

BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

IN THE MATTER OF:

AP# 16-002

PHIL WRIGHT AUTOPLEX

NOTICE OF VIOLATION

IT HAS BEEN determined by the Arkansas Motor Vehicle Commission (hereinafter "Commission") that Phil Wright Autoplex (hereinafter "Phil Wright"), a licensed dealer, violated the motor vehicle commission statute when they hosted a sales event and failed to have the number of vehicles available to meet reasonably anticipated demands. This action is in direct violation of the Arkansas Motor Vehicle Commission Act, Ark Code Ann. §23-112-101, et seq., pursuant to Ark. Code Ann. §23-112-204. If the Commission determines that a firm or individual violated the Commission Act or Rules, the Commission may revoke or suspend the license, or impose a monetary penalty in lieu of revocation or suspension if the public interest would not be impaired thereby and the payment of the penalty will achieve the desired disciplinary results.

FACTUAL BACKGROUND

The Commission finds the following facts as true:

- F1. Phil Wright is a licensed new motor vehicle dealer located at 3300 E. Main St., Russellville, AR.
- F2. On March 10, 2016, Investigator Gordon McCoy traveled to Phil Wright following up on a complaint regarding a Government Surplus Vehicle Disposal event, and to obtain an inventory list.
- F3. Mr. McCoy met with Derek Libby who was onsite and hired by Phil Wright to organize the Government Surplus Vehicle Disposal Event which was scheduled to

occur from March 8, 2016, through March 14, 2016. Mr. McCoy discovered six (6) vehicles were available for sale during this event that qualified as government vehicles.

- F4. The Commission was not aware of this event prior to the start date, and no inventory list was provided by Phil Wright or Mr. Libby prior to the start date of this event.
- F5. The Commission's ad hoc committee met on April 20, 2016, and made a recommendation which was approved during the April 20, 2016, Commission meeting to issue a Notice of Violation to Phil Wright.

APPLICABLE LAW

- L1. Motor vehicle dealers are required to conform their conduct to the Motor Vehicle Commission Act, Ark. Code Ann. § 23-112-101, *et seq.* and the Rules promulgated by the Commission pursuant to Ark. Code Ann. § 23-112-204.
- L2. Violations of Commission Rules are considered to be a prima facie violation of Ark. Code Ann. § 23-112-402(3) which states it is unlawful for a motor vehicle dealer or salesperson to use any false or misleading advertisement.
- L3. Failure to comply with any provision of the Commission Act or Rules may lead to revocation or suspension of the license as per Ark. Code Ann. § 23-112-308(a)(4). The Commission may issue a monetary penalty in lieu of revocation or suspension as per Ark. Code Ann. § 23-112-309.
- L4. Arkansas Motor Vehicle Commission Rule 3 Advertising, Section 2, including but not limited to the failure to have available the number of vehicles to meet

reasonably anticipated demands, and advertising whose overall impression has a tendency to mislead consumers.

CHARGE

C1. Phil Wright violated the Motor Vehicle Commission Act when it failed to have the number of vehicles available to meet reasonable anticipated demand, and when the advertisement's overall impression has a tendency to mislead consumers. This charge is based on the facts above and the provisions of law set out in paragraphs L1, L2, L3, and L4.

AS A RESULT OF THESE VIOLATIONS, you are hereby directed to pay a civil penalty in the amount of two hundred fifty dollars (\$250.00). The Commission finds that in lieu of a suspension of Phil Wright's license the public interest would not be impaired and the payment of a penalty will achieve the desired disciplinary result by issuing a monetary penalty against Phil Wright in accordance with Ark. Code Ann. § 23-112-309.

This amount should be sent to the Commission within seven (7) days of receipt of this Notice of Violation.

IF YOU DESIRE TO CONTEST the alleged violation or the penalty imposed, please so indicate on the attached form and return to the Commission Office within seven (7) days and this matter will be set for an evidentiary hearing before the Commission.

ARKANSAS MOTOR VEHICLE COMMISSION

By: _____


Greg Kirkpatrick, Director

Date: _____

5/20/2016