BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

IN THE MATTER OF: **H# 11-001**

LANDERS TOYOTA

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Arkansas Motor Vehicle Commission (hereinafter the "Commission") held a hearing on January 19, 2011, to determine whether Landers Toyota violated the Arkansas 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. The charges before the Commission concerned whether Landers Toyota failed to have the consumer sign a delivery prior to sale agreement form after they delivered a vehicle to her prior to the completion of the contract for sale, and when they sold the consumer's trade-in prior to the completion of the contract for sale.

FINDINGS OF FACT

F1. On June 26, 2010, Ms. Shanelle Smith visited Landers and purchased a 2004 Nissan Altima. Ms. Smith traded-in her 2001 Lincoln LS Sedan for $3,200.00.

F2. Ms. Smith alleges in her complaint that on June 29, 2010, she began having mechanical problems with the Altima and contacted Landers. Ms. Smith alleges Landers told her nothing could be done to the vehicle until she had owned it for thirty (30) days.

F3. Following a number of contacts between Landers and Ms. Smith regarding the condition of the Altima, on July 19, 2010, Ms. Smith returned the Altima to Landers and attempted to pick up her trade-in. Landers informed Ms. Smith the trade-in was sold, and Landers gave Ms. Smith a check for $2,550.00. This

amount was in addition to a $650.00 check that Landers already paid to Ms. Smith for the value of her trade-in.

F4. On July 20, 2010, Shanelle Smith filed a notarized consumer complaint with the Commission.

F5. On August 17, 2010, Investigator Hogan visited with Eric Scaife, Sales Manager of Landers Toyota. Mr. Scaife stated Ms. Smith was first interested in only selling her car to Landers for $3,200.00. Mr. Scaife stated that Landers fixed the mechanical issues with the Altima, and that Landers had a fundable contract. Mr. Scaife stated everything would have gone through if Landers had not cancelled the contract at Ms. Smith's request. The Commission received a deal submission sheet dated June 28, 2010, from Landers to the lender, Credit Acceptance, which did not indicate approval for Ms. Smith's financing.

F6. Mr. Scaife told Investigator Hogan they sold Ms. Smith's trade-in to a wholesaler. After examining the documents presented by Landers, iFinance of Little Rock purchased Ms. Smiths 2001 Lincoln LS Sedan trade-in on June 30, 2010.

F7. Investigator Hogan traveled to iFinance on August 23, 2010, and spoke with General Manager Josh Lynn in reference to the 2001 Lincoln LS Sedan. The August 19, 2010, Auto Buyer Magazine revealed that iFinance was offering the trade-in for sale for $8,995.00. Mr. Lynn stated he purchased the vehicle from Landers Toyota on a bid. Mr. Lynn informed Investigator Hogan that iFinance is owned by Scott and Steve Landers.

F8. On November 9, 2010, the Commission issued a Notice of Violation, AP# 10-009, in which the Ad Hoc Committee recommended a fine of one thousand

dollars ($1,000.00). On November 10, 2010, Lander's Toyota contested the allegations set forth in the Notice of Violation.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Commission makes the following Conclusions of Law:

C1. Landers Toyota violated Commission statutes, Ark. Code Ann. §23-112-316, when they failed to have Ms. Smith sign a delivery prior to sale agreement form after they delivered the Nissan Altima to her prior to the completion of the contract for sale, and when they sold Ms. Smith's trade-in prior to the completion of the contract for sale.

ORDER

The Commission finds the violations of Commission statutes Landers Toyota warrants a suspension of Landers Toyota's license for failure to comply with provisions of the Commission Act or any Rule promulgated by the Commission as per Ark. Code Ann. § 23-112-308(a)(4). The Commission finds that in lieu of a suspension of Landers Toyota license, a monetary penalty is issued in the amount of one thousand dollars ($1,000.00) in accordance with Ark. Code Ann. § 23-112-309. This penalty is to be paid within thirty (30) days of receipt of this Order.

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 _____
Joe Morgan, Chairman

Date: _____