

Minutes

7-15-13

**TENNESSEE MOTOR VEHICLE COMMISSION
 BOARD MEETING
 July 15, 2013 10:00 A.M.
 CONFERENCE ROOM A-1
 DAVY CROCKETT TOWER, 500 JAMES ROBERTSON PKWY.
 NASHVILLE, TENNESSEE 37243**

ROLL CALL:

| | <u>PRESENT</u> | <u>ABSENT</u> |
|---------------------------------|----------------|---------------|
| EDDIE ROBERTS | X | |
| REED TRICKETT | X | |
| GEORGE BASS | X | |
| JOE CLAYTON | X | |
| KEVIN CULLUM | X | |
| DONNIE HATCHER | | X |
| NATE JACKSON | X | |
| JOHN MURREY | X | |
| DON PARR | X | |
| STAN MCNABB | X | |
| FARRAR SCHAEFFER VAUGHAN | X | |
| MARK PIRTLE | | X |
| RONNIE FOX | X | |
| WADE HINTON | | X |
| LYNN WEBB | X | |
| BILLY KECK | | X |

The Tennessee Motor Vehicle Commission Meeting was called to order by Chairman Eddie Roberts on July 15, 2013 Roll Call was taken with a total of (12) member's present.

A Motion was made by Commissioner Kevin Cullum, and seconded by Commissioner Joe Clayton, to approve the minutes from the April 15, 2013 meeting after correcting the date in the Legal section –Declaratory Order date is changed from January 2013 to January 2014.

A Motion was made by Commissioner Ronnie Fox, and seconded by Commissioner Nate Jackson to approve the minutes after the correction is made.

MOTION PASSED UNANIMOUSLY

APPEALS

The following appeals were heard by the Commission.

Ransom Griffey-East Tennessee Nissan, Morristown, TN
Staff denied application

Motion was made by Commissioner Nate Jackson, and seconded by Commissioner Ronnie Fox to grant the license.

ROLL CALL VOTE

| | |
|--------------------------|---------|
| Eddie Roberts | Yes |
| Ronnie Fox | Yes |
| Don Parr | Yes |
| Nate Jackson | Yes |
| Farrar Schaeffer Vaughan | Yes |
| Reed Trickett | Yes |
| Joe Clayton | Abstain |
| Lynn Webb | Yes |
| John Murrey | Yes |
| Kevin Cullum | Abstain |
| Stan McNabb | Yes |
| George Bass | Abstain |

Motion passed to grant the license.

Gregory Benson-Lance Cunningham Ford, Knoxville, TN
Staff denied application

Motion was made by Commissioner Farrar Schaeffer Vaughan, and seconded by Commissioner Nate Jackson to grant the license.

ROLL CALL VOTE

| | |
|---------------------------------|----------------|
| Eddie Roberts | Yes |
| Ronnie Fox | Yes |
| Don Parr | Yes |
| Nate Jackson | Yes |
| Farrar Schaeffer Vaughan | Yes |
| Reed Trickett | Yes |
| Joe Clayton | Abstain |
| Lynn Webb | Yes |
| John Murrey | Yes |
| Kevin Cullum | Yes |
| Stan McNabb | Yes |
| George Bass | Abstain |

Motion passed to grant the license.

John Layton-AAA Auto Sales, Inc, Memphis, TN
Staff denied application

Motion was made by Commissioner Nate Jackson, and seconded by Commissioner Reed Trickett to grant the license.

ROLL CALL VOTE

| | |
|---------------------------------|----------------|
| Eddie Roberts | Yes |
| Ronnie Fox | Yes |
| Don Parr | Yes |
| Nate Jackson | Yes |
| Farrar Schaeffer Vaughan | Abstain |
| Reed Trickett | Yes |
| Joe Clayton | Yes |
| Lynn Webb | Yes |
| John Murrey | Yes |
| Kevin Cullum | Yes |
| Stan McNabb | Yes |
| George Bass | Abstain |

Motion passed to grant the license.

Chauncy Gray-Auto X Change Sales and Leasing, Memphis, TN
Staff denied application

Motion was made by Commissioner Stan McNabb, and seconded by Commissioner Farrar Schaeffer Vaughan to grant the license.

ROLL CALL VOTE

| | |
|---------------------------------|----------------|
| Eddie Roberts | Yes |
| Ronnie Fox | Yes |
| Don Parr | Yes |
| Nate Jackson | Yes |
| Farrar Schaeffer Vaughan | Yes |
| Reed Trickett | Yes |
| Joe Clayton | Yes |
| Lynn Webb | Abstain |
| John Murrey | Yes |
| Kevin Cullum | Yes |
| Stan McNabb | Yes |
| George Bass | Yes |

Motion passed to grant the license.

Kiley M Laws-Ole Ben Franklin Motors, Knoxville, TN
Staff denied application

Motion was made by Commissioner Nate Jackson, and seconded by Commissioner Stan McNabb, to uphold the denial of the license.

ROLL CALL VOTE

| | |
|---------------------------------|------------|
| Eddie Roberts | Yes |
| Ronnie Fox | Yes |
| Don Parr | Yes |
| Nate Jackson | Yes |
| Farrar Schaeffer Vaughan | Yes |
| Reed Trickett | Yes |
| Joe Clayton | Yes |
| Lynn Webb | Yes |
| John Murrey | Yes |
| Kevin Cullum | Yes |
| Stan McNabb | Yes |
| George Bass | Yes |

Motion passed to uphold the denial of the license.

William B. Massengale-Toyota Scion of Cleveland, McDonald, TN

Staff denied application

Motion was made by Commissioner Stan McNabb, and seconded by Commissioner Farrar Schaeffer Vaughan to grant the license.

ROLL CALL VOTE

| | |
|---------------------------------|----------------|
| Eddie Roberts | No |
| Ronnie Fox | Yes |
| Don Parr | Yes |
| Nate Jackson | Yes |
| Farrar Schaeffer Vaughan | Yes |
| Reed Trickett | Yes |
| Joe Clayton | Abstain |
| Lynn Webb | Yes |
| John Murrey | Yes |
| Kevin Cullum | No |
| Stan McNabb | Yes |
| George Bass | No |

Motion was passed to grant the license.

Phillip Ashmore-E & S Auto Sales & Repair Inc. Nashville, TN

Staff denied application

Motion was made by Commissioner Lynn Webb, and seconded by Commissioner Don Parr to grant the license.

ROLL CALL VOTE

| | |
|---------------------------------|------------|
| Eddie Roberts | Yes |
| Ronnie Fox | Yes |
| Don Parr | Yes |
| Nate Jackson | Yes |
| Farrar Schaeffer Vaughan | Yes |
| Reed Trickett | Yes |

Joe Clayton No
Lynn Webb Yes
John Murrey Yes
Kevin Cullum Yes
Stan McNabb Yes
George Bass Abstain
Motion was to grant the license.

Coty Warren- Larry Hill Imports Inc.-Larry Hill Imports, Cleveland, TN
Staff denied application

Motion was made by Commissioner Farrar Schaeffer Vaughan, and seconded by Commissioner George Bass to up hold the denial of the license.

ROLL CALL VOTE

Eddie Roberts Yes
Ronnie Fox Yes
Don Parr Yes
Nate Jackson Yes
Farrar Schaeffer Vaughan Yes
Reed Trickett Yes
Joe Clayton Yes
Lynn Webb Yes
John Murrey Yes
Kevin Cullum Yes
Stan McNabb Yes
George Bass Yes
Motion was to up hold the denial of the license.

Christopher L. Looper- Rainbow Ford LLC, Lafollette, TN
Staff denied the application

Motion was made by Commissioner Nate Jackson, and seconded by Commissioner Stan McNabb to up hold the denial of the license.

ROLL CALL VOTE

Eddie Roberts Yes
Ronnie Fox Yes
Don Parr Yes
Nate Jackson Yes
Farrar Schaeffer Vaughan Yes
Reed Trickett Yes
Joe Clayton Yes
Lynn Webb Yes
John Murrey Yes
Kevin Cullum Yes
Stan McNabb Yes
George Bass Yes
Motion was to up hold the denial of the license.

Robert Green-Downtown Nashville Nissan, Nashville, TN

Staff denied application

Motion was made by Commissioner Joe Clayton, and seconded by Commissioner Stan McNabb to grant the license.

ROLL CALL VOTE

| | |
|---------------------------------|----------------|
| Eddie Roberts | Yes |
| Ronnie Fox | Yes |
| Don Parr | Yes |
| Nate Jackson | Yes |
| Farrar Schaeffer Vaughan | Yes |
| Reed Trickett | Yes |
| Joe Clayton | Yes |
| Lynn Webb | Yes |
| John Murrey | Yes |
| Kevin Cullum | Abstain |
| Stan McNabb | Yes |
| George Bass | Yes |

Motion was to up hold the denial of the license.

Christopher Holt-Tom Bannen Chevrolet, Madison, TN

Staff denied the application

Motion was made by Commissioner Kevin Cullum, and seconded by Commissioner Farrar Schaeffer Vaughan to grant the license.

ROLL CALL VOTE

| | |
|---------------------------------|------------|
| Eddie Roberts | Yes |
| Ronnie Fox | Yes |
| Don Parr | Yes |
| Nate Jackson | Yes |
| Farrar Schaeffer Vaughan | Yes |
| Reed Trickett | Yes |
| Joe Clayton | Yes |
| Lynn Webb | Yes |
| John Murrey | Yes |
| Kevin Cullum | Yes |
| Stan McNabb | Yes |
| George Bass | Yes |

Motion was to grant the license.

Hadden Motors LLC, Manchester, TN

Staff denied license.

Motion was made by Commissioner Joe Clayton, and seconded by Commissioner Don Parr to grant the license at the new location.

ROLL CALL VOTE

| | |
|---------------------------------|------------|
| Eddie Roberts | Yes |
| Ronnie Fox | Yes |
| Don Parr | Yes |
| Nate Jackson | Yes |
| Farrar Schaeffer Vaughan | Yes |
| Reed Trickett | Yes |
| Joe Clayton | Yes |
| Lynn Webb | Yes |
| John Murrey | Yes |
| Kevin Cullum | Yes |
| Stan McNabb | Yes |
| George Bass | Yes |

Motion was to grant the license.

DIRECTORS REPORT

Since the last Commission meeting in April, 2013 the following actions have been taken:

Dealers Opened, or Relocated98

Active Licensees as of April, 2013

| | |
|-----------------------------------|-------|
| Dealers..... | 3856 |
| Applications in Process..... | 40 |
| Distributions/Manufacturers | 122 |
| Auctions..... | 24 |
| Representatives..... | 328 |
| Salespeople..... | 14909 |
| Dismantlers..... | 334 |
| RV Dealers..... | 26 |
| RV Manufacturers..... | 56 |

Motor Vehicle Show Permits Issued Since April 15, 2013 ...3

| | |
|------------------|-----------|
| Revenue Received | \$ 600.00 |
|------------------|-----------|

Motion was made by Commissioner Nate Jackson, and seconded by Commissioner Farrar Schaeffer Vaughan to approve the Directors report.

Old Business

None

New Business

None

Legal Report presented to the Legal Review Committee

MEMORANDUM

Privileged and Confidential Communication – Attorney Work Product

TO: Tennessee Motor Vehicle Commission

FROM: Legal Division

DATE: July 15, 2013

SUBJECT: MVC Legal Report – ADOPTED JULY 15, 2013

1. Case No.: 2012014961, 2012014971, 2012015941

An internal investigation was opened upon Respondent/dealer for deceptive acts by requiring customers to purchase a service coupon booklet for approximately \$349.00. An investigation was conducted and found that Respondent was placing as an “accessory,” a coupon booklet for vehicle services. Customers were contacted, of which a majority indicated they did not realize the accessory was purchased. Few customers indicated they knew and agreed to the charge. The dealer did have customers use the coupons at its location for services. However, the investigation found that numerous customers indicated they were not aware of the charge. This office has negotiated an agreement with the Respondent for your consideration below:

Recommendation: Authorization for a civil penalty in the amount of Sixty Thousand Dollars (\$60,000) to be settled by consent order or formal hearing.

Commission Action: Approved.

2. Case No.: 2013001091/2

Complainant alleged that Respondent/dealer, who is a sole proprietor, assaulted him after he reneged on an agreement to pay the Respondent \$1,500 to obtain a Mississippi broker license. An investigation was conducted. The official police report indicated both Respondent and Complainant as victims. However, the Respondent’s criminal record was obtained and found that he had previously been convicted of a felony, of which included crimes of moral turpitude. Respondent had applied for a dealer license in 2012, at which time he indicated on his application that he had never been convicted of a felony, which was a false statement to the Commission.

A separate complaint was also opened against another Respondent for unlicensed activity, which was not found during the investigation.

Recommendation: 2013001091 - Authorization for revocation of Respondent’s motor vehicle dealer license.

2013001092 – Close – Unlicensed activity not found.

Commission Action: Approved.

3. Case No.: 2013005811, 2013005821

Complainant/business alleged that Respondent/dealer failed to indicate on the reverse side of the title, the full purchase price of vehicles purchased and therefore, more taxes were owed by the Complainant. The Respondent provided a response indicating that the Complainant attempted to provide a Sales & Usage Tax Exemption Certificate but failed to provide all necessary data. From the complaint and response it appears the Complainant and Respondent have had previous business dealings and attempting to use the complaint process as a measure of leverage over the other. As the allegations involve tax exemption issues, the TN. Dept. of Revenue would best handle these allegations.

Recommendation: Close with the forwarding complaints to the TN Dept. of Revenue.

Commission Action: Approved.

4. Case No.: 2013006441

Complainant/consumer alleged that Respondent/dealer discriminated against him by not allowing him to purchase a vehicle from them. The complaint provided no further information regarding pertinent facts or basis for discrimination. This allegation and relief request is not within the authority of the MVC. The MVC cannot discipline a licensee for a violation of ‘discrimination’ as it is not an enumerated violation which the MVC can seek discipline against under TCA 55-17-114. For relief, the Complainant must initiate his own private action.

Recommendation: Close – Lack of subject matter jurisdiction under MVC.

Commission Action: Approved.

5. Case No.: 2013006481

Complainant/consumer alleged a possible safety hazard with a motor vehicle she purchased. She indicated that her vehicle caught fire and was a total claim loss. She alleged that the manufacturer was sued by her insurance company alleging that the vehicle had a known safety defect. It was further alleged that the matter was settled out of court. This issue involves safety standards of motor vehicles and as such should be referred to the National Highway Transportation and Safety Administration.

Recommendation: Close with referral to the NHTSA.

Commission Action: Approved.

6. Case No.: 2013007671, 2012016471

Complainant/county clerk alleged that Respondent was engaging in unlicensed activity. Respondent is a dealer who abandoned its licensed location in July 2012. An investigation was conducted. The Respondent was located at an unlicensed location, across from its abandoned location. The Respondent provided a sworn affidavit that it had not sold a vehicle since July 2012 and was in the process of applying for a new license at the new location. Subsequent to this, the investigator found a complainant who provided a bill of sale showing that Respondent sold a motor vehicle from the unlicensed location to the consumer in January 2013 and provided them with a dealer tag since January 19, 2013 until at least May 2013.

The Respondent provided a false statement to the Commission, engaged in deceptive acts by holding himself out as a licensed dealer while being at an unlicensed location, and misused a dealer tag when providing to the customer.

Recommendation: Authorization for the revocation of Respondent's motor vehicle license. To be settled by consent order or formal hearing.

Commission Action: Authorization for a civil penalty in the amount of One Thousand Dollars (\$1,000) (\$500 x 1 count unlicensed activity), (\$500 one count misuse of dealer tag) to be settled by consent order or formal hearing.

7. Case No.: 2012009621

An internal complaint was opened against Respondent for allegations of providing temporary tags for salvaged vehicles. An investigation was conducted and found that Respondent sold salvaged vehicles to consumers. It appeared that the consumers knew they were purchasing salvaged vehicles, however, the Respondent admitted to providing temporary tags for salvaged vehicles. Further, Respondent failed to properly maintain a temporary tag log and failed to retain business records. Respondent also admitted to providing more than two temporary tags to a customer.

Recommendation: Authorization for a civil penalty in the amount of Four Thousand Dollars (\$4,000) (\$1,000 x 4 acts) to be settled by consent order or formal hearing.

Commission Action: Approved.

8. Case No.: 2013002742, 2013002741

An internal complaint was opened upon notification by an inspector that he attempted to conduct an inspection upon the premises of Respondent. The investigator found the Respondent employing an unlicensed salesperson. Respondent failed to produce any of its business record deal files. Further, Respondent refused inspection and directed the investigator to leave the property. A follow-up investigation was conducted. At such time, the unlicensed salesperson admitted by affidavit to selling not less than 10 motor vehicles. Further, the Respondent failed to produce any deal files at the time during the inspection or a week after the inspection and Respondent failed to provide proof of ownership of a vehicle in its possession for resale. After the inspection, the unlicensed salesperson received a salesperson license.

Recommendation:

2013002742 - Unlicensed salesperson – Authorization for a civil penalty in the amount of Five Hundred Dollar (\$500) to be settled by consent order or formal hearing.

2013002742 – Motor Vehicle Dealer – Authorization for a civil penalty in the amount of Six Thousand Dollars (\$6,000) – (\$1,000 – 1st count of failure to provide business records; \$3,000 – 2nd count of failure to provide business records; \$1,000 for failure to provide proof of ownership of vehicle; \$1,000 employing a person not licensed as a motor vehicle salesperson.)

Commission Action: Approved.

9. Case No.: 2013001351, 2013001352

Complainant/consumer alleged deceptive act on part of Respondent/dealer. Complainant alleged that she paid \$390 to hold a vehicle at Respondent’s dealership for “30-45” days. Respondent sold the vehicle 17 days after taking the \$390 fee to a third party. Approximately 41 days after paying the \$390 dollars, Complainant attempted to purchase the vehicle and was informed the vehicle was sold and a refund would not be given. An investigation was conducted. The only document retained by Respondent indicated “Layaway 05 Kia Sportage (white)” for “\$390.00.” However the receipt indicated that the \$390 was a “payment” on a \$1,500 account.” Further, the dealership manager indicated the complainant was given 7 days to purchase the vehicle. Contradicting this was the dealership’s owner who indicated the complainant was given 14 days to purchase the vehicle. The conflicting stories along with the receipt which appears to show that an “account of \$1,500” was opened is in the opinion of legal counsel a deceptive act. Further, complainant stated during the initial deposit she dealt with a salesperson and the manager. The manager took funds and wrote the complainant a receipt and signed such. The manager is not a licensed salesperson but appeared to be engaged in unlicensed activity.

Recommendation:

2013001351 – Dealer – Authorization for a civil penalty in the amount of One Thousand Dollars (\$500 – deceptive act; \$500 for employing an unlicensed salesperson) to be settled by consent order or formal hearing.

2013001352 – Unlicensed Salesperson/manager – Authorization for a civil penalty in the amount of Five Hundred Dollars (\$500) for unlicensed activity as a motor vehicle salesperson to be settled by consent order or formal hearing.

Commission Action: Approved.

10. Case No.: 2013007211

Complainant/consumer alleged that Respondent/dealer failed to retain possession of a trade-in vehicle until receiving funding from the third party financial institution. The

Respondent admitted to such but listed mitigating factors including that the Complainant was attempting to rescind the purchase.

Recommendation: Authorization for a civil penalty in the amount of Five Hundred Dollars (\$500) for violating 55-17-114(b)(4)(A)(ii) to be settled by consent order or formal hearing.

Commission Action: Approved.

**11. Case No.: 2013008131
2013008141
2013005951
2013009861**

For the above, Complainants/consumers allege that after purchase of vehicle by Respondent/dealer, the vehicle began to have mechanical problems. There is no proof of any deceptive act by the dealer. The vehicles were purchased As/Is or with a warranty of which the denial of such warranty claim was not provided to the Commission.

Recommendation: Close – No Violation Found. Vehicle purchased As-Is.

Commission Action: Approved.

12. Case No.: 2013006711

Respondent/dealer was found employing an unlicensed motor vehicle salesperson at its dealership. The employee had previously been licensed as a motor vehicle salesperson, but such license expired. A notice of violation was issued. The Respondent obtained a motor vehicle salesperson license for its employee 6 months later.

Recommendation: Authorization for a civil penalty in the amount of Five Hundred Dollars (\$500) for employing an unlicensed motor vehicle salesperson to be settled by consent order or formal hearing.

Commission Action: Approved.

13. Case No.: 2013008061

Complainant/consumer alleged that Respondent/dealer engaged in deceptive acts by failing to disclose a vehicle sold as having been announced with “frame/unibody damage” at auction. The vehicle was purchased in 2008. The dealership is now closed.

Recommendation: Close – Respondent is out of business.

Commission Action: Approved.

14. Case No.: 2013002521

Complainant/consumer alleged that Respondent/dealer provided her with a false temporary tag and further that the Respondent failed to provide registration. An

investigation was conducted. The investigator found that registration was provided to the Respondent. The Respondent indicated that he had provided a false temporary tag to the Complainant but was under the belief that such tag was allowed as it was purchased at a Birmingham auction. The tag stated "This car was sold by a licensed motor vehicle dealer." Respondent was interviewed by the TN Dept. of Safety and has now ceased providing such tags.

Recommendation: Authorization for a civil penalty in the amount of Five Hundred Dollars (\$500) for committing a false act of providing a false temporary tag. To be settled by consent order or formal hearing.

Commission Action: Approved.

15. Case No.: 2013002551

An internal complaint was opened after an investigator provided information that Respondent/dealer failed to correctly disclose the Regulation Z financing on vehicles sold with in-house financing. An investigation was conducted and found that the Respondent was very honest of his lack of knowledge of the disclosures and further showed that he did not charge interest on the financing. The investigator provided the Respondent with advice on how to correctly provide such information. It appeared however that the Respondent may have under charged the taxes to be paid for several bills of sale.

Recommendation: Close with a Letter of Warning and refer the investigation file to the TN Dept. of Revenue for possible tax code violations.

Commission Action: Approved.

16. Case No.: 2013002721

Complainant/consumer alleged that Respondent/dealer failed to provide registration and misused temporary tags provided. An investigation was conducted. The Respondent admitted that the vehicle was not registered after purchase stating that the "taxes were not paid." However, Respondent did obtain funds from the Complainant for the purchase of the vehicle. Further, Complainant provided a temporary tag with white-out stating that the tag was altered by the Respondent. Respondent denied such.

Recommendation: Authorization for a civil penalty in the amount of Three Thousand Five Hundred Dollars (\$3,500) (\$2,500 x fraudulent act of failing to register the vehicle stating taxes had not been paid), (\$1,000 x false act of altering a temporary tag.) To be settled by Consent Order or Formal hearing. Refer the investigation to the TN Dept. of Revenue for possible tax code violations.

Commission Action: Approved.

17. Case No.: 2013002971, 2013002972

An internal complaint was opened regarding allegations of unlicensed activity based upon a vehicle purchased at an auto auction. An investigation was conducted. The investigation found that Respondent – Auto Auction allowed Respondent – unlicensed dealer to bid online for a motor vehicle that was purchased and delivered in Tennessee. The Respondent – Auto Auction has since terminated the rights of the unlicensed dealer. The unlicensed dealer attempted to sell the vehicle to a consumer. The unlicensed dealer has since gone out of business. From the documentation, it appears that there was likely odometer fraud conducted by the unlicensed dealer, however, this would require a more extensive investigation by the TN Dept. of Safety.

Recommendation: 2013002971 – Respondent unlicensed dealer – Close with a letter of warning for unlicensed activity and refer the possible odometer tampering to the TN Dept. of Safety.

2013002972 – Respondent auto auction – Authorization for a civil penalty in the amount of Five Hundred Dollars (\$500) for allowing an unlicensed person to purchase at an auto auction. To be settled by Consent Order or Formal Hearing.

Commission Action: Approved.

18. Case No.: 2013003231, 2013003232

An internal complaint was opened upon information from a county clerk that Respondent, an Alabama licensed dealer was conducting unlicensed activity in Tennessee. An investigation was conducted. An individual purchased a BMW from Respondent in Tennessee and had difficulty obtaining title. The Davidson county clerk required the purchaser to provide an affidavit indicating that the vehicle was purchased in TN. The investigation found that the Respondent is a Nashville school teacher who purchased a licensed Alabama dealership which is run by her husband a few days a week. The husband purchases vehicles at auction and posts them on Craigslist. Respondent provided an affidavit that between 2012-2013, they sold 17 motor vehicles in TN without proper licensure.

Recommendation: Authorization for a civil penalty in the amount of Eight Thousand Five Hundred Dollars (\$8,500) (17 vehicles x \$500) to be settled by Consent Order or Formal Hearing.

Commission Action: Approved.

19. Case No.: 2013003331

Complainant/consumer alleged that Respondent/dealer engaged in deceptive and false practices during the sale of a vehicle. An investigation was conducted. The investigation found that Respondent has a business practice of not collecting taxes at the time of sale and requires the purchaser to pay the separate sales tax amount after delivery of the vehicle. Respondent refused to process registration until the taxes were paid. The Respondent provided an affidavit indicating they were ignorant to the fact that taxes were to be paid by the dealer and indicated this practice will stop.

Recommendation: Authorization for a civil penalty in the amount of Two Thousand Dollars (\$2,000) for the deceptive act of failing to register vehicle while requiring

further payments for state taxes to be paid. To be settled by consent order or formal hearing. Refer the file to the TN Dept. of Revenue for possible tax violations.

Commission Action: Approved.

20. Case No.: 2013004781

Complainant/dealer alleged that Respondent/competing dealer was altering the federally required Monroney Labels on new vehicles. An investigation was conducted. The alteration appeared to take the MSRP and add accessories onto that amount for an advertised price. Under federal law, the Monroney Label cannot be altered. The purpose of the label is for consumer information. The Respondent agreed to cease altering the labels and ordered new replacement labels.

Recommendation: Authorization for a civil penalty in the amount of One Thousand Dollars (\$1,000) for engaging in a deceptive act. To be settled by consent order or formal hearing.

Commission Action: Approved.

21. Case No.: 2013004771

An internal complaint was opened upon information from a county clerk that a consignment store was engaging in unlicensed activity. An investigation was conducted. The county clerk did not retain copies of the documentation alleging motor vehicle sales. As such, there is insufficient evidence of a violation.

Recommendation: Close with a letter of warning regarding licensure for the sale of motor vehicles.

Commission Action: Approved.

22. Case No.: 2013002541

Complainant/finance company alleged that Respondent/dealer failed to provide title to a consumer who purchased and financed the vehicle with the Respondent. An investigation was conducted and found that Respondent did not title the vehicle into the name of the consumer, but had charged the consumer to conduct the title work.

Recommendation: Authorization for a civil penalty in the amount of Five Hundred Dollars (\$500) for the deceptive act of failing to title vehicle but having charged the consumer to finance the vehicle. To be settled by consent order or formal hearing.

Commission Action: Approved.

23. Case No.: 2013003661, 2013003671

Complainants/consumers alleged that Respondent/dealer failed to provide registration and provided them dealer tags to drive upon. An investigation was conducted.

Registration was provided to both complainants. Respondent admitted to providing dealer tags to both complainants.

Recommendation: Authorization for a civil penalty in the amount of Two Thousand Dollars (\$2,000) (\$1,000 x 2 dealer plates provided) to be settled by consent order or formal hearing.

Commission Action: Approved.

24. Case No.: 2013003581

Complainant/consumer alleged that Respondent/dealer failed to provide her the statutorily required Conditional Delivery Agreement after she took conditional delivery, pending financial approval. Complainant also stated that the Respondent could not obtain financing on the same terms; that the interest rate was increased. The complainant stated that though the monthly payment amount and terms of payment remained the same, in order to do so, the Respondent amended the trade in value to obtain a lower monthly payment than originally agreed. The complainant requested the Respondent to void the transaction and the Respondent refused. Failing to provide the Conditional Delivery Agreement or allowing to void the transaction are separate violations under TCA 55-17-114(b)(4).

Recommendation: Authorization for a civil penalty in the amount of Two Thousand Dollars (\$2,000) (\$1,000 x 2 violations of 55-17-114(b)(4)). To be settled by consent order or formal hearing.

Commission Action: Approved.

25. Case No.: 2013003641

Complainant/consumer alleged that Respondent/dealer provided her with 4 temporary tags and had not yet received registration. An investigation was conducted. The investigator found that Respondent provided Complainant with 4 temporary tags. Complainant had received registration. Respondent indicated the 3rd and 4th temp. tags were issued because complainant failed to return the emissions certification.

Recommendation: Authorization for a civil penalty in the amount of One Thousand Dollars (\$1,000) (\$500 x 2 unauthorized temp. tags given). To be settled by consent order or formal hearing.

Commission Action: Approved.

26. Case No.: 2013008631

Complainant/seller alleged that Respondent/dealer refused to purchase a vehicle from Complainant after entering into an agreement. This matter is regarding a possible contractual argument and does not involve the sale of a vehicle to a consumer. As such, it is matter best left between the parties to resolve.

Recommendation: Close – Contractual matter between parties. No proof of violation on part of the Respondent.

Commission Action: Approved.

27. Case No.: 2013009171

An internal complaint was opened regarding possible misuse of dealer’s tag provided to an unlicensed person. The Respondent filed a police report for the tag as being lost during a test drive.

Recommendation: Close – No Violation Found.

Commission Action: Approved.

28. Case No.: 2013011081

Complainant/ex-salesperson alleged that Respondent/dealer failed to pay commissions owed. The Respondent denied such. This matter is outside of the regulatory authority of the commission.

Recommendation: Close – Lack of subject matter jurisdiction.

Commission Action: Approved.

29. Case No.: 2013011381

Complainant/out of state dealer alleged that Respondent/dealer failed to provide vehicle after receiving payment. The Respondent provided documentation that they did not sell the vehicle to the Complainant.

Recommendation: Close – No Violation Found.

Commission Action: Approved.

30. Case No.: 2013011371

Complainant/consumer alleged that Respondent/dealer failed to provide registration and provided 4 temporary tags. Respondent provided registration after difficulty in obtaining title and admitted to providing the Complainant 4 temporary tags.

Recommendation: Authorization for a civil penalty in the amount of One Thousand Dollars (\$1,000) to be settled by consent order or formal hearing.

Commission Action: Approved.

31. Case No.: 2011003091

An internal complaint was opened after allegations of unlicensed activity on part of Respondent. Respondent had applied for a new dealership license. The license was granted a few days after the complaint was opened.

Recommendation: Close with a letter of warning regarding licensure for each location prior to beginning sales.

Commission Action: Approved.

32. Case No.: 2012023881

Complainant/out of state consumer alleged that Respondent/dealer engaged in deceptive bait and switch tactics. The Complainant ultimately purchased the vehicle requested and advertised but indicated this was only after being told the vehicle was no longer for sale. The Respondent indicated this was a miscommunication with their staff. The Complainant was adamant that this was a bait and switch tactic. Due to the vehicle actually being sold, bait and switch would be very difficult to prove.

Recommendation: Close with a letter of warning regarding the availability of vehicles advertised.

Commission Action: Approved.

33. Case No.: 2013000781

Complainant/consumer alleged that Respondent/dealer failed to provide registration and requested a separate amount for the payment of sales tax prior to providing registration. An investigation was conducted. The Respondent indicated that his policy is that the taxes must be paid separate before he provides registration. Respondent provides in-house financing and though may be paid thousands of dollars for the sale of the vehicle, will not register the vehicle before the taxes are paid. The Respondent indicated that he would mail the title to the Complainant. However, the investigator found that the Respondent has posted signs and documentation as part of the sale confirming that each customer is required to pay an additional amount of sales tax.

Under TN law, the dealer is the agent for the TN Dept. of Revenue and required to collect sales tax upon sale whether financed in-house or with third party financing. Such acts by this Respondent are false upon the state and deceptive upon consumers.

Recommendation: Authorization for the revocation of the motor vehicle dealer license of Respondent and referral of the investigation to the TN Dept. of Revenue. To be settled by consent order or formal hearing.

Commission Action: Approved.

RE-PRESENTATIONS

34. Case No.: 2012022831

2012018991
2012010621
2012022671
2013005971
2010021611
2011022211

The above complaints were received stating that the Respondents/dealers failed to provide title/registration for vehicles purchased or the dealers had been issued a citation which has not been paid. The dealer has abandoned the business and is no longer operating. Surety Bond information has been sent to Complainants.

Recommendation: Close and Flag – Respondent is out of Business.

Commission Action: Approved.

35. Case No.: 2012013111

The Commission previously authorized a civil penalty for Respondent failing to maintain a 5 parking lot space that had dedicated and exclusive use. The Respondent was licensed at this location in 2007, prior to the rule regarding such dedicated parking spaces. As such, this complaint should be closed.

Recommendation: Close.

Commission Action: Approved.

36. Case No.: 2012013061
2011023361

The Commission previously authorized civil penalties against each Respondent who are out-of-country motor vehicle dealers. The dealers, who are not licensed in TN, purchased motor vehicles at automobile auctions. Subsequent to the purchase, a motor vehicle was sold or attempted to be sold in TN – the vehicle being represented as sold by a licensed dealer.

There is difficulty showing proof as to who sold the motor vehicle. However, the automobile auction should not authorize such out-of-country dealers from purchasing at TN auctions without first being licensed in this state or another similar state.

Recommendation: Letter of instruction requesting automobile auction to remove the Respondents' privileges from purchasing vehicles at the automobile auctions and close.

Commission Action: Approved.

37. Case No.: 2012000351

The commission previously authorized a civil penalty against Respondent/dealer for an amount of \$76,000 in 2012 for Respondent failing to log its temporary tag logs properly.

There is no proof of misuse of its temporary tags other than failing to log them properly. The Respondent has offered a settlement of \$5,000. This office would recommend that amount be accepted based upon the statutory violation for failing to maintain a log can only be prosecuted as one (1) count to a maximum amount of \$5,000.

Recommendation: Authorization to settle the matter with a civil penalty in the amount of Five Thousand Dollars (\$5,000) by consent order or formal hearing.

Commission Action: Approved.

38. Case No.: 2012003141, 2012003141, 2012005161, 2012008941

The Commission previously authorized a civil penalty in the amount of \$12,000 against Respondent/distributor for selling 3 motor vehicles to persons not licensed as motor vehicle dealers. The Respondent has proposed a counter-offer of 1) Payment of \$5,000 civil penalty and 2) surrender of its manufacturer/distributor license.

Recommendation: Amend the previous authorization of a civil penalty in the amount of \$5,000 along with the surrender of license number 7325.

Commission Action: Approved.

39. Case No.: 2012012551

The Commission previously authorized a civil penalty in the amount of \$3,000 for Respondent/dealer advertising motor vehicles at an unlicensed location. Respondent/dealer as part of another case presented in April 2013, voluntarily suspended its license until its date of termination. As such, Respondent is no longer in business.

Recommendation: Amend the previous authorization to allow the suspension of Respondent's license until August 31, 2013, the date of license expiration.

Commission Action: Approved.

40. Case No.: 2012025132

The commission previously authorized a \$1,000 civil penalty against a licensed salesperson. \$500 of the civil penalty authorized was from an alleged deceptive act of selling a vehicle that was purchased at an auto auction and disclosed as having "unibody, rckr dmg." This was not disclosed to the consumer. Two years later, a Carfax obtained by the consumer indicated the vehicle was sold with "structural/frame damage." After review of the auction documents, it is apparent that he Carfax report obtained by the purchaser was not accurate. The vehicle when purchased at auction did not have damage to the structure or frame, it was a dent in the vehicle's rocker panel, which was repaired before sale. The vehicle's history does not indicate an accident. As such, the Respondent did not intentionally withhold knowledge of any vehicle frame/unibody damage that would affect the structure of the vehicle.

The remaining \$500 of the original civil penalty was issued for off-site sales, which is not subject to this re-presentation.

Recommendation: Amend the previous authorization from \$1,000 civil penalty to \$500 civil penalty to be settled by consent order or formal hearing.

Commission Action: Approved.

41. Case No.: 2013007231
2013008721

The above complaints were internally generated after Respondent/dealers received a notice of violation during a biennial inspection indicating that the Respondent failed to renew/post its city and county business license.

Recommendation: Authorization for a civil penalty in the amount of Two Hundred Fifty Dollars (\$250) to be settled by consent order or formal hearing.

Commission Action: Approved.

42. Case No.: 2013006631
2013009191

The above complaints were internally generated after Respondents/dealers received a notice of violation during a biennial inspection indicating that the Respondent failed to maintain its temporary tag log.

Recommendation: Authorization for a civil penalty in the amount of One Thousand dollars (\$1,000) to be settled by consent order or formal hearing.

Commission Action: Approved.

43. Case No.: 2013006601
2013006621
2013006691
2013006731
2013006751
2012013141
2012005671

The above complaints were internally generated after Respondent/dealers received a notice of violation during a biennial inspection indicating a violation of the commission's statutes and regulations. However, the Notice of Violation was not supported by sufficient proof showing a violation.

Recommendation: Close.

Commission Action: Approved.

44. Case No.: 2013006581

The above complaints were internally generated after Respondent/dealers received a notice of violation during a biennial inspection indicating violations of the commission's statutes and regulations. An agreed citation was issued by the Commission and not paid or responded to by the Respondent.

Recommendation: Authorization for a civil penalty in the amount of One Thousand Dollars (\$1,000) to be settled by consent order or formal hearing.

Commission Action: Approved.

**45. Case No.: 2013006571
2013006611**

The above complaints were internally generated after Respondent/dealers received a notice of violation during a biennial inspection. The inspections were performed in July 2012. An agreed citation was not sent to the dealer.

Recommendation: Close with a letter of warning.

Commission Action: Approved.

**46. Case No.: 2013007981
2013006561
2013007801
2013003751**

The above complaints were received stating that the Respondents/dealers failed to provide titles/registration for vehicles purchased or the dealers has been issued a citation which has not been paid. The dealers have abandoned the business and are no longer operating. Surety Bond information has been sent to all Complainants.

Recommendation: Close and Flag – Respondent is out of business.

Commission Action: Approved.

**47. Case No.: 2013004741
2013010831
2013011211**

The above complaints have been settled between the parties after the filing of the complaint.

Recommendation: Close – Settled between parties.

Commission Action: Approved.

**48. Case No.: 2013007041
2013007991
2013004311/2**

The above complaints were withdrawn by the Complainant after submitting to the commission.

Recommendation: Close – Withdrawn.

Commission Action: Approved.

1A. Case No.: 2013005961

Complainant alleged that Respondent/dealer knowingly sold motorcycles to consumers that were subject to open safety recalls before the recall work was performed. The allegations include motorcycles sold between 2007-2012. Respondent primarily deals in Powersports and motorcycles. The complainant is an ex-contractor who managed the daily operations of the dealership until 2007. The complainant states that he is now a safety advocate for the protection of the public. The complainant further stated that the Respondent had been found of conducting such violations by the National Highway and Transportation Safety Administration (NHTSA).

This office determined that the NHTSA investigated the Respondent for allegations of selling hundreds of motorcycles and Powersports without first conducting open safety recall repairs. The NHTSA and Respondent entered into an agreement whereby the Respondent agreed to pay the NHTSA \$125,000 over a 5 year period. However, as part of the agreement, the Respondent denied any violation ever occurring. As such, there has not been a finding or admission of violation regarding these actions, only a penalty amount paid.

This office obtained documentation which appears to show that Respondent sold approximately 400 motorcycles without first performing the open safety recall repairs. Of those 400, approximately 140 motorcycles still have an outstanding safety recall. The remaining safety recalls have ultimately been conducted either by the Respondent or another dealer. Further, this office was provided a 2008 document from the manufacturer to the Respondent indicating that the Respondent was found selling motorcycles without first performing safety recall repairs. The bulk of Respondent's alleged failure to conduct safety recall repair work was from 2007-2008. Approximately 20 of such alleged violations occurred after 2008.

Respondent indicated that many of the safety recall work was performed almost immediately after the sale and delivery to customer. This appeared to be true in part, however, under federal law, the Respondent was prohibited from selling the motorcycle until the safety recall was performed. Respondent further stated that many of the recalls required first that a visual inspection be performed to determine if a repair was

necessary and that many of those inspections were conducted but never recorded. This has not been substantiated by the Respondent with any documentation or statement. The Respondent further assures that it has no knowledge of any individual being injured on one of the vehicles subject to recall. Further, the Respondent provided a copy of its policy and procedure used to ensure that it does not sell a motorcycle if a safety recall is outstanding.

The motor vehicle commission has authority to discipline the Respondent for the above actions under TCA 55-17-114(b)(1)(K) by engaging in false, fraudulent or deceptive acts. The state attorney general's office is also pursuing the Respondent for the same actions for violations under the TN Consumer Protection Act.

Recommendation: The legal division has decided not to provide a recommendation to the commission other than indicating that in its opinion the commission does have authority over such actions.

Commission Action:

- 1) The Commission states that it has authority over such activities and is the state licensing authority over the sales of motorcycles.
- 2) Legal counsel will monitor the case over the same actions between the Respondent and the Attorney General's office and keep the commission chairman apprised of any developments or resolution.

Motion made to adjourn was made Commissioner Nate Jackson, and seconded by Commissioner Stan McNabb.

Eddie Roberts, Chairman

Leon Stribling, Executive Director