

BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

IN THE MATTER OF:

AP# 14-002

ROCKY FULKERSON

vs.

CRAIN FORD

NOTICE OF VIOLATION

IT HAS BEEN determined by the Arkansas Motor Vehicle Commission (hereinafter "Commission") that Crain Ford (hereinafter "Crain"), a licensed dealer, violated the delivery prior to sale statute. 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 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 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. Crain is located at 4601 Colonel Glenn Plaza Drive, Little Rock, AR.
- F2. On April 7, 2014, Mr. Rocky Fulkerson visited Crain, purchased a 2008 Cadillac STS, and traded-in his 2004 Cadillac Deville.
- F3. On April 23, 2014 Crain sent the trade in to Central Arkansas Auto Auction in Beebe, AR, and the trade-in was sold to Evan's Motors.

- F4. On May 2, 2014, Crain notified Mr. Fulkerson the April 7, 2014, deal was unable to get funded.
- F5. On May 6, 2014, Mr. Fulkerson met with Crain, and declined to sign the new contract which changed the original terms of the April 7, 2014, purchase. Mr. Fulkerson returned the 2008 Cadillac STS to Crain, requested to obtain his trade-in back from Crain, and was advised by Crain it was sold on April 23, 2014.
- F6. On May 6, 2014, Mr. Fulkerson signed a "Release of All Claims" from the original contract and Crain paid Mr. Fulkerson \$2,500.00 for his trade-in.
- F7. On May 6, 2014 Mr. Fulkerson purchased new vehicle from another dealership.
- F8. On May 9, 2014 Crain notified Mr. Fulkerson that the trade-in had been reacquired from Evans Motors, and demanded Mr. Fulkerson bring Crain a \$2,500.00 check in order for Crain to release the trade-in. Additionally, Crain refused to pay off the balance of the amount owed on Mr. Fulkerson's vehicle.

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 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. In accordance with Ark. Code Ann. § 23-112-316 related to delivery prior to sales transactions, a dealer shall provide the consumer an agreement for delivery prior

to sale at the time of delivery of the motor vehicle to the consumer. The agreement states that a new motor vehicle dealer shall not sell a trade-in until the contract for sale is final. Additionally, a consumer retains the right to cancel the purchase of a motor vehicle if the consumer fails to obtain financing that meets the agreed upon interest rate. If the consumer cancels the purchase, the dealer shall immediately return the trade-in.

CHARGES

- C1. Crain violated Ark. Code Ann. sec. 23-112-316 when it failed to have Mr. Fulkerson sign a delivery prior to sale agreement form after Crain delivered the Cadillac STS to him prior to the completion of the contract for sale, and when Crain sold Mr. Fulkerson's trade-in prior to the completion of the contract for sale.

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: _____


Greg Kirkpatrick, Director

Date: _____

7/16/2014