

BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

IN THE MATTER OF:

AP# 17-001

MCLARTY NISSAN OF NORTH LITTLE ROCK

NOTICE OF VIOLATION

IT HAS BEEN determined by the Arkansas Motor Vehicle Commission (hereinafter "Commission") that McLarty Nissan of North Little Rock (hereinafter "McLarty Nissan"), a licensed dealer, violated the delivery prior to sale statute. This 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 has 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.

FACTUAL BACKGROUND

The Commission finds the following facts as true:

- F1. McLarty Nissan is located at 5703 Landers Road, North Little Rock, AR.
- F2. On April 14, 2016, Reaunna Summerville purchased a 2012 Nissan Altima 2.5 Coupe with a \$1,500.00 down payment and 2007 Chevy Impala as a trade-in.
- F3. Ms. Summerville's deal did not get approved.
- F4. According to the notarized complaint filed January 11, 2017, she was told on April 14, 2016, that everything had gone through and that she could pick up her vehicle.
- F5. In May of 2016, Ms. Summerville contacted McLarty Nissan to see where to make a payment and was told by the salesperson that she was never approved, not to send a payment, and to stay away from the address she used on her paperwork.

- F5. According to the notarized complaint, in June 2016, Marty and Rush Cornstock of McLarty Nissan wanted the car (2012 Nissan Altima 2.5 Coupe) back and they are trying to repo that car.
- F6. January 2017, Ms. Summerville vehicle was repossessed.
- F&. After repossessing Ms. Summerville's vehicle, McLarty Nissan only offered to repay down payment and not return trade-in.
- F6. Investigator Campbell visited McLarty Nissan on January 13, 2017, to review deal jacket and discuss complaint with Jeff Peters. Mr. Peters stated that the deal was made in April of 2016 and the trade-in was taken and sold at the auction to Adesa of Little Rock. Investigator Campbell then informed Mr. Peters that the trade-in being sold before approval is a problem.

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. 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.
- 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 not to exceed ten thousand dollars (\$10,000.00) as per Ark. Code Ann. § 23-112-309.

- L4. In accordance with Ark. Code Ann. §23-112-316 (d)(3)(A-B), if a consumer who executes an agreement for delivery prior to sale chooses not to execute a contract for sale or otherwise cancels the purchase, then the dealer shall not deposit or cash any down payment provided by the consumer and the dealer shall immediately return any motor vehicle that was presented by the consumer as a trade-in.

CONCLUSIONS OF LAW

- C1. McLarty Nissan violated Commission statutes when they sold Ms. Summerville's trade in prior to completing the retail installment contract.

AS A RESULT OF THESE VIOLATIONS, you are hereby directed to pay a civil penalty in the amount of one thousand dollars (\$1,000.00). 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 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: Kristi Byers
Kristi Byers, Interim Director

Date: September 12, 2017