

Minutes

11-13-14

**TENNESSEE MOTOR VEHICLE COMMISSION
 BOARD MEETING
 November 13, 2014 8:00 A.M.
 CONFERENCE ROOM 6-1
 DAVY CROCKETT TOWER, 500 JAMES ROBERTSON PKWY.
 NASHVILLE, TENNESSEE 37243**

ROLL CALL:

	<u>PRESENT</u>	<u>ABSENT</u>
EDDIE ROBERTS	X	
REED TRICKETT	X	
JOE CLAYTON		X
DONNIE HATCHER		X
NATE JACKSON	X	
JOHN MURREY	X	
DON PARR	X	
STAN MCNABB		X
FARRAR SCHAEFFER VAUGHAN	X	
JIM GALVIN	X	
RONNIE FOX	X	
LYNN WEBB		X
BILLY KECK		X
STAN NORTON	X	

The Tennessee Motor Vehicle Commission Meeting was called to order by Chairman Eddie Roberts on November 13, 2014. Roll Call was taken and a quorum established.

A Motion was made by Jim Galvin to approve the Legal Report and seconded by Commissioner Ronnie Fox with changes as read into the record.

MOTION PASSED UNANIMOUSLY

Upon the request of Mr. James Chen, representing Tesla Motors Inc., and Tesla Motors TN Inc. / Brentwood, the pending matter without objection, was rescheduled to the first item on the December 3, 2014 agenda.

TO: Tennessee Motor Vehicle Commission

FROM: Legal Division

DATE: November 13, 2014

SUBJECT: MVC Legal Report

#1. Case No.: 2013007761, 2013011501, 2013012371, 2013012831

Complainants allege that Respondent dealer has altered temporary tags issued to them in lieu of providing proper registration, and issued more than two temporary tags. Respondent dealer refused to cooperate with Motor Vehicle Commission investigation, and refused to make available for inspection business records, including any of the documents pertaining to any of the transactions which were the subject of a complaint.

Recommendation: Authorization for the Revocation of Respondent's Motor Vehicle Salesperson License due to false, fraudulent or deceptive acts; failure to make business records available for inspection; issuance of more temporary plates than allowed by law; failure to maintain a record of issuance of temporary plates, and alteration of temporary plates, per TCA §55-17-114, to be settled by Consent Order or Formal Hearing.

Commission Action: Approved

#2. Case No.: 2013025181, 2013025182

Respondent, a licensed wholesale dealer in the state of Delaware, allowed "authorized buyers" to purchase vehicles at auction in Tennessee and then sell the vehicles in Davidson County to Tennessee consumers without acquiring a Tennessee dealer license. County clerk was able to provide proof of fourteen sales of vehicles.

Recommendation: Authorization of a civil penalty in the amount of Seven Thousand Dollars (\$7000) for unlicensed dealer activity, to be settled by Consent Order or Formal Hearing.

Commission Action: Approved

#3. Case No.: 2014006221

Complainant alleged that Respondent sent an advertisement that contained information to the effect that he had won \$20,000 and a chance to win a new car. When Complainant went to Respondent's licensed location to collect his prize, he was told he had instead won lottery tickets. Respondent stated that they would "take whatever efforts are

necessary” to eliminate confusion in the future but that it believed it complied with advertising rules.

Recommendation: Authorization for civil penalty in the amount of Ten Thousand Dollars (\$10,000) for fraudulent or deceptive acts per § 55-17-114, to be settled by Consent Order or Formal Hearing.

Commission Action: Approved

#4. Case No.: 2014015011, 2014015012

Complainant alleged that he purchased a vehicle from Respondent 2, alleged dealer/salesperson, and then could not obtain title or registration from Respondent. Bill of sale obtained from Respondent 2 indicated that he was a licensed dealer from Alabama, and he told Complainant that he was a dealer and that he also owned Respondent 1, the dealership in Tennessee where the car was first test driven by Complainant. Respondents did not respond to requests for information, and is not a licensed Tennessee dealer.

Recommendation: Authorization of a civil penalty in the amount of Two Thousand Five Hundred Dollars (\$2500) for unlicensed dealer activity and One Thousand Dollars (\$1000) for failure to respond to correspondence from the Motor Vehicle Commission, to be settled by Consent Order or Formal Hearing.

Commission Action: Approved

#5. Case No.: 2014016821

Respondent/dealer stated during the July 2014 Commission meeting that a salesman applicant who was denied a license was allowed to work and sell vehicles while awaiting the appeal of the denied license. Investigator was able to document three incidents of unlicensed sales by the applicant.

Recommendation: Authorization of a civil penalty in the amount of Two Thousand Dollars (\$2000) for three sales by unlicensed salesperson and employing an unlicensed salesperson, to be settled by Consent Order or Formal Hearing.

Commission Action: Approved

#6. Case No.: 2014017071

Complainant alleged that she purchased a vehicle from Respondent dealer in April, paid in full the day of purchase, but did not receive her title or registration until ninety-two days later, and only after filing a complaint with the Commission. Respondent/dealer’s initial response to the complaint stated that the title was provided as “soon as the check cleared”. Investigation found this statement to be false, and further found the temporary tag log to be incomplete.

Recommendation: Authorization of a civil penalty in the amount of Two Thousand Dollars (\$2,000) for failing to properly maintain a temporary tag log and for failure to timely deliver title, to be settled by Consent Order or Formal Hearing.

Commission Action: Approved

#7. Case No.: 2014018031

A county clerk in Ohio complained regarding the Respondent's refusal to assist a consumer obtain a title for their vehicle in Ohio on a car purchased from Respondent in Tennessee. During the investigation of the underlying matter, the Respondent's temporary tag log was found to be incomplete and other business records were not properly maintained.

Recommendation: Authorization of a civil penalty in the amount of Two Thousand Dollars (\$2,000) for failing to properly maintain a temporary tag log and failure to properly maintain business records, to be settled by Consent Order or Formal Hearing.

Commission Action: Approved

#8. Case No.: 2014018311

Complainant alleged that three months after purchasing his vehicle from Respondent/dealer he still did not have proper registration and that he had been provided three temporary tags by Respondent. At the time of investigation, Complainant did have proper registration, and Respondent did admit to issuing three temporary tags. Respondent stated that they had improved record keeping and assured the Commission it would not happen again.

Recommendation: Authorization of a civil penalty in the amount of Five Hundred Dollars (\$500) for issuing more temporary tags than allowed by law, to be settled by Consent Order or Formal Hearing.

Commission Action: Approved

#9. Case No.: 2014018391 and 2014018392

Consumer/Complainant alleged that Respondent 1 charged her to accompany him to an auction and purchase a vehicle. When she had trouble with the vehicle after purchase, Respondent allegedly assured Consumer/Complainant that he would pay for some of the repairs, and then did not do so. Further investigation found that Respondent 1 is a licensed salesman for Respondent 2, but that Respondent 1 also holds himself out to be an "independent broker" who gets a "bird-dog fee" for driving sales to both Respondent 2 and other dealerships from his independently owned website. Respondent 2 allowed Respondent 1 to use their dealer tags to run his "broker" business, and said they "did not know what other dealerships" he might work for.

Recommendation Respondent 1: Authorization for the Revocation of Respondent's Motor Vehicle Salesperson License for providing an application to the Commission that contained a statement that was false or misleading with respect to any material fact per TCA §55-14-114 and off-site sales per TCA §55-17-110; to be settled by Consent Order or Formal Hearing.

Recommendation Respondent 2: Authorization for the Revocation of Respondent's Motor Vehicle Dealer License for providing an application to the Commission that contained a statement that was false or misleading with respect to any material fact and failure to supervise employees per TCA §55-14-114, and off-site sales per TCA §55-17-110; to be settled by Consent Order or Formal Hearing.

Commission Action: Approved

#10. Case No.: 2014020281

Respondent/Dealer received an Agreed Citation for failure to properly maintain a temporary tag log. Respondent is contesting the citation.

Recommendation: Authorization of a civil penalty in the amount One Thousand Dollars (\$1000) for failure to properly maintain a temporary tag log, to be settled by Consent Order or Formal Hearing.

Commission Action: Approved

#11. Case No.: 2014020301

Complainant alleged that Respondent/dealer sold her a vehicle that had open recall work that still needed to be done, and told her that there were no open recalls on the vehicle. Respondent disputes the facts as alleged in the complaint, but does acknowledge that the consumer purchased the car and left the lot with the vehicle while the Respondent was still unsure about whether or not a recall was pending, and that they did not communicate effectively with the consumer regarding how and when recall repairs would be done if needed.

Recommendation: Close with a letter of warning.

Commission Action: Approved

#12. Case No.: 2014021841

Respondent/Dealer received an Agreed Citation for failure to properly maintain a temporary tag log. Respondent is contesting the citation.

Recommendation: Authorization of a civil penalty in the amount One Thousand Dollars (\$1000) for failure to properly maintain a temporary tag log, to be settled by Consent Order or Formal Hearing.

Commission Action: Approved

#13. Case No.: 2014021851

Respondent/Dealer received an Agreed Citation for failure to maintain and hold a current city or county business license, improper signage, and failure to maintain a temporary tag log. Respondent is contesting the citation.

Recommendation: Authorization of a civil penalty in the amount One Thousand Five Hundred Dollars (\$1500) for failure to maintain city or county business license, improper signage and failure to properly maintain a temporary tag log, to be settled by Consent Order or Formal Hearing.

Commission Action: Approved

#14. Case No.: 2014022111

Complainant/Credit Union employee alleged that Respondent was a dealer who borrowed money to floor plan his business and that Complainant never recovered their investment. Respondent is not a licensed dealer, no unlicensed dealer activity was found at location referenced in complaint, and lost investment is civil matter outside of the Commission's jurisdiction.

Recommendation: Close

Commission Action: Approved

#15. Case No.: 2014022141

Complainant/Consumer alleged that Respondent/dealer sold them a vehicle that had previously been determined to be a "lemon" and that, as a result, they could not refinance the vehicle loan at a lower rate as planned. Respondent disputes they had any knowledge of prior issues with vehicle, and vehicle has a non-branded title and clean "car fax" report.

Recommendation: Close

Commission Action: Approved

#16. Case No.: 2014022871

Complainant/consumer alleged that she purchased a vehicle from Respondent and was experiencing mechanical issues with the vehicle. Respondent sold the vehicle to consumer as-is, which Complainant acknowledges.

Recommendation: Close

Commission Action: Approved

#17. Case No.: 2014022921

Respondent/Dealer received an Agreed Citation for failure to properly maintain a temporary tag log. Respondent is contesting the citation.

Recommendation: Authorization of a civil penalty in the amount One Thousand Dollars (\$1000) for failure to properly maintain a temporary tag log, to be settled by Consent Order or Formal Hearing.

Commission Action: Approved

#18. Case No.: 2014023271

Respondent/Dealer received an Agreed Citation for two incidents of off-site sales. Respondent is contesting the citation.

Recommendation: Authorization of a civil penalty in the amount One Thousand Dollars (\$1000) for off-site sales, to be settled by Consent Order or Formal Hearing.

Commission Action: Approved

#19. Case No.: 2014020321

Complainant/consumer alleges that she purchased a vehicle from Respondent/dealer and paid in full at time of purchase, but three months after purchase she still does not have title to the vehicle. Respondent/dealer disputes that Complainant paid in full and both parties have submitted documentation that supports their version of events. Insufficient evidence to determine if a violation of TMVC laws or rules has occurred; both parties have obtained attorneys to pursue civil remedies.

Recommendation: Close

Commission Action: Approved

#20. Case No.: 2014023921

Complainant alleged that Respondent/Dealer misrepresented the condition of vehicle prior to purchase. Vehicle was purchased as-is, and emails provided by Respondent demonstrate that Complainant knew prior to purchase that some repairs would have to be made to vehicle after purchase. Insufficient evidence of misrepresentation.

Recommendation: Close

Commission Action: Approved

#21. Case No.: 2013024011

Complainant filed protest with the Commission in December 2013 against manufacturer for granting new dealership in Complainant's alleged market area. Since that time, both Complainant and Respondent manufacturer have made no effort to move matter forward and have made no effort to communicate with your staff attorney regarding negotiations to resolve the matter between the parties.

Recommendation: Close; protest can be re-filed should new information be provided to the Commission.

Commission Action: Approved

#22. Case No.: 2011027701

This case was previously authorized for litigation monitoring as a result of criminal charges against the Respondent for crimes involving theft and fraud involving customers of his dealership. Respondent has since been convicted of felony theft and sentenced to a lengthy prison sentence; Respondent's license has since expired.

Recommendation: Close and flag file should Respondent apply for licensure upon release.

Commission Action: Approved

#23. Case No.: 2014022431

Complaint opened at request of investigator who suspected unlicensed dealer activity at Respondent's non-automotive related business. Review of information provided by investigator, however, was deemed to not rise to level of need for investigation.

Recommendation: Close

Commission Action: Approved

#24. Case No.: 2014022861

Complainant alleges that he purchased a vehicle from Respondent after being assured that the SUV was equipped with four wheel drive. The Complainant discovered after purchase that it did not have four wheel drive, and alleges that he was intentionally misled by Respondent. Respondent denies any misrepresentation, there is no documentation of any statements or advertising stating the SUV had four wheel drive, and there is insufficient proof of deceptive acts.

Recommendation: Close

Commission Action: Approved

**#25. Case No.: 2014019531
2014020401**

2014022631
2014024671
2013017471
2013023581
2014006881

The above complaints were withdrawn or settled between the parties after submitting to the commission.

Recommendation: Close

Commission Action: Approved

#26. Case No.: 2014017581
2014025391

The above complaints were received stating that the Respondents/Dealers failed to provide titles/registration for the purchased vehicles. The dealer has abandoned the business and is no longer operating. Surety Bond information has been sent to Complainants.

Recommendation: Close

Commission Action: Approved

Meeting Adjourned

Eddie Roberts, Chairman

Barry Whitson, Interim Director