

BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

IN THE MATTER OF:

H# 13-003

HOLLY HAYNES

V.

LANDERS TOYOTA

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Arkansas Motor Vehicle Commission (hereinafter "Commission") held a hearing on August 21, 2013, to determine whether Landers Toyota (hereinafter "Landers") license to sell new motor vehicles should be suspended or revoked, or whether a monetary penalty should be imposed in accordance with the provisions of the Arkansas Motor Vehicle Commission Act, Ark. Code Ann. § 23-112-101 et seq., and Commission Rule 2 regarding hearings and appeals. The charges before the Commission concerned whether Landers violated the spot delivery rule, and/or when the dealership represented to Mrs. Haynes that her trade-in was sold prior to the completion of the retail installment contract as alleged in C#13-008.

Holly and Scott Haynes appeared as Complainants. Complainants were not represented by legal counsel.

Brandon Jones and Russell Comstock appeared as Respondent's representatives. Baker Kurrus represented Landers as legal counsel.

Having heard testimony from Holly and Scott Haynes, Brandon Jones and Russell Comstock, Greg Kirkpatrick, and having reviewed the exhibits admitted into evidence by the Commission, Complainants, and the Respondents, the Commission makes the following Findings of Fact, Conclusions of Law, and Order:

FACTUAL BACKGROUND

- F1. Landers' is a licensed new motor vehicle dealer in Little Rock, Arkansas.
- F2. Mrs. Haynes filed the attached notarized complaint marked Exhibit A with the Commission on April 22, 2013, alleging the following:
- a. On March 26, 2013, Mrs. Haynes and her husband traveled to Landers to trade-in their used 2011 Ford Flex and purchase a new Toyota Camry.
 - b. On March 27, 2013, Mrs. Haynes was informed by Russell Comstock, a finance manager with Landers, that Toyota Financial would not accept the agreed to terms.
 - c. Mrs. Haynes informed Landers that she could not agree to the new terms and requested to have her 2011 Ford Flex returned. Mrs. Haynes was informed the 2011 Ford Flex was already sold. As a result, Mrs. Haynes and her husband agreed to the new terms on the evening of March 27, 2013.
 - d. Mrs. Haynes states she saw the 2011 Ford Flex listed as available for purchase on the Landers used car website.
- F3. Landers responded to Mrs. Haynes complaint on April 29, 2013, in the attached letter marked Exhibit B.
- F4. Mrs. Haynes provided the Commission a follow-up to this response from Landers on May 8, 2013, as attached and marked Exhibit C.

- F5. On May 22, 2013, the Commission's Ad Hoc Committee sent an inquiry letter, marked Exhibit D, to Landers to clarify two (2) questions, and received a response, marked Exhibit E, to these two (2) questions from Landers on May 28, 2013. Landers stated it sold the 2011 Ford Flex on March 29, 2013.
- F6. The Commission held a hearing on January 19, 2011, in response to a complaint filed by Shanelle Smith. The Commission found Landers in violation of Ark. Code Ann. §23-112-316, when it failed to have Ms. Smith sign a delivery prior to sale agreement form after Landers delivered the Nissan Altima to her prior to the completion of the contract for sale, and when Landers sold Ms. Smith's trade-in prior to the completion of the contract for sale. The Commission fined Landers one thousand dollars (\$1,000.00) which was paid on April 26, 2011.
- F7. Facts F1 through F6 were established as true through testimony, however, the substance of the claims were not proven.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Commission makes the following

Conclusions of Law:

- C1. Landers Toyota did not violate Commission statutes when they proved Mrs. Haynes signed a delivery prior to sale agreement form as required by Ark. Code Ann. § 23-112-316.
- C2. Landers Toyota did not violate Commission statutes when Mrs. Haynes did not meet her duty of presenting the facts of her complaint to meet the necessary burden to prove a violation of Ark. Code Ann. § 23-112-308(a)(8).

ORDER

The Commission found the complainant failed to meet its burden of proof with respect to the allegations set forth in the complaint, and therefore, did not find violations of Commission statutes and rules.

This is a final Order of the Commission and as such is subject to judicial review pursuant to Ark. Code Ann. § 25-15-212.

ARKANSAS MOTOR VEHICLE COMMISSION

By: F. S. Stroope
Sandy Stroope, Chairman

Date: 8/27/13