



Office of Commissioner  
Rebecca Kelly Slaughter

UNITED STATES OF AMERICA  
**Federal Trade Commission**  
WASHINGTON, D.C. 20580

**STATEMENT OF COMMISSIONER REBECCA KELLY SLAUGHTER**

*In the Matter of Liberty Chevrolet, Inc. d/b/a Bronx Honda*

*Commission File No. 1623238*

May 27, 2020

The automobile-financing market in the United States is profoundly broken. Although this matter involves extreme conduct that may make it seem like an outlier, the tricks and traps that Bronx Honda used against consumers are all too prevalent at auto dealerships across the country. The complaint against and settlement with Bronx Honda and its general manager, Carlo Fittanto, highlight the perils that consumers, especially people of color, face in purchasing and financing a vehicle, and they illustrate the limited utility of one-off enforcement actions to fix a broken market. In my view, far-reaching structural reform to the automobile-financing and -sales markets is long overdue and urgently needed: First and foremost, the Commission can start by initiating a rulemaking, under the Dodd-Frank Act, to regulate dealer markup.

**Bronx Honda's Lawbreaking**

The Commission's Division of Financial Practices expertly uncovered a cornucopia of consumer abuses allegedly committed by Bronx Honda, from bait-and-switch advertising to rip-off fees for "certified" vehicles and from illegally exorbitant fees for vehicle registration to padding final sales contracts with "air money" consumers would not detect. *See* Compl. ¶¶ 10–19. Our complaint alleges that these practices all violate the prohibition against unfair or deceptive acts or practices under section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1). Bronx Honda also allegedly ran afoul of two important safeguards provided by the Truth In Lending Act and its implementing regulation, Regulation Z, when it advertised financing terms without disclosing the advertised interest rate as an Annual Percentage Rate (APR) and without clearly and conspicuously disclosing key financing terms, such as required down payment, when advertising a specific monthly payment. *See* Compl. ¶¶ 20–22; 15 U.S.C. § 1664(c)–(d); 12 C.F.R. § 226.24(c)–(d).

This lawbreaking is already outrageous enough to merit severe consequences, but it is Bronx Honda's, and Mr. Fittanto's, practice of brazenly and systematically discriminating against African-American and Hispanic consumers, as alleged in the complaint, that angers me most:

Defendants have instructed sales personnel to charge African-American and Hispanic consumers higher markups and additional fees, leading to higher prices for vehicles.

Defendants have instructed personnel to perform these practices with African-American and Hispanic consumers only, stating that these consumers have limited education. Defendants have told their employees not to attempt these practices with non-Hispanic white consumers. Defendants also have used derogatory terms to refer to African-American and Hispanic consumers.

Compl. ¶ 26. The high costs inflicted on people of color by discriminatory actors and policies are rarely so legible and calculable as they are here: “Defendants charged the average African-American borrower approximately 19 basis percentage points (approximately \$163) and the average Hispanic borrower approximately 24 basis percentage points (approximately \$211) more in interest than similarly situated non-Hispanic white borrowers.” *Id.* ¶ 28. This alleged conduct flagrantly violates the Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§ 1691–1691f.

### **Discrimination in Auto Finance and the Limitations of an Enforcement Strategy**

How was it that Bronx Honda was able to charge African-American and Hispanic borrowers more than their White counterparts? Some background about the auto-financing market may be helpful here. When a consumer purchases a car from a dealership without having already secured financing, she gives the sales representative all of her pertinent information (which is then combined with the vehicle and sale information) so that various third-party lenders can price the loan: income, credit score, down payment, vehicle price, and so forth. The sales representative assures the borrower that she will get the best rate that these lenders will offer based on her likelihood of repaying the loan. And the sales representative does see this rate, known as the “buy rate.” The buy rate incorporates every bit of information necessary to price a loan based on risk of repayment.

But the buy rate is rarely offered to the consumer. Instead, the consumer is typically offered a higher rate—up to 250 basis points, or 2.5% APR, higher—based on the discretion of (or, as alleged here, racist instructions given to) the sales representative. The proceeds of this additional cost, called “dealer markup,” are retained by the dealership. It is as maddening as it is unsurprising that, in the United States, people of color often pay significantly higher dealer markups. This has nothing to do with a given consumer’s likelihood to repay the loan. As a result, people of color on average pay far more for the same vehicle than their White counterparts with identical creditworthiness.

There are two parties whose actions combine to create this discrimination: the auto dealer and the indirect auto-finance company that bids for the former’s business. Because of the outsized political power and lobbying muscle of the auto dealers, they won an exemption from the jurisdiction of the Consumer Financial Protection Bureau in the final days of debate over the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (2010). Nevertheless, the young CFPB tried to root out this systemic discrimination by bringing ECOA enforcement actions against the indirect auto-finance companies whose policies permitted dealers unfettered discretion to charge people of color more for the same car than identically

creditworthy White borrowers.<sup>1</sup> But the effort was doomed by a collective-action problem: So long as *any* indirect auto lender was willing to provide more dealer markup than those lenders that were under order, dealers would flock to those permissive lenders.<sup>2</sup> Because of the power auto dealers have in selecting a lender for most borrowers, permitting maximal dealer markup remained an important element for lenders in bidding for business from the dealers.

This enforcement action against Bronx Honda is the Commission’s first ECOA action since the passage of the Dodd-Frank Act, and it is, in my view, a most welcome development. The hard-fought settlement, which I support, is necessarily a compromise: It limits dealer markup to just 185 basis points (subject to rigorous fair-lending compliance and monitoring), and it allows Mr. Fittanto to continue participating in auto sales. In an ideal world, I would have gladly supported the elimination of Bronx Honda’s ability to charge dealer markup as well as a lifetime ban against Mr. Fittanto’s managing any dealership or related entity. These are the tradeoffs inherent in an enforcement strategy.

### **How Consumers Can Avoid Abusive Markups Now**

I believe that a rulemaking strategy will prove more useful, but rulemakings take time—to say nothing of political will. In the meantime, I have pragmatic advice to share with consumers who are shopping for cars. (None of this is new.<sup>3</sup> All of it deserves to be repeated.)

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<sup>1</sup> This effort resulted in many consent orders with major captive lenders and other indirect auto lenders, in which they agreed to limit dealer markup and police dealerships for fair-lending compliance. *See, e.g.,* Consent Order, *In re Ally Fin. Inc. & Ally Bank*, No. 2013-CFPB-0010 (Dec. 20, 2013), [https://files.consumerfinance.gov/f/201312\\_cfpb\\_consent-order\\_0010.pdf](https://files.consumerfinance.gov/f/201312_cfpb_consent-order_0010.pdf); Consent Order, *In re Fifth Third Bank*, No. 2015-CFPB-0024 (Sept. 28, 2015), [https://files.consumerfinance.gov/f/201509\\_cfpb\\_consent-order-fifth-third-bank.pdf](https://files.consumerfinance.gov/f/201509_cfpb_consent-order-fifth-third-bank.pdf); Consent Order, *In re Toyota Motor Credit Corp.*, No. 2016-CFPB-0002 (Feb. 2, 2016), [https://files.consumerfinance.gov/f/201602\\_cfpb\\_consent-order-toyota-motor-credit-corporation.pdf](https://files.consumerfinance.gov/f/201602_cfpb_consent-order-toyota-motor-credit-corporation.pdf). Civil-rights advocates rightly cheered this important development.

<sup>2</sup> *See, e.g.,* William Hoffman, Auto Finance News, *Lingering CFPB Consent Order Restricts 3 Lenders to Lower Dealer Markups* (Feb. 26, 2018), <https://www.autofinancenews.net/allposts/operations/comp-reg/lingering-cfpb-consent-order-restricts-3-lenders-to-lower-dealer-markups> (“As long as there are finance sources out there willing to offer 200 to 250 basis points, the industry is naturally going to revert back to that standard.”). In fact, Bronx Honda did this as well when American Honda Finance Corporation, under its order with the CFPB, limited dealer markup to 125 basis points. *See* Compl. ¶ 29; Consent Order, *In re Am. Honda Fin. Corp.*, No. 2015-CFPB-0014 (July 14, 2015), [https://files.consumerfinance.gov/f/201507\\_cfpb\\_consent-order\\_honda.pdf](https://files.consumerfinance.gov/f/201507_cfpb_consent-order_honda.pdf).

<sup>3</sup> *See* Fed. Trade Comm’n, *Financing or Leasing a Car*, <https://www.consumer.ftc.gov/articles/0056-financing-or-leasing-car#Shop> (“Before you finance a car, shop around and compare the financing terms offered by more than one creditor.”); Consumer Fin. Prot. Bureau, *Learn to Explore Loan Choices*, <https://www.consumerfinance.gov/consumer-tools/getting-an-auto-loan/learn-to-explore-loan->

First, do not rely exclusively on the auto dealership to secure financing for your automobile purchase. Instead, try to obtain financing first from a trusted financial-services provider, such as a community bank or credit union. When you shop for a car with financing in hand, all you are negotiating is vehicle price and add-ons. When, instead, you shop for a car without financing, you are an easier mark, and the dealership has more ways to steer you into paying more. If you do try to secure financing through a dealership, you should ask: “What is the best ‘buy rate’ that a lender has offered? How much in dealer markup do you propose to charge me?” You might follow up: “I am unwilling to pay any dealer markup. I will agree only to the lowest ‘buy rate’ that has been offered and not a penny more.”

### **The Need for FTC Rulemaking**

Enforcement actions and consumer education can help mitigate racial disparities, but to eliminate them we need to turn to another tool in our toolbox: rulemaking. The fundamental problem in the auto-dealing market is that auto dealers no longer make most of their money by selling cars. Instead, they make money by selling credit and add-on products, such as guaranteed asset protection (GAP), window etchings, extended warranties, and anti-rust coatings.<sup>4</sup> Nearly all of these moneymaking strategies can be bad for consumers. Despite the obvious flaw of the Dodd-Frank Act’s exemption from the jurisdiction of the CFPB for auto dealers, the Act had a saving grace: The Federal Trade Commission is empowered to write rules, under the Administrative Procedure Act, to regulate auto dealers. *See* 12 U.S.C. § 5519(d). I agree with Commissioner Chopra<sup>5</sup> that the time has come for the Commission to commence rulemaking proceedings to tackle both the unfair and deceptive consumer abuses as well as the discrimination too often seen at auto dealerships. (I also share Commissioner Chopra’s view that discriminatory pricing practices that result from dealer markup are unfair under section 5 of the Federal Trade Commission Act.)

Most consumers who shop for cars have not secured financing beforehand. Should we, as a society, write them off, throw them to the wolves? I think that we should not. The consumer-dealer relationship is fundamentally unequal, and the dealers have had the upper hand for too long. The CFPB’s actions against auto lenders, which covered millions of loans but did not include vivid evidence of intentionally discriminatory policies of the sort alleged here,

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choices/ (“Check out banks, credit unions, and other lenders. . . . Dealers may have discretion to charge you more than the buy rate they receive from a lender, so you may be able to negotiate the interest rate the dealer quotes to you. Ask or negotiate for a loan with better terms.”).

<sup>4</sup> *See, e.g.,* Mish Schneider, *Car Dealers Make More Profit on Loans than Selling Cars*, TheStreet (Oct. 2, 2019), <https://www.thestreet.com/mishtalk/economics/car-dealers-make-more-profit-on-loans-than-selling-cars>; RealCarTips, *How Car Dealerships Really Make Money*, <http://www.realcartips.com/newcars/135-how-car-dealers-really-make-money.shtml> (“Most dealers don’t make the bulk of their profits on the sale of a new car. The big profit usually comes through arranging car loans, selling add-ons, and making money on your trade-in.”).

<sup>5</sup> *See* Fed. Trade Comm’n, *FTC v. Liberty Chevrolet, Inc.*, Statement of Comm’r Chopra, at 1.

uncovered similarly disparate or even worse results in loan pricing.<sup>6</sup> These data impel the conclusion that the policy of permitting unfettered discretionary dealer markup leads to the same racist result, whether or not discriminatory intent is involved. Impact, more than intent, should be the guide for our policymaking. On that score, dealer markup has got to go. And I would like to help.

The federal government, I believe, has a moral obligation to end the discriminatory impact of permissive dealer markup. The net result of doing so will be to end an enormous wealth transfer from consumers of color to other consumers and to dealers. This ending is worth celebrating if we achieve it. As I mentioned, we should start by initiating a rulemaking to regulate discretionary dealer markup. Using our enforcement authority, dealership-by-dealership, is unlikely to effect mass changes; here, an enormous amount of staff time was invested in taking on just one of the tens of thousand dealerships<sup>7</sup> in the United States. Rulemaking, I believe, will prove to be a more effective and efficient approach.

American consumers of all races should hope for the same outcome: The financing terms of a vehicle should depend only on one's financial capability and not on one's race. This desirable outcome is not the system American consumers encounter today, because of widespread discretionary dealer-markup policies countenanced by auto lenders and exploited by auto dealers. A better, fairer, simpler auto-purchasing market awaits us: one in which our merit, not the color of our skin, or the way in which a sales agent regards our particular jib, determines the APR we pay for a particular vehicle. This case brings us one step closer to that better future. A rulemaking that reins in discriminatory discretion and other consumer abuses may yet get us all the way there, but that is a question to be confronted in the future. For now, this strong case adds on to the CFPB's pathmarking efforts and confirms the Federal Trade Commission's role as a vanguard agency for enforcing civil rights, so I gladly concur in the result.

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<sup>6</sup> To wit, Bronx Honda's allegedly intentional discrimination resulted in African-American and Hispanic borrowers' paying 19 and 24 basis points more, respectively, than their similarly situated non-Hispanic White counterparts. *See* Compl. ¶ 28. Ally Bank, which as an indirect lender did not know the race of the borrower, permitted dealer markup that resulted in African-American and Hispanic borrowers' paying 29 and 20 basis points more, respectively, than their similarly situated non-Hispanic White counterparts. *See* Consent Order, *In re Ally Fin. Inc. & Ally Bank*, ¶¶ 21–22. Fifth Third, another indirect lender, permitted dealer markup that resulted in African-American and Hispanic borrowers' paying 35 and 36 basis points more, respectively, than their similarly situated non-Hispanic White counterparts. *See* Consent Order, *In re Fifth Third Bank*, ¶¶ 18–19. Similarly, Toyota permitted dealer markup that resulted in African-American borrowers' paying 27 basis points more than similarly situated non-Hispanic Whites. *See* Consent Order, *In re Toyota Motor Credit Corp.*, ¶ 18. That these indirect lenders, which could not have intentionally discriminated in the way that Bronx Honda allegedly did, saw even greater racial disparities than Bronx Honda, across millions of loans they originated, underscores that Bronx Honda's racist impact is not an outlier in the industry.

<sup>7</sup> The Commission estimated that around 44,000 dealerships exist in total. *See* Fed. Trade Comm'n, Request for Comment on the Privacy Rule, 85 Fed. Reg. 23,961, 23,964 (Apr. 30, 2020).