. In our hearing in April of 2011, we had discussed DCA posting complaint data online, in addition to a list of licensed car dealers. Interested in knowing what progress DCA has made toward providing that data online, since the April 2011 hearing.

MARLA TEPPER: I--I think that

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we're working on it. We're still working on it.
So, at this time, consumers can call to get that
information, as they could in April of 2011.

CHAIRPERSON GARODNICK: How hard
are you working on it?

MARLA TEPPER: At the moment, I'm
testifying, so I'm not working that hard on it at
the moment.

CHAIRPERSON GARODNICK: I
understand--

MARLA TEPPER: [laughs]

CHAIRPERSON GARODNICK: --my
question is, do you have a timeframe? Like what's
the story here?

MARLA TEPPER: I, I--

CHAIRPERSON GARODNICK: 'Cause
obviously you're giving us an answer in February
of 2012 that you gave in April 2011, where it was
anticipated that that was something you all were
going to do. So what, what's the, what's the
story?

MARLA TEPPER: [pause, background
noise] Okay, so, the, thank you to my colleagues
here, we're implementing a new system replacing

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2 our current computer system, so we anticipate that
3 will be up and running in about a year. A year,
4 yeah.

5 CHAIRPERSON GARODNICK: Okay. I
6 know we've talked about this computer system
7 before, and I expect we'll probably be talking
8 about in the budget, the budget hearing. So, that
9 will allow you to post these complaints, this new
10 system that you're bringing in?

11 MARLA TEPPER: [pause, background
12 noise] I'm being advised that yes, it will give,
13 it will enable access to computer, to complaint
14 data. Yes.

15 CHAIRPERSON GARODNICK: So, if a
16 consumer wanted to look it up online, they would
17 be able do that.

18 MARLA TEPPER: Yes.

19 CHAIRPERSON GARODNICK: All right,
20 well we'll talk about that further. And then,
21 let's conclude here with the, the penalty phase,
22 which you--

23 MARLA TEPPER: Okay.

24 CHAIRPERSON GARODNICK: --proposed,
25 including across all three bills. Now, the, the

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2 fines that you suggest are not insignificant. You
3 propose making secondhand car dealers subject to a
4 civil penalty of \$750 for each violation, and that
5 a knowing violation of a provision of the subject
6 chapter would be subject to a penalty of \$1,000
7 bucks per violation. But the rationale is to
8 allow for the Department to recover legal and
9 investigatory costs. Is that a usual
10 justification? Or ... or is it usually accessible
11 to the Department of Consumer Affairs, to recover
12 directly the fines associated with, with these
13 sorts of violations?

14 MARLA TEPPER: Now, the, the fines
15 that we collect go into the City's coffers, not to
16 the Department. And investigative--[clears
17 throat] excuse me--investigative costs and
18 attorney's fees would go to the Department, to
19 compensate for our expenditures with regard to
20 investigations. There are two different pots of
21 money.

22 CHAIRPERSON GARODNICK: So you have
23 the investigative costs and attorney's fees, that
24 would go to you all as a result of your--

25 MARLA TEPPER: That's my

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understanding, yes.

CHAIRPERSON GARODNICK: And the fines themselves go to the City, the City Treasury.

MARLA TEPPER: That's correct.

CHAIRPERSON GARODNICK: And you are proposing here--

MARLA TEPPER: The fines and a separate provision for costs of investigation, which we did when we amended the debt collection bill two years ago, and I believe that we included a similar provision, quite possibly with the process server bill, but I'm not sure, I'm not sure about that.

CHAIRPERSON GARODNICK: Okay, I, I'm sorry, let me just make sure I understand. So, you have three proposals. One is allow for suspension and revocation; two is to subject them to a civil penalty--

MARLA TEPPER: Correct.

CHAIRPERSON GARODNICK: --and three, there's your cost for legal and investigative work by the Department.

MARLA TEPPER: That's correct.

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CHAIRPERSON GARODNICK: Okay.

[pause] Okay. Well, in the model contract, at least, we do have suspension and revocation in there already, we may not have it in all of them. We'll take a look and, and consider your, your recommendations here. And you believe that we have cost for legal and investigation in other bills that we have passed through this Committee and the Council, and that the Mayor has signed into law.

MARLA TEPPER: In the debt collection bill, we included that, we included costs of investigation. By that, I know we meant to mean attorney's costs as well. Here we're just articulating that more clearly.

CHAIRPERSON GARODNICK: Okay. You guys? Well, we thank you very much for your testimony, and we look forward--

MARLA TEPPER: Thank you.

CHAIRPERSON GARODNICK: --to following up with you on these matters and--

MARLA TEPPER: Thank you.

CHAIRPERSON GARODNICK: --and we appreciate it. Now [pause, background noise] I'd

1
2 like to invite Stuart Rosenthal of the Greater New
3 York Automobile Dealers Association to the witness
4 stand. Good morning, Mr. Rosenthal.

5 STUART ROSENTHAL: [off mic] Good
6 morning.

7 CHAIRPERSON GARODNICK: And
8 welcome, take--yeah, take a moment and whenever
9 you are ready. [pause, background noise] While
10 we are getting settled, let me just note that we
11 have testimony that's been submitted for the
12 record. Looks like we have one in opposition, the
13 New York State Automobile Dealers Association,
14 which is distinct from the Greater New York
15 Automobile Dealers Association, and this
16 memorandum is expressing opposition to Intro 674-A
17 and 675-A. And just for everyone's reference,
18 that is the model contract and the buyer's rights
19 bill, but they express no view on 787, which is
20 the electronic records. And we also have
21 testimony from MFY Legal Services, which does not
22 have a, the header which answers the question, but
23 I will glean here that there are some suggestions
24 that they make on each of the bills. And we will
25 look forward to taking those into consideration as

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2 we move forward. So, Mr. Rosenthal, maybe I've
3 bought you enough time to set up here, and I see
4 we have some visuals, which we appreciate. And
5 we, we look forward to your testimony.

6 STUART ROSENTHAL: You have, and
7 thank you very much for the time, and also for the
8 opportunity to be here. Good morning, Chairman
9 Garodnick, and Members of the Committee. My name
10 is Stuart Rosenthal, I am the Vice President of
11 the Greater New York Automobile Dealers
12 Association, and I'm here to testify in regard to
13 proposed Intro 674-A, 675-A and 787. Okay.

14 GNYADA is a not-for-profit trade association that
15 represents 400 franchised new motor vehicle
16 dealers in the nine downstate counties of New
17 York, including on Long Island, Westchester and
18 Rockland Counties, and including approximately 100
19 dealers in New York City. Our members sell and
20 lease new and used vehicles, perform warranty and
21 non-warranty repairs, service, maintenance,
22 including factor recall work on motor vehicles,
23 perform state mandated annual safety and emissions
24 inspections. New York City dealerships are a key
25 part of the economic life of the City. In 2010,

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2 our total sales by GNYADA members were nearly \$25
3 billion. Our members created employment for more
4 than 55,000 New Yorkers, including direct
5 employment of more than 30,000 in the region and
6 nearly 10,000 in New York City alone. The average
7 New York City dealership payroll is just shy of \$5
8 million annually. Over the past couple of years,
9 and projecting this year and next year, New York
10 City dealerships have invested or will invest
11 nearly \$1 billion in capital improvements and
12 construction, in New York City. Although our
13 membership is comprised of franchise new car
14 dealers, our members all transact significant
15 sales of used automobiles, including certified
16 pre-owned automobiles, which are warranted under
17 manufacturer warranty programs. Our members are
18 not only subject to the New York City
19 Administrative Code and regulation enforced by the
20 Department of Consumer Affairs, the New York City
21 Police Department, and other New York City
22 agencies, but each dealer is registered as a motor
23 vehicle dealer with New York State Department of
24 Motor Vehicles, and further regulated by various
25 agencies of the State of New York, including the

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2 Department of Environmental Conservation,
3 Department of Financial Services, and the Attorney
4 General's office. Each dealer must also meet a
5 variety of federal standards from a veritable
6 alphabet soup of agencies: DOT, NYTSA [phonetic],
7 IRS, DOL, FTC, FRB, and EPA, to name just a few.
8 Attached to my testimony is a copy of the NADA's
9 regulatory maze, listing just the federal agencies
10 that supervise dealership's operations. And
11 you'll see that that oversight is quite extensive
12 alone. Further, dealers are compelled by many
13 forces to comply with rules and regulations that
14 are established by the Finance sources on which
15 they rely, to obtain financing for consumers.
16 Those sources are highly regulated by State and
17 federal regulators, including new rules and
18 regulations being created under the Dodd-Frank
19 Act. Lastly, each dealership follow a strict set
20 of guidelines set forth by the manufacturers by
21 which they are affi--with which they are
22 affiliated and by which they are franchised. We
23 understand the concerns of the members of the City
24 Council and the Department of Consumers Affairs
25 have when regard to the worst elements of the

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2 business community, and the very small minority of
3 bad actors in our industry. Our organization is
4 and has always been available to work with elected
5 officials, City agencies and consumer
6 organizations, to find and promote effective ways
7 to rid our industry of all unscrupulous practices.
8 In fact, it was GNYADA that approached then
9 attorney General Robert Abrams in 1988 to ask him
10 to create with us a standard for automobile dealer
11 advertising, which resulted in the Attorney
12 General's advertising guidelines for auto dealers.
13 As the Committee considers these proposals, we
14 urge you to keep in mind that there are already
15 very broad and effective set of federal, state and
16 local laws, rules and regulations, that are
17 properly aimed at protecting automobile
18 purchasers. And while there is no showing of
19 pervasive or even widespread improper practices,
20 these broad proposed rules and regulations would
21 impose significant burdens on all dealers,
22 indiscriminately, without regard to their
23 generally high level of compliance with effective,
24 existing rules. Although GNYADA supports efforts
25 to make the car buying process more transparent

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2 and consumer friendly, we believe the legislation
3 before the Committee will not achieve those goals.
4 I'd like to go through our concerns with respect,
5 with regard to the each bill, and I would be more
6 than happy to answer any questions that you may
7 have. Proposed Intro 674-A will create and
8 require the use of a model contract in at least
9 seven different languages for the sale and leasing
10 of used automobiles. Leasing in parenthesis there
11 because quite honestly there is very little, if
12 any, leasing of used automobiles in our region.
13 There are other places in the country where that
14 takes place, but I know of none of it happening in
15 New York. We have questions and concerns with
16 both the concept of a model contract, as well as
17 some of the individual items that would be
18 required under this legislation. This proposal
19 does not take into consideration that most
20 dealerships already employ forms that are heavily
21 laden with many required disclosures. The forms
22 include buyers order forms and lease order forms,
23 in addition to retail installment sales contracts,
24 commonly referred to as RISC, or lease contract,
25 depending on the nature of the transaction. As

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2 the order form are not required by law, some
3 dealers prefer to rely, to not to rely on the
4 order forms. The provide the actual retail
5 installment sales contract, or the lease
6 contracts, instead. The proposal was also silent
7 as to whether the Department will have to take
8 into account or be compatible with the various
9 computer systems that modern dealerships use for
10 those forms. And frankly with which they could
11 not do without. Will the contract referred to in
12 the legislation be produced, printed and
13 distributed by the Department. Or will it be a,
14 an order form or final contract? Will the stated
15 provisions be required to be included in all
16 individual documents? Will those dealerships that
17 do use an order form now be, that do not, rather,
18 use an order form, now be required to do so? Will
19 they comply with the one document rule that exists
20 in, in federal law? Will they be required to
21 accommodate and comply with all existing federal
22 and state required disclosures and formats. It is
23 of paramount importance not to lose sight of the
24 fact that the retail installments sales contract,
25 in every instance, is provided by the lender or

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2 the--in the leasing situation, the leasing
3 company--that is financing the purchase or leasing
4 a vehicle to the consumer. Dealerships do not
5 create those documents. In addition, both
6 financing and leasing transactions are subject to
7 requirements and restrictions under the personal
8 property law of the State of New York, and are
9 subject to either federal Truth in Lending Act and
10 Regulation Z, or the federal Consumer Leasing Act
11 and Regulation M. Importantly, there does not
12 appear to have been consideration of those
13 extensive and longstanding consumer protections
14 statutes and regulations in this draft
15 legislation. Failing them, to take them into
16 consideration, it is entirely likely that
17 extensive preemption issues will arise. Further,
18 there are also issues with some of the specific
19 items that will be included. I speak in
20 particular with regard to the requirements for the
21 itemization and the requirement to itemize
22 optional items, as was correctly pointed out in
23 the earlier testimony, some of the items--and I'm
24 summarizing my testimony here--some of the items
25 that are listed in the legislation are not in fact

1 options. If someone's buying a used car, it
2 either has power brakes or it doesn't; nobody is
3 taking the power brakes off of a used car. It's
4 neither practicable or possible in most instances.
5 Other items, such as the rear window defroster,
6 are generally governed by federal safety
7 standards, that are either there or not there
8 depending on the year of the car, as well. The
9 car, the used car is a unique item, and even when
10 those cars were new, by the way, some of those
11 items were not optional. There are certain line
12 makes that produce cars with a certain trim level,
13 and you don't have an option as to power brakes;
14 if you want to buy that car, it comes with power
15 brakes because that's the way the manufacturer
16 makes it. The same thing with things like anti-
17 lock brakes, these days, and other, other--
18 airbags. The number of airbags is about the only
19 thing that's, that some lines, that's optional
20 these days. The bill also requires that all
21 charges related to Section 396QQ of the New York
22 State General Business Law, must be provided. We
23 note that the charges in that section of law are
24 not set by the dealer, but rather dealers are
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2 required to collect those fees on behalf of the
3 City and/or the State. Often, those charges are
4 difficult to determine with exactitude, prior to
5 actually registering the vehicle, as they are
6 variable, since they are determined by the weight
7 of the vehicle in New York, and in DMV's database,
8 and subject to various local surcharges depending
9 upon the consumer's residence. Thus they are not
10 subject to inclusion in a model contract. If a
11 dealer estimates the charges, as they are
12 permitted to do under the law, and those estimates
13 result in an overcharge of those fees, the dealer
14 is already required to refund the excess amounts
15 to the consumer in a timely manner, under Section
16 396QQ of the general business law. In regard to
17 disclosing the amounts to be paid under a lease,
18 or in monthly installments in a retail installment
19 sales contract, the Truth in Lending and Consumer
20 Leasing Acts and regulation Z and M, already fully
21 address those requirements. I would note,
22 parenthetically here, that they also, Truth in
23 Lending Act, and Regulation Z, also permit the
24 consumer to cancel any contract or to refuse to
25 enter in to any contract, and to get a full refund

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2 of any deposit, if there is any change in the
3 terms that are being offered to that consumer from
4 the initial terms that were offered. So, in the
5 instance where a consumer signed a, a buyer's
6 order that said, "3.9 percent APR and \$400 a month
7 for 20 months, with a down payment of X, and now
8 it's turned out to be 5.9 percent instead, the
9 consumer is absolutely already entitled under
10 Truth in Lending Act, to a, to refuse that
11 contract and to get a full refund of any deposit
12 that they have already made. Any requirement that
13 would lead to a deviation from the well-
14 established and very specific standards in
15 Regulation Z, and language that would put the
16 dealer in jeopardy of violating longstanding
17 federal law, that has been refined by amendments,
18 extensive federal and State jurisprudence, and
19 many scholarly treatments, were violating newly
20 enacted locally, local law, would certainly be an
21 anathema. The requirement, by the way, that the
22 consumer be entitled to refund, to a refund if
23 they, if they don't sign the final contract, is
24 also already required to be printed on the buyer's
25 order, so this is disclosure that's already given

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2 to every consumer who comes in to purchase a
3 vehicle. GNYADA was also in the forefront when
4 New York State passed the first in the nation
5 Motor Vehicle Retail Leasing Act more than 15
6 years ago. In addition, when the Federal Consumer
7 Leasing Act followed a year later, the State
8 harmonized its law with the federal law, to avoid
9 putting auto retailers, lenders and lessors in the
10 position of having to violate State law in order
11 to comply with federal law. The net effect of
12 those positive enactments and avoiding confusion
13 between tow standards, was to increase consumer
14 protection and consumer understanding of the
15 leasing process, as demonstrated by the enormous
16 growth of leasing. I use this point not because
17 there's a lot of leasing of used vehicles, but
18 simply to illustrate the importance of having
19 standards that are the same across the
20 jurisdictions, the City, the State and the federal
21 law, all in compliance, make it easier for
22 consumers to understand what they're doing and how
23 they're transaction is proceeding, rather than
24 more difficult. GNYADA believes that the use of a
25 model contract will be an additional burden to

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2 dealers, and the concerns outlined in the bill are
3 already addressed under current methods employed
4 by dealers in the purchase process. We also have
5 further serious and significant concerns with
6 regard to the requirement that contracts be
7 provided in a foreign language, in any foreign
8 language in which a contract might be negotiated.
9 Our objections are set forth in a memorandum of
10 opposition to a proposed legislation on this issue
11 in the State Legislature, and I have asked, I'll
12 ask the Committee to consider that memorandum,
13 which is attached to my testimony. In brief, I
14 would note that the outset, at the outset, the
15 consumers already have the right to take a copy of
16 the retail installment sales contract home, or to
17 their attorney, or to anyone they wish, to have it
18 reviewed and to have it explained before they sign
19 it. As out--and that notice is also provided to
20 consumers at the dealership. As outlined in the
21 memorandum, the risks that are engineered in
22 enforcing translation into more than 160 foreign
23 languages that are spoken in New York, far
24 outweigh any perceived benefits. If all financing
25 institutions fail to participate in providing

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2 contracts in every possible language, the result
3 of such a requirement will definitely result in
4 either decreased opportunities for those buyers to
5 purchase vehicles, or to obtain financing, or in
6 increased costs as competition for that business
7 would be reduced. Remedies already exist for any
8 deceptions that might occur. Proposed Intro 675,
9 requires the posting and distribution of
10 information relating to secondhand automobile
11 buyers' rights. Dealerships are already mandated
12 to post more than 50 signs in their dealerships.
13 More than half of which address specific consumer
14 rights. What you have before you today is
15 actually only a small sample, kit's only part of
16 the signs that are required already in a
17 dealership. These are frankly the signs that,
18 that the association prints and that I can get my
19 hands on in order, before this hearing. But there
20 are at least this many and more additional signs
21 that we don't have before you. And you can see
22 the range of disclosures that are made to
23 consumers on these signs. At some point, someone
24 really has to ask themselves whether the, the
25 plethora of signs increases disclosure or actually

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2 causes a decrease, decrease in disclosure, because
3 of the fatigue of trying to read all of these
4 disclosures at some point in time. In addition,
5 dealers provide more information materials to
6 buyers such as the government mandated annual fuel
7 economy guide and NYTSA's comparison of insurance
8 costs guidebook. These examples, as I said, are
9 just some of the examples of what's disclosed at a
10 dealership. GNYADA believes that this bill is
11 unnecessary and that buyers are well informed of
12 their rights through existing requirements. It is
13 unclear that the, in the legislation, whether
14 every dealer will have to post all seven signs
15 that are referred to, and who will print and pay
16 for those additional materials. Examples of
17 materials and information that is required to be
18 provided to consumers include the Used Car Buyers
19 Guide, already mandated to be distributed under
20 federal law. The Department of Consumer Affairs
21 enforces this provision regularly. The ability of
22 a consumer to find out the history of a dealer
23 through 311, by dialing 311, is provided on signs
24 required by existing regulations, also enforced by
25 the Department of Consumer Affairs. And the

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2 secondhand dealers license document, along with
3 their DMV dealer registration document, are
4 already displayed among the required signs. We
5 are also required, concerned, rather, that
6 requiring the term "bait and switch" to be
7 mandated in signs suggests or establish in the
8 minds of the customer in the dealership that is
9 reading the sign, that the dealer has already
10 employed that unscrupulous deceptive and outlawed
11 tactic. While it may be appropriate to require a
12 business that has been adjudicated to have
13 committed that violation to post such language,
14 requiring every dealership, even the most
15 scrupulous, careful and honest business, to post
16 such a sign, is unsupportable and bad policy. It
17 is punitive and reveals a guilty until proven
18 innocent ethic that has no place in this proposed
19 statute. Rather than create additional signs and
20 handouts, we would welcome the opportunity to work
21 with the Council and with the Department of
22 Consumer Affairs on ways to streamline the
23 information posted in dealerships and provided to
24 customers. A quick word on proposal 787. With
25 regard to electronic recordkeeping, we believe

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2 this step is premature. And we ask the Council to
3 hold off on mandating such a requirement until the
4 New York State Department of Motor Vehicles has
5 acted on this issue. The DMV is currently in the
6 process of setting up requirements for electronic
7 recordkeeping for all New York State automobile
8 dealers. We are in support of allowing dealers to
9 move to electronic records at this time. But fear
10 that requiring them to keep both electronic
11 records and the current book of registry--that is
12 the paper log--will create confusion and the
13 potential for inadvertent mistakes that will
14 become the subject of violations and penalties
15 needlessly. If I may also, I would like to, to
16 address a few of the issues that have already been
17 raised that I think are important to note. The
18 Department has suggested that itemization is a
19 good step, and we have no quarrel with that. In
20 fact, requiring itemized receipts is already part
21 of the Department of Consumer Affairs rules and
22 regulations that are imposed on every business in
23 New York City, and they should simply enforce that
24 rule instead of seeking to add yet another layer
25 of rules that require the same thing. As I said,

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2 the--when terms change as was spoken about, the
3 consumer already has the right under Regulation Z,
4 to void the contract, avoid the contract, get
5 their money back. It's, it's absolutely right,
6 it's in their written buyer's order, as is
7 required by law already existing. A word about
8 the police book, that is the book of registry.
9 The book of registry is required under New York
10 State rules and regulations, and New York City
11 rules and regulations. The Department of Motor
12 Vehicle regulations require that when you acquire
13 a vehicle, you have to list certain specific
14 information and they give you exactly in the State
15 rules and regs what information it is, the VIN
16 number, where you got it from, who provided it,
17 etc. And then they require that when you dispose
18 of that vehicle, that you must then again enter in
19 the book of registry where the vehicle went, who
20 bought it, essentially. This allows the Police
21 Department in New York City of course to track, to
22 track a vehicle, to find out who came in and
23 bought a used vehicle, who came in and sold a
24 vehicle in, for instance it turns out to have been
25 a stolen vehicle, who sold that vehicle to this

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2 dealer. I can, I can tell you that certainly our
3 members are in the business ever, wanting to be
4 caught with a stolen vehicle, because to them it's
5 a loss. Right? The vehicle gets seized and
6 they're out whatever money they paid to the thief.
7 There's no, there's nothing, nothing good about
8 ending up with a stolen vehicle on your lot.
9 There is, however, a great deal of confusion at
10 the Department, about the requirement to make
11 these records available, and to, and what has to
12 be in the records and when they have to be
13 entered. So, for example, dealers have been cited
14 for not having the records available when an
15 inspector from the Department came into a
16 dealership on a weekend, to see the book. The
17 book was, as required by New York State Department
18 of Motor Vehicles, locked up in a safe place
19 inaccessible to anybody who's not supposed to have
20 their hands on the book. The book is considered
21 to be an important document, and dealers are
22 required to lock up that book when essentially the
23 biller, who's the person who takes charge of
24 making all the entries in that book is not there.
25 Well, that dealer was cited because they didn't

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2 make the book available quickly enough when the
3 inspector came into the dealership. Dealers have
4 also been cited when a particular car did not
5 demonstrate when the dealer hadn't entered in this
6 book of registry that the car was being stored
7 offsite at a garage. New York City dealers are,
8 in some ways, unique, certainly in New York State,
9 not necessarily across the country, in that they
10 are often handicapped by the lack of available
11 real estate in which to store inventory. A car
12 comes into the dealership, it gets entered into
13 the book, and many times the dealers will have an
14 offsite garage or parking lot where they store a
15 vehicle. It's the only way they can operate, they
16 haven't got room in their, in their business,
17 which is often required by the manufacturer to be
18 on a major thoroughfare like Queens Boulevard or
19 Northern Boulevard, in Queens, for example. They
20 can't store 300 vehicles in that space, certainly
21 not cost effectively. So they rent space at
22 places like Belmont Racetrack where they have
23 excess parking lot space, and they keep vehicles
24 there. And when they need the vehicle, they bring
25 it back to the dealership. Well, dealers have

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2 been cited because they didn't enter in the book
3 that the vehicle had been moved to that offsite
4 storage. That offsite storage was under the
5 control of the dealer. The car had not been
6 disposed of, it had not been sold or transferred,
7 it simply was moved off of their storefront into a
8 parking lot. And dealers have been cited for
9 violations such as that, as well. Some of the
10 ads, some of the, the violations for what are
11 alleged to be bait and switch advertising.
12 Dealers work with newspapers to provide--and they
13 work often with an ad agency, to provide
14 advertisements to the newspapers. If a news--if
15 an ad was going to appear in the weekend edition
16 of the New York Times, for example, that ad has to
17 be in no later than 5:00 or 6:00 o'clock on
18 Thursday night. If the car is then sold on
19 Saturday morning before the Sunday edition of the
20 paper comes out, DCA has told the dealer they have
21 been in violation of bait and switch under those
22 circumstances, as well. They have also refused to
23 accept documentation from the ad agency that the
24 ad agency omitted a license number when they
25 submitted the, the ad to the newspaper. It was

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2 not the dealer's intent to omit their ad number,
3 certainly omitting a license number doesn't
4 enhance their ad in any way; in fact dealers
5 probably prefer to have their license number in
6 the ad, it shows a certain amount of legitimacy to
7 their business. So, they have no incentive to
8 leaving out their license number in an ad, it
9 happens by mistake, the dealer still gets cited
10 for a violation and it, it gets ballyhooed as a
11 terrible deceptive practice, by the dealer. With
12 that, I'd be happy to answer any kind of questions
13 that you might have.

14 CHAIRPERSON GARODNICK: Great, well
15 thank you, Mr. Rosenthal, for your very thoughtful
16 testimony.

17 COUNCIL MEMBER KOPPELL: Mr.
18 Chairman.

19 CHAIRPERSON GARODNICK: Yes,
20 Council Member.

21 COUNCIL MEMBER KOPPELL: Before you
22 ask questions, I just want to welcome the witness,
23 who I know for decades, and also apologize for
24 being late but I had the hearing of the Education
25 Committee upstairs.

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2 CHAIRPERSON GARODNICK: That's
3 okay, it's my sincere hope that that Committee
4 continues to be in sessions as I am a member of
5 that Committee as well.

6 COUNCIL MEMBER KOPPELL: And I
7 might also mention that more years ago than I care
8 to count, I was the principal sponsor of the Used
9 Car Warranty Legislation in Albany, which is I
10 guess still part of the panoply of rights that
11 used cars have, and I'm interested that we're
12 still talking about this subject 30 years later.
13 [laughs]

14 CHAIRPERSON GARODNICK: Well, thank
15 you for your comments and certainly I think that
16 that is a good place for me to start, which is
17 that obviously the panoply of regulations that
18 exist, exist for a reason. And that is of course
19 because it is an area which is potentially prone
20 to deception. And, and that's what this is all,
21 all of the, the rules and regs that you have
22 posted here are designed to do. Deception or
23 safety, and you know, I'd say half of these are
24 for safety related issues, half of 'em are related
25 to, to deception. And to the extent that I take

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2 issue with any big picture point that you made, it
3 was really only that what DCA is finding out
4 there, is that when they go out and do their
5 enforcement, and particularly on bait and switch,
6 less than half of the cars are actually that are
7 advertised are actually out there on the lot.

8 They're issuing, you know, fines to 90 percent of
9 the, the dealers that they're out there enforcing
10 against, which presents a less rosy picture,

11 perhaps, than what, what we heard from you're a
12 moment ago, and with full recognition that there
13 are good actors and there are bad actors out
14 there. And we really are looking to get at the
15 bad actors and not overregulate the good actors.

16 So, it is with that, you know, framework, that I
17 just wanted to pose a couple of questions at you.

18 One of them is on the model contract. Now, you
19 noted that there are a number of points here that
20 are required through the existence of federal or
21 state law. My question for you is there, is there
22 anything substantively that we have included in
23 this proposed model contract that you believe
24 should not be disclosed to a consumer? [pause]

25 If you want me to, I can through you, through it

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with you, if you want.

STUART ROSENTHAL: That would be, that would be good.

CHAIRPERSON GARODNICK: To make your life easier. I mean, one of them is the make and model.

STUART ROSENTHAL: It's already disclosed. Nobody has an objection to that.

CHAIRPERSON GARODNICK: Itemized list of costs. Now you noted in your testimony--

STUART ROSENTHAL: Already required.

CHAIRPERSON GARODNICK: Now, it's required at the end. You said it's a receipt required by DCA. What we're, we're really concerned about here is making sure that people understand what they're getting themselves into before they put down their credit card here, or before they hand over a money order or whatever it is. So, is there any rationale--putting aside any existing laws, and I want you, I want you to just, I know it's very hard to separate from that, over there, but is there any reason for somebody not to be able to see or contemplate a list of any

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2 itemized editions with their costs in advance of
3 their putting down their credit card.

4 STUART ROSENTHAL: Not only is
5 there not, it, it's certainly in terms of the
6 dealers that I represent, that is the franchised
7 new car dealers, many of them actually sell from
8 what they refer to as a menu. And they provide
9 the customer with an options, with a list of
10 options, and they ask the customer to sign which
11 ones they want, and which ones they don't want.
12 So the customer's already, they're already
13 essentially following some of the procedures that
14 you're talking about. In other instances, the
15 overwhelming majority of car sales are, if they're
16 not on a lease, and we've already said that used
17 cars are not, the overwhelming majority are done
18 as a finance purchase. And the, the consumer has,
19 until they actually sign that final retail
20 installment sales contract, which is actually in
21 most cases the day which they come back to pick up
22 the car after it's been prepped, it's been
23 checked, it's been whatever, they're already
24 getting that disclosure prior to they come, to
25 when they come in to get the, to sign the retail

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2 installment sales contract. Is there a reason
3 that you could, that anyone would, should not be
4 entitled to a itemized list, absolutely not.

5 CHAIRPERSON GARODNICK: Okay. That
6 those options are not mandatory? That that be
7 disclosed, that those are not mandatory for you to
8 include any or all of those additional items?

9 STUART ROSENTHAL: Well, again, it
10 is under the other Consumer Affairs regulation
11 that already exists, but--

12 CHAIRPERSON GARODNICK: Again, put
13 aside that, and we'll get to that in a second, but
14 I just wanted to--

15 STUART ROSENTHAL: Correct.

16 CHAIRPERSON GARODNICK: --
17 understand from your perspective, is there any
18 reason why a used car dealer would have any issue
19 with saying that purchasing these additional
20 options is not mandatory?

21 STUART ROSENTHAL: No.

22 CHAIRPERSON GARODNICK: Okay. Now,
23 final cost of the automobile, including taxes and
24 other fees, you made an interesting point about
25 that in your testimony, that some of those fees

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are not calculable until a later time, is that right?

STUART ROSENTHAL: Correct.

CHAIRPERSON GARODNICK: Now, what if the, what if the, the contract included just the fact that there's an estimate of those fees with an indication that you're entitled to the refund that you described. No reason for not disclosing that, is that right?

STUART ROSENTHAL: Not only is there not any reason for not disclosing it, it is already disclosed and is required to be disclosed by the Department of Motor Vehicles.

CHAIRPERSON GARODNICK: Right. Now, of course, and again, the reason I'm holding you off on that, and what the alternative requirements are, is that some of it's required by posting, some of it's required in one way or another, and as you point out, it, you know, it could be very hard to decipher all of these things. If you spend the time reading all of it, then are competent enough to understand the language that various entities have set out, you may be in very good shape, or you may be duly

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confused. But the point that I'm trying to understand is, is there any reason why it shouldn't be? And the answer is no.

STUART ROSENTHAL: Correct.

CHAIRPERSON GARODNICK: Okay.

STUART ROSENTHAL: 'Cause it already it is.

CHAIRPERSON GARODNICK: Okay.

STUART ROSENTHAL: On the, on the actual contract, by the way, that's not a sign, the disclosure that if the dealer is estimating the fees, you're ent--and there's an overcharge, you're entitled to an overcharge within a certain period of time, is required to be on the contract, by the State.

CHAIRPERSON GARODNICK: Got it.

And by the way, an important point here is that this bill does not require anybody to change their contract if the terms of their, the contract already include what is contemplated here. So, your point about, "Well, this is in the contract," and this is, that is in the contract already for the folks who are representatives, or that you represent, they're good. It's if you are, if you

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2 do not already have components that are here, in
3 your contract, they would need to be included in
4 the contract. Okay. If the automobile is to be
5 leased or paid monthly installments, the total
6 number of monthly installments, the total cost of
7 each monthly installment, and the date upon which
8 monthly installments shall cease?

9 STUART ROSENTHAL: All covered by
10 Regulation Z, and the federal Truth in Lending
11 Act, it's all disclosed.

12 CHAIRPERSON GARODNICK: Required to
13 be in the contract.

14 STUART ROSENTHAL: Required to be
15 in the final retail installment sales contract.
16 And under New York State personal property law, as
17 well.

18 CHAIRPERSON GARODNICK: Okay.
19 Charges related to the automobile dealer's
20 provision of registration, and/or certificate of
21 title?

22 STUART ROSENTHAL: Required to be
23 disclosed by the Department of Motor Vehicles.

24 CHAIRPERSON GARODNICK: In the
25 contract.

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STUART ROSENTHAL: In the contract.

CHAIRPERSON GARODNICK: Disclosures related to the buyer's guide and warranty pursuant to the FTC and section 198(b) of the New York State General Business Law?

STUART ROSENTHAL: Not disclosed in the contract, but disclosed, but required under other laws. So, the Federal Trade Commission used car buyer's rule, requires the posting of the buyer's guide on every used car that's being offered for sale. So that's already required to be there and is required to be provided to--

CHAIRPERSON GARODNICK: Elsewhere.

STUART ROSENTHAL: --to the--

CHAIRPERSON GARODNICK: Elsewhere, but not here.

STUART ROSENTHAL: Correct.

CHAIRPERSON GARODNICK: Okay. So no, in other words, no reason to not disclose it, it's required in other contexts, got it. The customer's right to receive a copy of the final assigned contract?

STUART ROSENTHAL: We wholeheartedly endorse that.

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CHAIRPERSON GARODNICK: Okay.

Okay. So, then it really becomes a question of if you were to do this, how you do it in a way that does not interfere with those who are already providing this information in their contracts already? And to the extent that we need to tweak any of these things because they are either impossible to know or unduly burdensome on the dealer.

STUART ROSENTHAL: Correct. And I would also ask that the Committee consider that, that franchise new car dealers in particular, and even I think to a large extent many of the used car dealers, are already computerized with systems from organizations such as Reynolds and Reynolds, and ADP, and an outfit called Arcona [phonetic] and two or three others that provide software and hardware that allow them to take their forms and put them in the computer and that all of the information that's been entered in the computer with regard to that sale, is populated into the correct place on the form, so the consumer ends up with a document that's understandable next to the line that says, "Title and registration fees" is

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2 the number that's supposed to be there for title
3 and registration fees, next to the number for, you
4 know, warranty is the number that relates to the
5 warranty. So, it's important that in proposing a
6 model contract, that the actual form of that
7 contract be flexible enough so that dealers don't
8 have to leave a contract that they have with
9 Reynolds and Reynolds, which by the way may be a
10 15 year contract, because that's the way Reynolds
11 and Reynolds was selling their contracts, and it
12 would be extremely costly for them to try to break
13 that contract, in order to match, manufacture
14 documents that meet some model form.

15 CHAIRPERSON GARODNICK: We're
16 sensitive to that. The buyer's rights. Today,
17 putting aside the terms that are in the contract,
18 and putting aside the buyer's guide, which I think
19 you said is posted. Is that accurate?

20 STUART ROSENTHAL: On the vehicle,
21 yes.

22 CHAIRPERSON GARODNICK: Right. Is
23 there anything that's required to be handed to a
24 consumer, that explains the process that they're
25 about to engage in, in advance of essentially

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doing the transaction?

STUART ROSENTHAL: There is--I'll try to answer your question as best as I understand it.

CHAIRPERSON GARODNICK: Okay, I can clarify, too, if you need, if you need me--

STUART ROSENTHAL: There is nothing, there is nothing that a, that a dealer is required to prepare to educate the consumer about how to buy a car.

CHAIRPERSON GARODNICK: That's not the question. So the question is--

STUART ROSENTHAL: Okay.

CHAIRPERSON GARODNICK: --about your rights as a car buyer. The, you know, the combined, simple, simple language format of what you are entitled to do, and what you are not obligated to do, as a consumer, at the outset, as opposed to after all of the interactions have happened between the consumer and a salesperson.

STUART ROSENTHAL: There is no single document that, that is required to be put together to tell a consumer what all the steps are and what all their rights are. They're, they are

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2 entitled, if they want, to get a copy of the
3 retail installment sales contract, and leave with
4 it, to have it reviewed. They're entitled to, to
5 have that understanding they are given at the time
6 of the sale, their bill of rights, under the
7 Section 198(b), the Used Car Warranty Law and
8 commonly referred to as the Used Car Lemon Law.
9 The Attorney General's office provides a ton of
10 information on that. The dealer's association has
11 provided in the past booklets about that as well.

12 CHAIRPERSON GARODNICK: Okay.

13 Okay, but the short answer is that some of this
14 you need to know to request, some of it is posted
15 in one place or another, some of it is included
16 in, in the midst of requirements about accepting
17 used oil for recycling or discarding vehicle
18 batteries, or labor costs or other requirements,
19 but nothing is required to be actually handed to
20 somebody when they are contemplating buying the
21 car, as opposed to the, the contract or the
22 receipt or other things at the end of the
23 transaction.

24 STUART ROSENTHAL: That's, that's
25 correct, just as there is nothing required when

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2 you go into purchase a house or to get a mortgage
3 or to buy a stereo or--

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CHAIRPERSON GARODNICK: That's
5 true, but I just want to be clear, the reason why
6 we're having the conversation about used cars is
7 that while I would trust you to sell me a used
8 car, and I believe that you would follow all of
9 the rules, and I believe that it would be done
10 very likely to the letter of the law, that may not
11 be the case for all people in the industry. And
12 as a result, we need to continue to have the
13 conversation of about how to protect consumers in
14 those contexts, and certainly DCA's investigations
15 are showing that there's a pretty high rate of
16 noncompliance in some of these areas. And you
17 know, by the way, on your, your point about
18 publishing an add and having a car be sold between
19 the time that the ad was put into the newspaper
20 and when it was published, to the extent that
21 that's not an affirmative defense for somebody who
22 is issued a violation, I would be very surprised.
23 But if it's not, then we should, we should discuss
24 that. I mean, certainly, you have to, you know,
25 you should have an intent to have actually create

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2 a deceptive practice, I would think, for you to be
3 fined for it at the end of the day. But what
4 their results are showing is that there, there are
5 issues, still, in the industry and that's, that's
6 what we're trying to get at. So, when you give
7 the example of, "You don't get that when you're
8 buying a house" or "You don't get that when you're
9 buying something in a grocery store" or any store,
10 there's something different about this category,
11 where the consumer does not necessarily know what
12 they're getting into, and that's what we're
13 looking to protect them from.

14 STUART ROSENTHAL: With all due
15 respect, I would take issue with what a high rate
16 of violations or noncompliance is. The Department
17 has said, I believe in their testimony, that there
18 are 1,000 used car dealers in New York City alone.
19 Each one of those dealers in all likelihood
20 conducts hundreds of transactions every month.
21 We, we undoubtedly have millions of used cars
22 being sold in the City of New York. So, so the
23 number of instances where there are violations of
24 this nature, is a little uncertain. I would also
25 take issue with the characterization of what the

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2 Department considers a violation. The Department
3 has in the past issued statements that "X dealer
4 violated the law by not having a car available" or
5 not having it, whatever the substance was. Many
6 times we have, it's been our experience, those
7 declarations were prior to any adjudication of the
8 violation. They didn't follow hearings, they
9 preceded the hearings. Dealers names were bandied
10 about in the press as bad guys, before there had
11 been a hearing or an opportunity for the, for the,
12 the dealer to defend themselves, and to show why
13 maybe that wasn't a violation. Their
14 understanding, as I say, is imperfect about the
15 regulation, and what it's required. So, I really
16 do have a, with all respect, a variance as to what
17 the level of violations are.

18 CHAIRPERSON GARODNICK: Okay. Oh,
19 look, that's a, that's a fair point, and a fair
20 critique, and that's something we should talk
21 about further, 'cause certainly a violation is,
22 should really only be tallied to the extent that
23 it is not dismissed. And those are details that
24 we certainly should pursue together. I want to
25 just express my appreciation again to you for your

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2 testimony, and we certainly will count on you as
3 we, you know, work on these bills going forward,
4 because you are certainly a wealth of information
5 here, and we appreciate that. And I want to
6 recognize the presence of Council Member Nelson
7 and Council Member Koppell identified himself
8 before. Okay. And we have no other witnesses
9 wishing to testify at this hearing today, so with
10 that we will thank you and to, thank everyone for
11 their participation and for their testimony,
12 whether it was submitted orally or in written
13 form, or both, and with that we are adjourned, so
14 thank you.

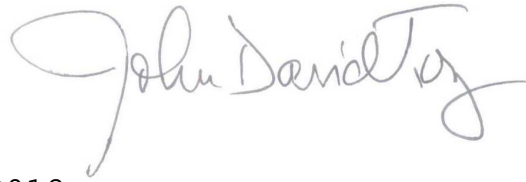
15 [gavel]

16 STUART ROSENTHAL: Thank you.

C E R T I F I C A T E

I, JOHN DAVID TONG certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature

A handwritten signature in cursive script that reads "John David Tong". The signature is written in dark ink and is positioned to the right of the printed word "Signature".

Date March 21, 2012