

BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

IN THE MATTER OF:

H# 14-013

ROCKY FULKERSON

vs.

CRAIN FORD, INC.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Arkansas Motor Vehicle Commission (hereinafter "Commission") held a hearing on November 19, 2014, to determine whether Crain Ford, Inc. (hereinafter "Crain"), a licensed dealer, violated the delivery prior to sale statute pursuant to the Arkansas Motor Vehicle Commission Act, Ark. Code Ann. § 23-112-101 et seq., and Commission Rule 2 regarding hearings and appeals. The charge before the Commission concerned whether Crain violated Commission statutes when they sold Mr. Fulkerson's trade-in prior to the completion of the contract for sale.

Rocky Fulkerson appeared and provided testimony as the Complainant.

Brandon Degroat appeared and provided testimony on behalf of Crain as the Respondent.

Having heard testimony from the above referenced parties, Director Greg Kirkpatrick, and having reviewed the exhibits admitted into evidence, the Commission makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

F1. Crain is located at 4601 Colonel Glenn Plaza Drive, Little Rock, AR, and at the time of the transaction described below was operated by Larry Crain, Jr. as Crain Ford, Inc., doing business as Crain Ford of Colonel Glenn.

- 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 a 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.
- F9. Paragraphs F1 through F8 were established as true through testimony and evidence.

CONCLUSIONS OF LAW

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

- C1. 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.
- C2. 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.
- C3. 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.
- C4. Respondent Crain violated Ark. Code Ann. § 23-112-316 when they sold Mr. Fulkerson's trade-in prior to the completion of the contract for sale.

ORDER

The Commission finds the violation of Commission statutes and rules by Crain warrant a suspension of Respondent's license for failure to comply with provisions of the Commission Act and Rules promulgated by the Commission as per Ark. Code Ann. § 23-112-308(a)(4).

The Commission finds that in lieu of a suspension of Crain'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 Crain in accordance with Ark. Code Ann. § 23-112-309 in the amount of five hundred dollars (\$500.00) per day for two (2) days for an aggregate amount of one thousand dollars (\$1,000.00).

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: 2-26-2015