



Lorelei Salas,
Commissioner

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Re: Definition of Secondhand Automobile Dealer

The Department of Consumer Affairs (“DCA”) issues this letter to clarify the license requirement for secondhand automobile dealers in Section 20-265 of the New York City Administrative Code (“Code”). For the reasons set forth below, DCA has determined that any person or business who deals in the purchase or sale of secondhand automobiles in New York City must be licensed by DCA as a secondhand automobile dealer, regardless of the number of automobiles displayed, purchased or sold.

Section 20-265(a) of the Code makes it “unlawful for any person to act as a dealer in second-hand articles without a license therefor.” Subdivision (b) provides for two types of secondhand dealer licenses: a “general license,” and a “secondhand automobile dealer’s license.” The term “dealer in second-hand articles” is defined in Section 20-264(a) to include “any person who, in any way or as a principal broker or agent: (1) Deals in the purchase or sale of second-hand articles of whatever nature, or (2) Accepts [*sic*] or receives second-hand articles as returns of merchandise or in exchange for or for credits on any other articles or merchandise” None of the definitions of “dealer in second-hand articles” listed in Section 20-264(a) requires a minimum number of purchases and sales of second-hand articles. See also Irreplaceable Artifacts v. City of New York Dep’t of Consumer Affairs, 802 N.Y.S.2d 450, 452 (1st Dep’t 2005) (finding that “[Section 20-264, et seq.] does not contain an [] exception for occasional sales of secondhand articles.”).

Motor vehicle dealers are also required to register with the New York Department of Motor Vehicles (DMV) pursuant to the New York Vehicle and Traffic Law (“VTL”) § 415. VTL § 415(a)(1) defines a “dealer” as “a person engaged in the business of buying, selling or dealing in motor vehicles, motorcycles or trailers” VTL § 415(a)(1) also contains the following provision: “any person who sells, or offers for sale more than five motor vehicles, motorcycles or trailers in any calendar year or who displays or permits the display of three or more motor vehicles, motorcycles or trailers for sale at any one time . . . will be regarded as a dealer.” DCA interprets this provision as creating a presumption that a person who sells more than five motor vehicles in any calendar year or who displays or permits the display of three or more motor vehicles for sale at any one time will be considered a “dealer” requiring licensure by DMV, and not as part of the definition of dealer.



In an interpretation letter issued on September 30, 2008, DCA cited the presumption in VTL §415(a)(1) as a basis for concluding that any person who sells, or offers for sale more than five motor vehicles, motorcycles or trailers in any calendar year or displays more than three automobiles for sale at any one time is required to obtain a second hand automobile dealer's license from DCA. For the reasons stated above, DCA hereby clarifies that interpretation and finds that Section 20-265 of Code requires any person who deals in the purchase or sale of second hand automobiles is required to obtain a license from DCA, regardless of the number of second hand automobiles bought, sold, or displayed.

