



INSPECTOR GENERAL REPORT

2005-05-0286

December 20, 2006

FLEETMAX

Indiana Inspector General David O. Thomas, after an investigation by Special Agent Darrell Boehmer and Staff Attorney Amanda Schaeffer, reports as follows:

This investigation involves a corporation, Family Management Corporation, d/b/a Fleetmax (Fleetmax), which contracts with the Indiana Bureau of Motor Vehicles (BMV) for the titling of imported vehicles. Indiana and federal laws require that a vehicle imported into the United States must pass an inspection which reviews, among other things, the vehicle identification number (VIN). This inspection must be accompanied by an affidavit verifying that the inspection took place. IC 9-17-2-12(d). The purpose of this law is to prevent fraud and the selling of stolen vehicles.

I.

Investigation

In April of 1999, Fleetmax contracted with the BMV to process imported vehicles in a pilot program. Subsequent contracts have left this relationship intact. The contract makes Fleetmax a limited service contract license branch, and the contractual duty of Fleetmax is to obtain speed titles for vehicles that are being imported by Fleetmax from Canada. In order to import vehicles into the United States, the vehicles must obtain United States ownership. To accomplish this, vehicles are titled by Fleetmax's dealership with Indiana titles being owned by Fleetmax as a trustee of Ford Motor Company and as an agency of Chrysler Financial LLC. Under this contract with the BMV, Fleetmax imported approximately 29,000 vehicles in 2004 and approximately 12,000 vehicles in 2005.

Fleetmax is willing to enter this contract, and even pay a fee to BMV for the importing service Fleetmax provides, because Fleetmax is then able to make a profit on the vehicles it imports and sells to others. Fleetmax also produces a profit by charging automobile companies a fee for importing the vehicle into the United States.

Following Indiana law, the contract requires Fleetmax to perform physical police inspections of each imported vehicle and to provide an affidavit evidencing this inspection. The fulfillment of this contract term has changed since the original 1999 contract. In the beginning stage, there was apparently an informal oral agreement between BMV and Fleetmax that a physical inspection of every

vehicle was not required, and that inspections would be conducted from photographs and import records. Subsequently, inspections were done by a Fleetmax employee, and then later by Marion County Sheriff Deputies.

In this interim stage, BMV changed to a strict interpretation of the contract and Indiana law and required Fleetmax to obtain the required physical inspections of each vehicle by law enforcement officers. To further this requirement, in September of 2003 the contract changed to allow Canadian police officers to perform the required physical inspections. Approximately five officers were recruited by Fleetmax to do the inspections, and they were paid \$200 a month.

An interim State Board of Accounts (SBOA) audit of Fleetmax revealed noncompliance, triggering an OIG investigation in 2006. Pursuant to this investigation, the OIG contacted Canadian police officers who were hired by Fleetmax to perform inspections. Officer Bill Zaharia of the Royal Canadian Mounted Police stated that he had signed blank affidavits, without actually inspecting many of the vehicles, from July 2003 until approximately October of 2004. Another officer, Dan Lampert of the York Regional Police Department, stated that he signed blank affidavits from November of 2003 through July 2004. He stated that he had never inspected any vehicles. Troy Rossignol of the Greater Sudbury Police Department also admitted to signing blank affidavits.

Fleetmax provided the officers with these blank affidavits. Through investigation, it was also discovered that on several occasions affidavits with officers' signatures were photocopied by Fleetmax employees when the officers stopped signing the affidavits. Photocopies of the affidavits with officers'

signatures were used from the summer of 2004 through 2005.

This physical inspection requirement is coupled with a required form to be completed by Fleetmax, specifically State Form 39530. The SBOA audit also revealed that many of these forms were only partially completed. The audit also noted that many of the signatures on the forms appeared “canned” or copied.

Fleetmax responded to these allegations in writing by alleging it was impractical to do a physical inspection of every vehicle, as there was not a sufficient amount of police officers.

Former BMV Commissioner Mary DePrez learned in a meeting in 2004 with Fleetmax that physical inspections were not being performed on every vehicle and responded immediately. DePrez hired an attorney, Kevin Schiferl, on behalf of BMV to investigate these issues. On May 11, 2004, Schiferl sent a letter on behalf of BMV to Fleetmax containing the following excerpt:

[C]ommissioner DePrez and the BMV were surprised to learn that physical police inspections are not occurring on every vehicle titled in Indiana by Fleetmax... [T]he BMV expects nothing short of compliance with the law on a going forward basis. If this is not possible, please immediately notify me.

This May 11 letter was followed by another letter on May 26, 2004, which reiterated the statements above and added:

[A]s I stated in my earlier letter, the BMV expects nothing short of compliance with the law and Fleetmax’s own prior commitment

regarding physical police inspections. With this in mind, please provide the BMV with evidence of Fleetmax's commitment to comply with this obligation at your earliest convenience. If Fleetmax is unable or unwilling to comply with its stipulated legal obligations to ensure that physical police inspections are occurring on each and every imported vehicle titled by Fleetmax in Indiana, the BMV will consider Fleetmax to be in breach of its contract and will initiate termination of the contract.

The SBOA audit also found other deficiencies in Fleetmax's operations as highlighted below.

A.

On many of the forms audited, the BMV copy and the Fleetmax copy of the form had different officers' signatures.

B.

On some of the forms, the federal identification numbers on the form did not agree with the federal identification numbers on the ST-108E (State Form 48841) or the "Certificate of Gross Retail of Use Tax Exemption for the Purchase of Motor Vehicle or Watercraft." Five out of five ST-108E forms examined had differences between the BMV copy and the Fleetmax copy. The differences included signatures, dates, federal identification numbers and exemptions. This indicates that the forms may not have been completed in conjunction with a physical inspection by a police officer, as required by Indiana law.

C.

Sixteen (16) of the fifty-four (54) applications examined did not include all of the required photographs. Fleetmax was required under the contract to provide these photographs and keep them on file in its records for ten years.

D.

In at least one title application, it was found that the contractor processed a speed title for a third-party dealer owned vehicle. The Fleetmax contract states that Fleetmax shall not process speed title applications for third-party dealer owned imported vehicles.

E.

Additional errors included a large amount of invoices that were not transferred in accordance with the transfer schedule developed by the BMV, some applications were not voided properly and others did not say the reason for the void, and the "Application for Certificate of Title" (State Form 205) forms were not used in a manner prescribed or approved by the BMV.

II.

Jurisdiction and Applicable Law

The OIG asserts jurisdiction under IC 4-2-7-3(3), which states that the OIG is responsible for addressing fraud, waste, abuse, and wrongdoing in agencies. This includes corporate bodies that are established as an instrumentality of the state. IC 4-2-7-1(1). Fleetmax is a corporation that was acting as a limited service license branch in Indiana.

IC 9-17-2-12(c) states that an application for certificate of title for a motor vehicle may not be accepted by the BMV unless the motor vehicle has been inspected by an employee designated by the BMV, a military policeman, a police officer, or a designated employee of the bureau. 140 IAC 6-1-11 states that a police check is *required* on all out of country vehicles seeking an Indiana title [emphasis added]. 140 IAC 6-1-9 also states that a police check is *required* on out of country vehicles [emphasis added].

IC 9-23-2-14(a)(4) states that a dealer license may be denied, suspended, or revoked for willful violation of a federal or state law relating to the sale, distribution, financing, or insuring of motor vehicles. 140 IAC 3.5-2-16 states that a dealer license may be suspended or revoked if the BMV determines that the dealer has willfully violated federal or state law relating to the sale, distribution, financing, or insuring of motor vehicles.

The contract between Fleetmax and the Indiana BMV, on page six, states in part that:

[T]he Contractor [Fleetmax] shall insure that an Indiana Police Officer physically inspects the vehicle identification number for the Indiana automobile dealer... Contractor's failure to comply with this paragraph shall be immediate grounds for termination of the contract.

On page 8, the contract states that the contractor "shall strictly adhere to and comply with all applicable BMV and Commission rules, procedures and

guidelines.” On page 14, the contract states that the contractor “agrees to comply with all applicable federal, state, and local laws, rules, regulations or ordinances.” This page goes on to state that “this contract may be terminated, in whole or in part, by the [BMV] whenever, for any reason, the [BMV] determines that such termination is in the best interest of the Commission.”

III.

The OIG makes the following findings and recommendations:

A.

Findings

1.

Fleetmax has not performed inspections as required by IC 9-17-2-12(c), 140 IAC 6-1-9 and the contract requirements.

2.

Fleetmax has breached its contract with the BMV.

3.

Fleetmax has violated Indiana law by submitting documents with inaccurate signatures and identifying information.

B.

Recommendations

1.

BMV should end its contractual relationship with Fleetmax.

2.

Fleetmax's dealer license should be revoked pursuant to IC 9-23-2-14(a)(4) and 140 IAC 3.5-2-16.

Dated this 20th day of December, 2006.

A handwritten signature in black ink, appearing to read "David O. Thomas". The signature is written in a cursive style with a horizontal line underneath it.

David O. Thomas, Inspector General