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## **Stuff I read in depositions – Best rate discussion**

*by Gil Van Over*

I've read more than a few depositions over the last couple of years. Some of the questions asked by plaintiff's attorneys shed light on the risks faced in a dealership's operations. Today I will discuss the best rate discussion.

### **Background**

This consumer sued the dealership under the state's unfair and deceptive practices act alleging that the finance manager told him that he was getting the best rate available. The complaint went on to say that since the dealership retained a portion of the finance charge, the customer APR was not, in fact, the best rate.

### **Interrogation**

Attorney: Mr. Consumer, you are suing XYZ Motors because of the APR on your retail contract?

Consumer: No, I'm suing because the finance guy lied to me about the rate.

Attorney: And how did the finance manager lie to you?

Consumer: He told me I was getting the best rate.

Attorney: What makes you think that you didn't get the best rate?

Consumer: Cause I called the bank and they told me what the rate was.

Attorney: When did you call the bank?

Consumer: Two days after I bought the car. The dealer called me and said I had to come back and redo the papers, that the original deal was not approved and the interest rate went up.

Attorney: Are you sure it was two days later?

Consumer: Positive.

Attorney: So, if the first contract, labeled Exhibit A, was signed on November 2, that would mean that the dealer called you on November 4?

Consumer: Sounds right.

Attorney: Was it or was it not November 4.

Consumer: Yea. I remember them calling me on my birthday, November 4.

Attorney: I have here as Exhibit H, a paper that was faxed to the dealership from the bank that approved your financing. Would you agree this is the bank that you made payments to?

Consumer: Yea.

Attorney: This paper is the credit decision the bank sent to the dealership on your application.

Do you see your name here?

Consumer: Yes.

Attorney: This paper was faxed to the dealer on November 9. How do you explain that the credit decision was sent to the dealer, with the interest rate, five days after you claim to have called the bank and was told what the interest rate was?

Consumer: The dealer must have made up this letter.

Attorney: Do you know what your credit score was when you bought this car?

Consumer: No.

Attorney: Do you know what your credit was like when you bought this car?

Consumer: It wasn't the best.

Attorney: Would you be surprised if I told you your credit score was below 500?

Consumer: I don't know what that means, so I guess I would not be surprised at any number you gave me.

Attorney: Do you still have the car?

Consumer: No.

Attorney: What happened to the car?

Consumer: I didn't make a payment and the bank took it back.

Attorney: Do you still owe the bank some money?

Consumer: Yea, about \$6,000.

### **Solution**

The dark side has latched onto this phrase, "best rate", as a potentially deceptive practice at auto dealerships. They allege that since the dealer's rate was less than the customer's APR, that the best rate is really the dealer's rate.

It is, in my opinion, a slimy argument. The consumer likely could not walk into the institution and get the indirect financing rate. Nor could a subprime consumer walk into many of the indirect lending institutions and even obtain a credit approval.

This dealer was fortunate. The documentation in the deal file proved the inconsistencies in the consumer's testimony. The dealer's attorney was able to show that the dealer did not have the information to give the consumer any indication about rate at the time the consumer alleged the conversation took place.

But, what if the paperwork did not support the dealer's claim?

The first thing a dealer should do is to train all dealership employees to strike the words "best rate" from their vocabulary. Defer conversations about rate to the professionals in the finance office.

If you are quoting payment in your sales process, and are not pulling a credit report first, start with an average rate. If the consumer asks what rate was used, tell her that it is an average rate of X% and that her rate may be more or less depending on her personal situation.

If you are pulling a credit report first, establish a rate matrix so that all consumers with like credit are quoted payments using the same rate. If the consumer asks what rate was used, tell him the rate, but let him know that the professional in the business office will be able to determine the final rate.

If the consumer asks, "Is this your best rate?" answer with "It is the rate we have to offer you at this point."

Gil Van Over is the President and founder of gvo3 & Associates, a nationally recognized F&I, Sales and Red Flag Rule compliance consulting and training firm ([www.gvo3.com](http://www.gvo3.com)).

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