§ 471-a. Adjudicatory proceedings. 1. Request for an adjudicatory proceeding. (a) Any franchised motor vehicle dealer who is or may be aggrieved by a violation of this article may request mediation with the franchisor. The request for mediation shall be served by certified mail, or in such manner as the franchisor and franchised motor vehicle dealer have agreed. If the franchisor agrees to mediation, such mediation shall proceed in accordance with the terms as agreed upon by the franchisor and franchised motor vehicle dealer; provided, however, that if the franchisor and franchised motor vehicle dealer have not agreed upon the terms of mediation (i) the franchisor and franchised motor vehicle dealer shall select a mediator within seven days of service by the franchised motor vehicle dealer of the request for mediation; (ii) the mediation shall be completed within twenty-one days of selection of the mediator, or within such period as the franchisor and the franchised motor vehicle dealer shall agree; and (iii) the cost of mediation shall be shared equally by the parties. If the matter is resolved by mediation, a written memorandum of the agreement shall be executed by the mediator, the franchisor, and the franchised motor vehicle dealer.

(b) If the matter has not been resolved by mediation, the franchisor and franchised motor vehicle dealer have not agreed to mediation, or the mediation has not been completed within the period set forth in subparagraph (ii) of paragraph (a) of this subdivision, the franchised motor vehicle dealer may file with the commissioner a request for an adjudicatory proceeding pursuant to this section. The request shall be in writing and contain a short and plain statement of the facts relied upon by the dealer to support a claim that the franchisor has violated one or more specific provisions of this article together with a request for a specific remedy other than damages. The request shall be accompanied by copies of all correspondence between the dealer and the franchisor and other documents relevant to the claims made in the request. The request shall be accompanied by a non-refundable filing fee of two thousand dollars.

(c) A true copy of the request with copies of all documents filed with the request shall be served upon the franchisor at the same time as the request is filed with the commissioner by transmitting such documents in any manner specifically permitted under the terms of the franchise agreement or, if no such manner is specified in such agreement, then by

certified mail, return receipt requested, addressed to the officer or employee of the franchisor from whom the dealer has received correspondence relevant to the claims made in the request. A certificate of service shall accompany the request.

(d) The hearing shall be at such time and place as the commissioner shall prescribe. The commissioner shall mail to the dealer and the franchisor a notice stating the name of the presiding officer assigned to the matter, and the place and time of the hearing. The hearing shall be commenced as soon as practicable, but in no event sooner than sixty days from the date of the notice.

(e) The notice shall be sent by ordinary mail to the address of the dealer or attorney shown in the request and to the address to which the copy of the request was sent as shown in the certificate of service or such other address as the franchisor has designated for receiving such notices. The notice shall advise the franchisor of the right to submit within twenty days of receipt of such notice a short and plain statement of answers to the allegations of the request and of facts on which the franchisor relies in defense of such allegations. Such answering statement shall be mailed to the commissioner or his or her designee and the dealer at addresses shown on the notice.

(f) The dealer may submit within twenty days of receipt of the franchisor's answering statement and additional statement of facts and documentary material only to the extent of answering new matter raised by the franchisor. Except as set forth in paragraph (g) of this subdivision, after receipt by a party of the notice from the commissioner, all correspondence and other communications relating to the dispute shall be with the presiding officer with copies to the opposing party.

(g) In accordance with the rules and regulations prescribed by the commissioner, each party shall disclose to the other all documents or other materials, including those that may have been maintained in electronic form, that the party intends to introduce at the hearing.

2. Hearings and other proceedings and presiding officers. Except as otherwise set forth in this section, hearings and other proceedings authorized under this article shall comply with article three of the state administrative procedure act and shall be presided over by the

presiding officer appointed by the commissioner. The presiding officer shall be admitted to practice as an attorney in the state of New York and shall rule on all motions, procedures and other legal objections.

3. Resolution without a hearing. Either party may request resolution of the dispute without a hearing. A request for a resolution without a hearing shall be accompanied by sufficient information to permit a determination of whether any unresolved material issue of fact exists, and may be accompanied by a legal memorandum. The other party shall have an opportunity to respond. Such a request shall be granted if the presiding officer determines that no unresolved material issue of fact is presented in the matter. No hearing shall be conducted until the request for a resolution without a hearing has been determined.

4. Presiding officer decision. The presiding officer shall render a decision upon the conclusion of the hearing or without a hearing pursuant to subdivision three of this section not later than ninety days after the close of the hearing or the granting of the request for resolution without a hearing. The decision of the presiding officer shall be based on the preponderance of the evidence. The presiding officer shall prepare a decision which shall include: (a) findings of fact; (b) a determination on each charge; and (c) in the event of a determination of a violation of this article, the remedy to be ordered. The decision of the presiding officer shall be deemed the determination of the commissioner.

5. Right of appeal. Any party may file an appeal of a determination made pursuant to this section in accordance with section two hundred sixty-one of this chapter.

6. Litigation costs. In any administrative proceeding pursuant to this section, each party shall bear its own litigation costs and attorneys' fees.

7. Penalties. Any party to a proceeding held pursuant to this section shall comply with the commissioner's decision in such proceeding, unless a stay or extension of the date for compliance is granted by the

commissioner or a court of competent jurisdiction. If, after notice to such party and an opportunity to respond, the commissioner finds that a party has not complied with the commissioner's decision by the designated date of compliance, unless a stay or extension of such date has been granted, the commissioner, in addition to any other enforcement powers the commissioner holds, may assess such party a civil penalty not to exceed one thousand dollars per day of noncompliance. Civil penalties assessed under this section shall be paid to the commissioner for deposit in the state treasury, and unpaid civil penalties may be recovered by the commissioner in a civil action in the name of the commissioner. In addition, as an alternative to such civil action and provided that no proceeding for judicial review shall then be pending and the time for initiation of such proceeding shall have expired, the commissioner may file with the county clerk of the county in which the dealer or franchisor is located a final order of the commissioner containing the amount of the penalty assessed. The filing of such final order shall have the full force and effect of a judgment duly docketed in the office of such clerk and may be enforced in the same manner and with the same effect as that provided by law in respect to executions issued against property upon judgments by a court of record.