

BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

IN THE MATTER OF:

AP# 16-006

MILDRED CLARK

VS.

STEVE LANDERS KIA

NOTICE OF VIOLATION

IT HAS BEEN determined by the Arkansas Motor Vehicle Commission (hereinafter "Commission") that Steve Landers Kia, a licensed dealer, violated the motor vehicle commission statute when they utilized false and misleading advertising. 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, they 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. Steve Landers Kia is a licensed new motor vehicle dealer, F1071, located at 4600 South University Ave., Little Rock, AR.

Mildred Clark vs. Steve Landers Kia, C#16-012:

F2. On June 2, 2016, the Commission received a notarized complaint from Mildred Clark regarding an advertising mailer she received from Steve Landers Kia. The

mailer promoted a vehicle sales event taking place on June 1, 2016 – June, 5, 2016.

The mailer included the following claims:

- A. MORE CASH – MORE WINNERS;
- B. 10 - \$1,000.00 WINNERS & 1- \$10,000.00 WINNER! HONDA ATV. 60”
FLAT SCREEN TV;
- C. CONFIRMED WINNERS HAVE BEEN MAILED!;
- D. YOUR CHANCE TO WIN HAS NEVER BEEN BETTER!; and
- E. IF YOUR NUMBERS MATCH, YOU’VE WON! CALL 866-306-7101
NOW!

F3. The mailer also contained a scratch off section with a list of thirteen (13) prizes corresponding to thirteen numbers. Of these thirteen (13) prizes, ten (10) numbers corresponded to a \$1,000.00 prize.

F4. Ms. Clark scratched off the five (5) covered numbers which revealed 4-0-1-7-2. According to the prize list adjacent to the scratch off numbers, Ms. Clark’s number indicated she won \$1,000.00.

F5. Ms. Clark called 866-306-7101 as instructed on the mailer to claim her prize. The voice requested the Claim Number that is found on the mailer above the recipient’s address. Ms. Clark’s Claim Number was 2071621. Ms. Clark provided this information and the voice confirmed that she won and asked that she proceed to Steve Landers Kia to claim her prize.

F6. Upon arrival, she was informed that she did not win \$1,000.00 but instead won an MP3 player. The sales person pointed to the fine print at the bottom of the flyer

that included among several other disclosures “Scratching off a winning combination does not guarantee you’ve won that particular prize.”

- F7. Ms. Clark asked for a manager who assured her the mailer was approved by the Attorney General’s office. Ms. Clark called the Attorney General’s office, and was informed the advertising mailer had not been approved.

Commission Review of the Advertising Mailer:

- F8. The six (6) vehicles advertised in the mailer include a disclaimer that states “All vehicles plus tax, title, license and \$299 admin. fee. Only one vehicle available at this price. Photos for illustration purposes only.”
- F9. The mailer contains a “Discount Voucher” for \$2,532.00 with the disclaimer that states “Applies to purchase of used vehicles priced over \$10,000.”
- F10. The Commission’s Ad Hoc committee met on Thursday, August 25, 2016, and made a recommendation to the full Commission which was approved during a Monday, August 29, 2016, Commission meeting to issue a Notice of Violation to Steve Landers Kia.

APPLICABLE LAW

- L1. Motor vehicle dealers are required to conform their conduct to the Motor Vehicle Commission Act, Ark. Code Act § 23-112-101, *et seq.* and the Rules promulgated by the Commission pursuant to Ark. Code Act § 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 AMVC Act or any Rule promulgated by the Commission 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. False or misleading advertising is prohibited by Rule 3 Advertising, Section 2 and the following are in violation of this rule:
- a. Direct statements or reasonable inferences that have the tendency to mislead consumers, Rule 3 Advertising, Section 2(B)(2)(a);
 - b. When an advertisements overall impression has the tendency to mislead consumers, Rule 3 Advertising, Section 2(B)(2)(b);
 - c. The failure to make clear and conspicuous disclosures of limitations, disclaimers, qualifications, conditions, exclusions, or restrictions, Rule 3 Advertising, Section 2(B)(2)(d); and,
 - d. Using in advertisement, footnotes, asterisks, or various superscripted symbols which, confuse, contradict, materially modify or unreasonably limit the material terms of an advertisement, Rule 3 Advertising, Section 2 (B)(2)(g).
- L5. The advertised sale price of a new motor vehicle shall only exclude tax, title, and license fees.
- L6. Specific claims or discount offers shall only be used in connection with new or demonstrator vehicles. Rule 3 Advertising, Section 2(A)(6).
- L7. No advertisement containing an offer to sell a motor vehicle shall be published when the offer is not a bona fide attempt to sell that specific advertised motor

vehicle. Certain acts will be considered in determining if an advertisement is not a bona fide offer to sell a vehicle such as failure to show, demonstrate, or sell the motor vehicle in accordance with the terms of the offer. Rule 3 Advertising, Section 2 (B)(3)(a).

- L8. It is false and misleading to use, in any advertising, inaccurate photographs or illustrations when describing specific automobiles. Rule 3 Advertising Section 2 (B)(4).
- L9. According to Ark. Code Ann. § 23-112-317 and Rule 8, no dealer may charge more than one hundred twenty-nine dollars (\$129.00) for a service and handling fee.

CHARGES

- C1. Steve Landers Kia violated Commission statutes and Rule 3 on Advertising when they utilized false and misleading advertising designed to mislead consumers by indicating the consumer won a particular prize. This charge is based on the facts as stated and referenced above, and the provisions of law set out in paragraphs L1, L2, L3 and L4.
- C2. Steve Landers Kia violated Commission statutes and Rule 3 on Advertising when they failed to include the administration fee in the advertised sales price. This charge is based on the facts as stated and referenced above, and the provisions of law set out in paragraphs L1, L2, L3 and L5.
- C3. Steve Landers Kia violated Commission statutes and Rule 3 on Advertising when they offered a discount on a used vehicle. This charge is based on the facts as stated and referenced above, and the provisions of law set out in paragraphs L1, L2, L3 and L6.

- C4. Steve Landers Kia violated Commission statutes and Rule 3 on Advertising when they failed to include accurate photographs of the advertised vehicles. This charge is based on the facts as stated and referenced above, and the provisions of law set out in paragraphs L1, L2, L3, L7, and L8.
- C5. Steve Landers Kia violated Commission statutes and Rule when they advertised a \$299 admin. fee in excess of the allowed maximum service and handling fee of one hundred and twenty-nine dollars (\$129.00). This charge is based on the facts as stated and referenced above, and the provisions of law set out in paragraphs L1, L2, L3, and L9.

AS A RESULT OF THESE VIOLATIONS, you are hereby directed to pay a civil penalty in the amount of five thousand dollars (\$5,000.00).

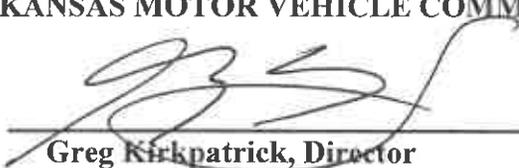
The Commission finds the violations of Commission statutes and rules by Steve Landers Kia warrant a suspension of Steve Landers Kia's license for failure to comply with provisions of the Commission Act and Rules promulgated by the Commission as per the applicable law stated above.

The Commission finds that in lieu of a suspension of Steve Landers Kia'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 Steve Landers Kia in accordance with Ark. Code Ann. § 23-112-309 in the amount of five hundred dollars (\$500.00) per day for ten (10) days for an aggregate amount of five thousand dollars (\$5,000.00).

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 indicate this request 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: 8/30/2014