

Minutes

4-21-14

**TENNESSEE MOTOR VEHICLE COMMISSION
 BOARD MEETING
 April 21, 2014 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	
LYNN WEBB		X
BILLY KECK		X

The Tennessee Motor Vehicle Commission Meeting was called to order by Chairman Eddie Roberts on April 21, 2014 Roll Call was taken with a total of (10) member's present.

A Motion was made by Commissioner Joe Clayton, and seconded by Commissioner Ronnie Fox, to approve the minutes from the January 6, 2014 meeting.

MOTION PASSED UNANIMOUSLY

A Motion was made by Commissioner Stan McNabb, and seconded by Commissioner Stan McNabb to adopt the Agenda for this meeting.

MOTION PASSED UNANIMOUSLY

Rachel Powers spoke to the Commission about the 2014 Legislative Session. Damon Romano from our Legal Section spoke to the Commission about the Sunshine Law.

APPEALS

The following appeals were heard by the Commission.

Timothy Taylor-Kia of Johnson City, Elizabethton, TN

Staff denied application- NO SHOW

Motion was made by Commissioner Farrar Schaeffer Vaughan, and seconded by Commissioner Donnie Hatcher to uphold the denial of the license.

Voice Vote was unanimous

James S. Clark- Budget Transmission, Knoxville, TN

Staff denied application

Motion was made by Commissioner Reed Trickett, and seconded by Commissioner Mark Pirtle to grant the license.

ROLL CALL VOTE

Eddie Roberts	No
Nate Jackson	No
Farrar Schaeffer Vaughan	No
Reed Trickett	Yes
John Murrey	Yes
Stan McNabb	Yes
Mark Pirtle	Yes
Donnie Hatcher	No
Joe Clayton	Abstain
Ronnie Fox	Yes

Motion passed to grant the license.

Michael C. Buchanan- City Motors Auto Sales Inc., Mascot, TN

Staff denied application

Motion was made by Commissioner Farrar Schaffer Vaughan, and seconded by Commissioner Ronnie Fox to grant the license.

ROLL CALL VOTE

Eddie Roberts	Yes
Nate Jackson	Yes
Farrar Schaeffer Vaughan	Yes
Reed Trickett	Yes
John Murrey	Yes
Stan McNabb	Yes
Mark Pirtle	No
Donnie Hatcher	No
Ronnie Fox	Yes
Joe Clayton	Abstain

Motion passed to grant the license.

Regina L. Edgeman-Chatt. Cars.com, Chattanooga, TN
Staff denied application-NO SHOW

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

Darius J. Cane-Auto Masters West Nashville, LLC. Nashville, TN
Staff denied application- NO SHOW

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

Voice Vote was unanimous

David M. Clancy-Riverside Motors, Inc., Murfreesboro, TN
Staff denied application-NO SHOW

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

Voice Vote unanimous

Decotus G. Sims- Miracle Chrysler-Dodge-Jeep, Inc, Gallatin, TN
Staff denied application

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

ROLL CALL VOTE

Eddie Roberts	Yes
Nate Jackson	Yes
Farrar Schaeffer Vaughan	Yes

Reed Trickett Yes
Donnie Hatcher Yes
John Murrey Yes
Stan McNabb Yes
Mark Pirtle Yes
Joe Clayton Yes
Ronnie Fox Yes
Motion passed to deny the license.

Cory Coker-Green Light Car Sales, Hendersonville, TN

Staff denied application

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

ROLL CALL VOTE

Eddie Roberts Yes
Nate Jackson Yes
Farrar Schaeffer Vaughan Yes
Reed Trickett Yes
John Murrey Yes
Stan McNabb Yes
Mark Pirtle Yes
Donnie Hatcher Yes
Joe Clayton Yes
Ronnie Fox Yes
Motion passed to grant the license.

Hugh Hollon-Peggy's Auto Sales, Hendersonville, TN

Staff denied application

Motion was made by Commissioner Nate Jackson, and seconded by Commissioner Donnie Hatcher to grant the license.

ROLL CALL VOTE

Eddie Roberts Yes
Nate Jackson Yes
Farrar Schaeffer Vaughan Yes
Reed Trickett Yes
John Murrey No
Stan McNabb Yes
Mark Pirtle No
Donnie Hatcher Yes
Joe Clayton No
Ronnie Fox Yes
Motion passed to grant the license.

Timothy Vantrease-Crown Ford, Nashville, TN

Staff denied application

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

ROLL CALL VOTE

Eddie Roberts	Yes
Nate Jackson	Yes
Farrar Schaeffer Vaughan	Yes
Reed Trickett	Yes
John Murrey	Yes
Stan McNabb	Yes
Mark Pirtle	Yes
Donnie Hatcher	Yes
Joe Clayton	Yes
Ronnie Fox	Yes

Motion passed to grant the license.

Darius Cane- Auto Masters West Nashville LLC., Nashville, TN

Staff denied application-NO SHOW

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

Voice Vote unanimous

Piston Auto Sales, LLC., Knoxville, TN

Staff denied application

Motion was made by Commissioner Joe Clayton, and seconded by Commissioner Farrar Schaeffer Vaughan to table the application.

Voice Vote unanimous

DIRECTORS REPORT

Since the last Commission meeting in January, 2014 the following actions have been taken:

Dealers Opened, or Relocated114

Active Licensees as of April 1, 2014

Dealers.....	3775
Applications in Process.....	32
Distributions/Manufacturers	140
Auctions.....	29
Representatives.....	549
Salespeople.....	15484
Dismantlers.....	320
RV Dealers.....	26
RV Manufacturers.....	59

Motor Vehicle Show Permits Issued Since January 7, 2014 ...10
 Revenue Received \$ 2000.00

Motion was made by Commissioner Nate Jackson, and seconded by Commissioner Joe Clayton to approve the Directors report.

Old Business

None

New Business

None

TO: Tennessee Motor Vehicle Commission

FROM: Legal Division

DATE: April 21, 2014

SUBJECT: MVC Legal Report

#1. Case No.: 2013005961

Complainant alleged that Respondent/dealer knowingly sold motorcycles and ATVs to consumers that were subject to open safety recalls before the recall work was performed. The allegations include motorcycles and ATVs sold between 2007-2012. Respondent primarily deals in Powersports and motorcycles. The complainant is an ex-contractor who, by his own admission, managed the daily operations of the dealership until mid-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 to be

conducting such violations by the National Highway and Transportation Safety Administration (NHTSA).

There have been several allegations made by Complainant, but generally they break down into three separate types of allegations:

1) Complainant alleged deceptive acts in that vehicles sold to consumers without necessary safety recall repairs being made prior to purchase. 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.

(See attached Exhibit 1). Respondent and Respondent's manufacturer took steps at the time of the NHTSA investigation to modify the registration of sales' process via electronic means so that a sale cannot go forward if an open safety recall exists on the product. Additionally, Complainant is not and was not a purchaser of product from Respondent, and would not be able to testify to any of the alleged violations. Purchasers of products with open safety recalls were notified by the manufacturer regarding the recalls and given instructions on how to obtain needed repairs. To date, the Motor Vehicle Commission has not received a single consumer complaint regarding these same allegations. Proving by a preponderance of evidence that Respondent engaged in "deceptive, fraudulent or false" activities would be difficult without a single consumer to testify that they have been harmed or "deceived" in any fashion by Respondent's alleged activities.

2) Complainant alleged that Respondent engaged in deceptive financing schemes, called "dumb-downed" financing. Complainant offered the affidavit of Ursula Treadway, a former finance clerk who worked for Respondent and who, Complainant alleged, would testify that, per Respondent's instructions, she and the other finance clerks would fill out financing applications on behalf of consumers and add to the application a non-existent down payment in order to improve the likelihood of the application being approved. This allegation, even if true, would be a matter for the finance company to raise, and to date not a single finance company has made this complaint against the Respondent. Complainant was not a party to any of the alleged transactions and would not be able to testify to any of the allegations. Additionally, when contacted regarding her affidavit, Ms. Treadway retracted much of her statement and refused to submit a revised affidavit. Similarly, the author of another affidavit, who was also a former employee of Respondent's, has since disavowed much of the same information contained in an affidavit supplied by the Complainant.

3) Complainant has alleged that Respondent failed to fulfill the "required pre-delivery inspection on thousands of units" and that this would be a violation of Tennessee Motor Vehicle Commission law and rules. Complainant made these same allegations in 2008, and the Commission found at that time that there was

no violation of Motor Vehicle statutes or rules. (See attached Exhibit 2) An investigation was done by the NHTSA on related matters and pursuant to their authority to enforce specific duties of manufacturers the previously mentioned agreement was entered.

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: Closed

#2. Case No.: 2013003401

Complainant/Law enforcement agent was concerned that Respondent/Auctioneer was operating without a dealer license. Investigation determined that respondent was auctioning vehicles pursuant to a judicial decree at the request of a drug task force and therefore exempt under TCA 62-19-103.

Recommendation: Close, no violation.

Commission Action: Approved.

**#3. Case No. 2013008961
2013008971**

Advertisement for auctions indicated possible unlicensed sales activity. No further information was able to be obtained due to time delay between events and when Commission actually received notice the auctions had occurred. Respondent #1 advertisement indicated this would be an “annual event”, however, so possibility exists of re-opening investigation if more information becomes available.

Recommendation: Close and flag

Commission Action: Approved.

**#4. Case Nos. 2013007782
2013011691
2013015811
2013018481
2013018482**

Investigation was prompted by advertisements on Craigslist for vehicles by sale for owner under Respondent/Dealer #1’s listed phone number, as well as advertisements by Respondent stating the following: “Become an Auto Dealer!! (Respondent’s phone number)”. Investigator spoke with several “independent

brokers” who confirmed that they paid a \$1,000 fee in order for respondent #1 to endorse their salesperson application, and then paid a \$300 fee per month in order to use Respondent’s dealer lot to close sales and do paperwork. Vehicles are purchased at auction under Respondent’s dealer license but with the “broker’s” personal funds. As many as fifty-one motor vehicle salesmen were acting as agents for Respondent #1 at one time. Respondent #1 stated that the salespeople are independent brokers and not employees, and that an employee/unlicensed salesman managed the dealership with owner’s permission, and advertised heavily on the internet for this “business model” on behalf of Respondent. Employee/unlicensed salesman eventually left Respondent and opened his own location, continuing the same “business model” and continuing to operate under Respondent’s dealer license. Employee/unlicensed salesman stated he was a licensed salesman in Alabama and “did not know” he could not operate this way in Tennessee.

Recommendation: Authorization for the revocation of Respondent’s Motor Vehicle Dealer License for failure to reasonably supervise agents, salesperson or employees per T.C.A. §55-17-114(b)(1)(H) and committing any act or practice involving the sale of a motor vehicle that is false, fraudulent or deceptive per T.C.A. §55-17-114(b)(1)(K) i.e. by charging a fee to “endorse” the sales license with no intent to employ the applicant, to be settled by Consent Order or Formal Hearing before an Administrative Law Judge.

Commission Action: Approved.

#5. Case No.: 2013008121

County Clerk alerted the Commission regarding possible unlicensed sales activity as well as unlicensed activity as a dismantler and recycler on behalf of the Respondent and members of his household. Investigation found that Respondent offered vehicles and parts for sale via Craigslist, using a phone number registered to Respondent. Over a hundred separate transactions were alleged, and the investigator was able to document definitively the following vehicle sales: in 2011 respondent sold eleven (11) motor vehicles; in 2012 seven (7) vehicles were sold; and in 2013 ten (10) vehicles were sold.

Recommendation: Authorization for a civil penalty in the amount of Eleven Thousand Two Hundred and Fifty Dollars (\$11,250) (\$750 x 15 incidents of unlicensed sales i.e. sales of more than 5 vehicles per year) to be settled by Consent Order or Formal Hearing.

Commission Action: Approved.

#6. Case No.: 2013010571

Investigation was prompted by advertisement by Respondent stating the following:

“Be a Licensed, Independent Automobile Representative. (Part-time/Full-time) Buy Wholesale, Sell Retail, You Keep All The Profit (phone number) DEALER PLATES OPTIONAL”.

Investigator obtained copies of written agreements between respondent and “Independent Sales Representatives”, which makes clear that vehicles are purchased at auction under Respondent’s dealer license but with the “representative’s” personal funds. Respondent charges a \$485 fee for endorsement of the salesman license on behalf of the “Representative”. The Respondent then allows the Representative to display the first three (3) vehicles on the Respondent’s lot, and once three (3) vehicles have been sold by the Representative, the Representative must pay the Respondent \$150 per vehicle in order to display the vehicle on Respondent’s lot. Once the sale of the vehicle is completed the representative is to pay Respondent a “doc fee” of \$275.00. Representatives are not employees of Respondent, but independent contractors.

Recommendation: Authorization for the revocation of Respondent’s Motor Vehicle Dealer License for failure to reasonably supervise agents, salesperson or employees per T.C.A. §55-17-114(b)(1)(H) and committing any act or practice involving the sale of a motor vehicle that is false, fraudulent or deceptive per T.C.A. §55-17-114(b)(1)(K) i.e. by charging a fee to “endorse” the sales license with no intent to employ the applicant, to be settled by Consent Order or Formal Hearing.

Commission Action: Approved.

**#7. Case Nos.: 2013014631
2013014632
2013014633**

Complaint initially opened against Respondent #1 in May 2013 due to Investigator finding business abandoned when he went to conduct biennial inspection. Investigator was told at that time by Respondent #2, a salesperson, that the owner had left the country. Concerns regarding on-going activity prompted an investigation in February of this year. Respondent #1 was open and actively selling cars under the direction of Respondent #2, who was operating both Respondent #1 business as well as his own dealership in another location, Respondent #3, and acting as a salesperson at the second location while being licensed under Respondent #1. Respondent #2 could not provide any documentation for any of the vehicles at either location, including any of the deal files; and gave a statement wherein he admitted to giving more than two temporary tags to multiple consumers at both locations; that he could not account for a large portion of the temporary tags purchased from the Department of Revenue; that vehicles were transferred between the two dealerships without documentation; and that temporary tag logs were incomplete at both locations. Respondent #2 blamed the complete lack of documentation on his bookkeeper, saying she had the paperwork. Bookkeeper was contacted and stated Respondent #2 gave her minimal documentation, usually a single sheet of paper regarding a sale for accounting purposes.

Recommendation: 2013014631 - Revocation of Motor Vehicle Dealer license for failing to reasonably supervise agents, salesperson or employees per T.C.A. §55-17-114(b)(1)(H); issuing more temporary plates than allowed by law per T.C.A. §55-17-114(b)(1)(O); and failing to maintain a record of the issuance of temporary plates per T.C.A. §55-17-114(b)(1)(O); and filing a dealer application that as of its effective date contained a statement that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact per T.C.A. §55-17-114(a)(1)(D), namely “that the members of this organization are familiar with the provisions of the law under which this application is made”, to be settled by Consent Order or Formal Hearing.

2013014632 – Revocation of Motor Vehicle Salesperson license for issuing more temporary plates than allowed by law per T.C.A. §55-17-114(b)(1)(O); engaging in unlicensed activity for Respondent #3 per T.C.A. §55-17-109 and T.C.A. §55-17-110; and filing a motor vehicle salesman application that as of its effective date contained a statement that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact per T.C.A. §55-17-114(a)(1)(D), specifically, that he would be working as a full time employee for Respondent #1, to be settled by Consent Order or Formal Hearing.

2013014633 – Revocation of Motor Vehicle Dealer license for failing to reasonably supervise agents, salesperson or employees per T.C.A. §55-17-114(b)(1)(H); employing Respondent #2 when he was not licensed as a salesperson for that dealership per T.C.A. §55-17-114(b)(1)(G); issued more temporary plates than allowed by law per T.C.A. §55-17-114; (b)(1)(O); failing to maintain a record of the issuance of temporary plates per T.C.A. §55-17-114(b)(1)(O); and filing a dealer application that as of its effective date contained a statement that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact per T.C.A. §55-17-114(a)(1)(D), namely “that the members of this organization are familiar with the provisions of the law under which this application is made”, to be settled by Consent Order or Formal Hearing.

Commission Action: Approved.

#8. Case No.: 2013015801

Complainant alleged that he purchased motorcycle from Respondent and was unable to obtain title. Respondent owns a motorcycle shop but sold the motorcycle to Complainant in a personal capacity, for parts only, and there is no proof he held himself out as a dealer.

Recommendation: Close, no evidence of violation.

Commission Action: Approved.

#9. Case No.: 2013015891

Complainant alleged that Respondent sold her a vehicle without disclosing rebuilt title status and also changed the odometer to reflect a significantly lower mileage on the vehicle. Respondent provided bill of sale and purchasing contract with "Rebuilt Title" circled and signed by Complainant. Respondent admitted to replacing the odometer because it was inoperable the day of purchase but claims that Complainant knew of the replacement. Respondent provided "odometer discrepancy" statement which Complainant signed.

Recommendation: Monitor: Criminal case has already been opened with Tennessee Department of Safety.

Commission Action: Approved.

#10. Case No.: 2013018531

Complainant alleged that Respondent, owner of dealership and resident of the Complainant's subdivision, was misusing his dealer plates and possibly engaging in off-site sales. An investigation found no proof of any violations, and indicates this is a dispute between the homeowner's association and resident over on-street parking.

Recommendation: Close, no evidence of violation.

Commission Action: Approved.

#11. Case No.: 2013019291

Complainant/Consumer alleged that Respondent sold her a car without disclosing that the vehicle was a salvage vehicle. Investigation found that Respondent told Complainant the title was "clean", and did not disclose the vehicle had a rebuilt title. Additionally, during the investigation it was noted that several vehicles did not have buyer's guides displayed on the vehicles; the temporary tag log was not available for inspection; and the salesman who sold the vehicle to the Complainant was unlicensed at the time of the purchase.

Recommendation: Authorization for a civil penalty in the amount of Five Thousand Five Hundred Dollars (\$5,500) for: unlicensed sale (\$500); failure to provide records of temporary tags (\$2,000); failure to properly display buyer's guide (\$1,000); and deceptive act of failure to disclose status of title to purchaser (\$2,000) to be settled by Consent Order or Formal Hearing.

Commission Action: Approved.

#12. Case No.: 2013019491

Investigation requested after possible unlicensed sales activity was observed at body shop. Investigator found that owner of body shop was purchasing salvage vehicles, repairing them, then listing for sale on Craigslist. Respondent has sold approximately fifteen vehicles in the last 12 months.

Recommendation: Authorization for a civil penalty in the amount of Five Thousand Dollars (\$5,000) for ten (10) unlicensed sales to be settled by Consent Order or Formal Hearing.

Commission Action: Approved.

#13. Case No.: 2013019701

Complainant alleged that he purchased a vehicle from Respondent in April 2013 and, as of September 2013, he still had not received title for the vehicle. Investigation found that the vehicle was sold with a salvage title, Complainant purchased the vehicle As-Is, and signed an acknowledgement of salvage title only. Dispute then arose over who would pay for repairs in order to have rebuilt title issued. Insufficient evidence of violations.

Recommendation: Close, no evidence of violation.

Commission Action: Approved.

#14. Case No. 2013020071

Complainant alleged that she had purchased a vehicle from Respondent in February, 2013 and, as of October 2013, still did not have tags or title, and had been issued several temporary tags by the Respondent. Investigation found that Respondent had provided seven (7) temporary tags to Complainant, and explained that the title had been misplaced, but Respondent knew it would be located eventually so didn't try to get a replacement title.

Recommendation: Authorization for a civil penalty in the amount of Two Thousand Five Hundred Dollars (\$2,500) (\$500 x 5 incidents of improper issuance of a temporary tag) to be settled by Consent Order or Formal Hearing.

Commission Action: Approved.

#15. Case No. 2013020391

Complainant alleged multiple issues with vehicle purchase, most of which were not violations due to "As-Is" nature of sale and documentation provided by Respondent regarding financing of the vehicle. However, during course of investigation it was found that eight (8) vehicles on Respondent's lot did not have buyer's guide displayed as required.

Recommendation: Authorization for civil penalty in the amount of One Thousand Dollars (\$1,000) for failure to properly display buyer's guide to be settled by Consent Order or Formal Hearing.

Commission Action: Approved.

#16. Case No.: 2013020771

Complainant alleged that Respondent was operating an unlicensed dismantler and recycler business, and purchased a car that Complainant had a properly recorded lien on and scrapped it without notifying Complainant or obtaining Complainant's permission. Investigator was unable to locate anyone operating under Respondent's alleged name or any evidence of business activity at the provided address. Complainant eventually admitted to "not being sure" of Respondent's actions or location.

Recommendation: Close

Commission Action: Approved.

#17. Case No.: 2013020791

Complainant/County clerk alleged possible unlicensed activity on behalf of Respondent. Investigation found that Respondent's license was surrendered in April 2013, and that three (3) vehicles were sold by Respondent in June, July and August. Respondent has since obtained a new dealer license.

Recommendation: Authorization for a civil penalty in the amount of One Thousand Five Hundred Dollars (\$1,500) for three (3) unlicensed sales to be settled by Consent Order or Formal Hearing.

Commission Action: Approved.

#18. Case No.: 2013020401

Complainant alleges Respondent sold her a salvage vehicle without disclosing status. Respondent provided Buyer's Guide signed by Complainant showing "As-Is" sale, and copy of non-branded title. Complainant has not provided any additional documentation regarding title issue.

Recommendation: Close, no evidence of violation.

Commission Action: Approved.

#19. Case No.: 2013020221

Complainant/Consumer alleges that Respondent/Dealer sold a salvage vehicle without disclosing prior damage. Respondent/Dealer provided documentation of As-Is sale, as well as evidence of non-branded title.

Recommendation: Close. As-Is sale, no proof of violation.

Commission Action: Approved.

#20. Case No. 2013020401

Complainant alleged that he never received a title even though he paid for vehicle in full at time of purchase. Respondent provided documentation of multiple attempts to contact Complainant to resolve issue before complaint was filed, as well as signed receipt of title finally being delivered.

Recommendation: Close, no evidence of violation.

Commission Action: Approved.

#21. Case No.: 2013021781

Complainant/Consumer alleged multiple issues with purchase of the vehicle, including not being able to obtain proper registration or title four (4) months after purchase. Investigation found that four (4) temporary tags had been issued to this consumer, and three (3) issued to another purchaser. Respondent did eventually provide proper title to consumer.

Recommendation: Authorization for civil penalty in the amount of One Thousand Five Hundred Dollars (\$1,500) for three (3) incidents of providing more temporary tags than allowed by law, to be settled by Consent Order or Formal Hearing.

Commission Action: Approved.

#22. Case No.: 2013021791

Complainant/Consumer alleged that Respondent/Dealer did not pay off the lien on his trade-in vehicle in a timely manner in violation of TCA §55-17-114. Respondent provided documentation of pay-off occurring within 15 calendar days of sale, well within a reasonable time frame.

Recommendation: Close.

Commission Action: Approved.

#23. Case No.: 2013021841

Complainant is a law enforcement officer who arrested the Respondent for driving on a suspended license. During the incident Complainant saw multiple open titles in Respondent's possession, and was concerned that Respondent was conducting unlicensed sales activity. Respondent stated that the titles were for cars he had in his personal collection, a friend/business associate of Respondent also stated that was the case, and investigation was unable to find proof of any violations.

Recommendation: Close, no evidence of violation.

Commission Action: Approved.

#24. Case No.: 2013022351

Complainant/Purchaser alleged that Respondent/Dealer issued more than two (2) temporary tags and failed to timely discharge the lien on the trade-in vehicle. Investigation found that three (3) tags were issued, the temporary tag log was not properly maintained, and that the lien was discharged two (2) months after the purchase of the vehicle, and only after multiple calls to the Respondent by the Complainant.

Recommendation: Authorization for a civil penalty in the amount of Two Thousand Five Hundred Dollars (\$2,500) for failure to properly maintain temporary tag log (\$1,000); failure to timely discharge the lien (\$1,000); and issuing more than two (2) temporary tags (\$500), to be settled by Consent Order or Formal Hearing.

Commission Action: Approved.

#25. Case No.: 2013022531

Complainant/County Clerk alleged possible unlicensed sales activity on behalf of Respondent. Investigator obtained documentation showing ten (10) separate sales by Respondent over a few months' time. Respondent purchases salvage vehicles in North Carolina, obtains rebuilt titles and then sells them in Tennessee.

Recommendation: Authorization for a civil penalty in the amount of Two Thousand Five Hundred Dollars (\$2,500) for five (5) unlicensed sales at \$500 each, to be settled by Consent Order or Formal Hearing.

Commission Action: Approved.

#26. Case No.: 2013023101

Complainant/Consumer alleges that Respondent/Dealer sold her a vehicle, under a limited warranty, and that she immediately had mechanical issues with the vehicle. Respondent/Dealer ultimately took back the first vehicle and sold her another car. Complainant says that she was "forced" into new contract. Respondent/Dealer denies undue influence or fraud and provided documentation of the sale.

Recommendation: Close. No proof of violation; civil matter between parties regarding contract terms.

Commission Action: Approved.

#27. Case No.: 2013023111

Complainant/consumer alleged that Respondent conducted off-sites sales and has not provided him with a title. Respondent did not provide a response to the complaint, and Investigator provided information that prior inspection attempts on this Respondent were not possible due to a bad phone number and no one at the location on multiple attempts. Investigator found that sale was done off-site but by Respondent #2, a salesman whose license expired in July 2012. Respondent #2 was not honest in his conversation with the investigator regarding dealings with the Complainant. Respondent #1's dealer license expired December 2013 and has not been renewed.

Recommendation: Close and flag both Respondents.

Commission Action: Approved.

#28. Case No.: 2013023121

Complainant/Consumer alleged that Respondent/Dealer required him to purchase GAP insurance as part of the financing of his purchase. Additionally, Complainant alleged that Respondent told him he "did not qualify" for the special financing or rebates currently offered and would have to use their recommended financing company in order to complete the purchase. Complainant persisted in asking why his credit application was rejected, and later determined that his credit application was never actually submitted for the "special financing". Additionally, Respondent assured Complainant after he complained about the GAP insurance purchase that it would be cancelled once his paperwork was submitted. Complainant learned four (4) months later that the Respondent never submitted the cancellation, and so Complainant dealt with the finance company himself to make sure it was done.

Recommendation: Authorization for a civil penalty in the amount of Two Thousand Dollars (\$2,000) for violation of: TCA §55-17-114(b)(1)(A) required the purchaser of a vehicle as a condition of sale to also purchase features not requested by the purchaser (\$1,000); and TCA §55-17-114(b)(1)(K), commits any act or practice involving the purchase or sale of a motor vehicle that in the opinion of the commission is false, fraudulent or deceptive (\$1,000) to be settled by Consent Order or Formal Hearing.

Commission Action: Approved.

#29. Case No. 2013023361

Complainant alleged that he traded a vehicle to Respondent/Dealer in exchange for a vehicle and did not receive a title; and that Respondent issued him multiple temporary tags while they allegedly attempted to locate the title. Respondent did not provide a response to the complaint as required. Investigation found that the Respondent issued a total of six (6) temporary tags to Complainant. Investigation also found that the temporary tag log was not properly maintained, with several tags unaccounted for or without required information, and Respondent indicated that she hoped if she "ignored the complaint it would go away".

Recommendation: Authorization for a civil penalty in the amount of Three Thousand Two Hundred and Fifty Dollars (\$3,250): (\$500 each for four (4) violations of issuance of temporary tags in excess of two (2); \$1,000 for failure to properly maintain temporary tag log; and \$250 for failure to respond to communications from the Commission within thirty (30) days) to be settled by Consent Order or Formal Hearing.

Commission Action: Approved.

#30. Case No. 2013023481

Investigator received information of possible unlicensed sales activity taking place. Investigation found thirty-one (31) vehicles purchased by Respondent from either online auctions or public auctions, then sold from January 2103 through October 2013.

Recommendation: Authorization for a civil penalty in the amount of Thirteen Thousand Dollars (\$13,000) for twenty-six (26) acts of unlicensed sales at \$500 each, to be settled by Consent Order or Formal Hearing.

Commission Action: Approved.

#31. Case No.: 2013023521

Complainant reported she was unhappy with condition of vehicle, and that Respondent/Dealer misrepresented the condition of the vehicle prior to purchase and would now not fix the mechanical issues. Vehicle was purchased “as-is”. Respondent eventually allowed the complainant to return the vehicle and allowed her out of the sales contract.

Recommendation: Close, no violation.

Commission Action: Approved.

#32. Case No. 2013023551

Complainant alleged that Respondent/Dealer had not paid for a vehicle sold to Respondent in October, 2013. Investigation found that the Respondent operated without a surety bond in place from May 1, 2013 when it was cancelled to March 1, 2014, when he was able to renew it, a period of three-hundred and four days (304). Complainant has been advised to pursue legal options.

Recommendation: Authorization for the Revocation of Respondent’s Motor Vehicle Dealer License, to be settled by Consent Order or Formal Hearing.

Commission Action: Approved.

#33. Case No. 2013023601

Complainant alleged that he purchased vehicle from Respondent/Dealer over a year ago, paid in full at time of purchase, and still did not have title to the vehicle. Respondent/Dealer stated that he mailed the title to Complainant and “never heard from him” so he assumed that title was received. Complainant disputes that version of events. During course of investigation it was found that Respondent could not produce deal file on this vehicle, temporary tag log was in disarray, three (3) temporary tags were issued to Complainant, and Respondent could not explain why he did not respond to initial complaint inquiry from Motor Vehicle Commission.

Recommendation: Authorization for a civil penalty in the amount of Eight Thousand Five Hundred Dollars (\$8,500) for: failure to maintain a temporary tag log (\$2,000); failure to produce requested business records (\$1,000); failure to reply to communication from the commission (\$500); and deceptive act in failing to deliver title to consumer within reasonable time or provide explanation as to why title could not be provided (\$5,000) to be settled by Consent Order or Formal Hearing.

Commission Action: Approved.

#34. Case No.: 2013023701

Complainant alleged that Respondent would not provide title to the vehicle. Complainant made the same allegation previously and complaint was closed in October 2013 due to lack of communication by Complainant. Investigation found that Respondent holds a lien on the vehicle and is holding title until vehicle is paid for in full.

Recommendation: Close, no violation.

Commission Action: Approved.

#35. Case No.: 2013023951

Complainant purchased vehicle from Respondent in February 2013, and alleged that when she attempted to sell the car in November 2013 she was notified that the title was a “stolen title” and therefore she would get much less for any trade-in or sale of the vehicle. Respondent closed in September 2013, so no additional information is available.

Recommendation: Close and flag.

Commission Action: Approved.

#36. Case No.: 2013023971

Complainant/Consumer alleged that almost two (2) months after purchasing and paying for car in full, Respondent/Dealer still had not provided tags or title to vehicle. Additional information provided by Respondent showed that title and

tags were given to Complainant a few days after complaint was filed. Complainant still unhappy about “incompetence” of Respondent, and while matter was handled poorly, insufficient evidence of any violation.

Recommendation: Close.

Commission Action: Approved.

#37. Case No.: 2013024021

Complainant/Consumer lost a vehicle due to flood, and worked with her insurer to purchase new vehicle from Respondent/Dealer. Complainant alleged that Respondent improperly handled the financing of the new vehicle, resulting in a loss to the Complaint of \$1,543 and that the Respondent was also demanding that the new vehicle be re-financed at a higher rate. After complaint was filed, Respondent compensated Complaint in the amount of \$1,543 and took no further steps regarding the re-financing issue.

Recommendation: Close

Commission Action: Approved.

#38. Case No.: 2013025061

Complainant/Consumer alleged that Respondent/Dealer sold him a vehicle without disclosing prior structural damage. Respondent uses AutoCheck for his used vehicles, and showed report indicating no prior damage, while dealer that Complainant attempted to trade vehicle to (a year after initial purchase) uses CarFax, which does show prior accident and damage. Respondent has offered to file claim against AutoCheck on Complainant’s behalf. No evidence of violation.

Recommendation: Close

Commission Action: Approved.

#39. Case No.: 2013025071

Complainant reported she was unhappy with condition of vehicle, and that Respondent/Dealer treated her unfairly regarding financing. No proof of violation.

Recommendation: Close, no violation.

Commission Action: Approved.

#40. Case No.: 2013025161

Complainant/Consumer alleged he did not sign finance documents and wants return of his deposit. Respondent/Dealer has provided documentation of transaction including financing. Insufficient proof of violation.

Recommendation: Close.

Commission Action: Approved.

#41. Case No.: 2013025171

Complainant/Consumer alleges that condition of car was mis-represented prior to purchase and that Respondent did not give him full credit for his trade-in when calculating amount owed. Respondent/Dealer provided documentation of “As-Is” sale and Bill of Sale with full credit for trade-in.

Recommendation: Close. “As-Is” sale, no proof of violation.

Commission Action: Approved.

#42. Case No.: 2013025351

Complainant/Consumer alleged deceptive business practices because Respondent/Dealer would not sell vehicle to Complainant for price displayed on “Craigslis” ad. Documentation revealed price on Craigslis ad was so low as to obviously be a mistake, and Respondent removed that ad and has updated software to attempt to keep that from happening again.

Recommendation: Close.

Commission Action: Approved.

#43. Case No.: 2013026081

Complainant/Consumer alleged that he was not notified by Respondent/Dealer prior to purchase that vehicle had a rebuilt title. Vehicle was a 1993 Nissan, so is exempt from disclosure requirements of TCA § 55-3-212. Additionally, Respondent/Dealer and Salesman both submitted affidavits indicating they discussed status of vehicle title with Complainant prior to purchase.

Recommendation: Close.

Commission Action: Approved.

#44. Case No.: 2014000101

Complainant alleges Respondent sold her a re-built vehicle without disclosing status. Respondent provided Buyer’s Guide signed by Complainant showing “As-is” sale, and copy of title with “Re-built” clearly legible on title as required. Complainant did not raise issue of title until eighteen (18) months after purchase, when vehicle was re-possessed for non-payment.

Recommendation: Close.

Commission Action: Approved.

#45. Case No.: 2014000551

Complainant/Finance Company alleged that Respondent/Dealer engaged in “fraudulent business transactions” with their company. Documentation provided clearly indicates a failed contractual obligation, but insufficient proof of violation.

Recommendation: Close.

Commission Action: Approved.

#46. Case No.: 2014000641

Complainant alleged that Respondent mis-represented condition of vehicle prior to sale. Respondent provided documentation of As-Is sale, and pointed out that Complainant drove vehicle for over three (3) months before problems arose, then never gave Respondent an opportunity to repair any issues with vehicle prior to filing complaint.

Recommendation: Close, no evidence of violation.

Commission Action: Approved.

#47. Case No.: 2014000931

Complainant alleged that Respondent/Dealer misrepresented car’s condition prior to purchase. Respondent provided proof of As-Is sale, which Complainant does not dispute. Additionally, Complainant inspected the car for an hour and took extended test-drive prior to sale.

Recommendation: Close.

Commission Action: Approved.

#48. Case No.: 2014000961

Respondent/Dealer received an Agreed Citation for fourteen (14) incidents of off-site sales, specifically fourteen (14) vehicles that were parked in a lot adjacent to the licensed dealership displaying sale information. Respondent is contesting the citation, asking the Commission to consider a warning in lieu of a civil penalty and asserting that the lot was for storage purposes only.

Recommendation: Authorization of a civil penalty in the amount of Seven Thousand Dollars (\$7,000) (\$500 x 14 off-site sales) to be settled by Consent Order or Formal Hearing.

Commission Action: Approved.

#49. Case No.: 2014000981

Respondent/Dealer received an Agreed Citation for failure to maintain the temporary tag log. Respondent is asking the Commission for a payment plan in order to pay the \$2,000 civil penalty.

Recommendation: Authorization for the Respondent to pay a \$2,000 civil penalty on a payment plan to be established based on Respondent's ability to pay as promptly as possible, to be settled by Consent Order or Formal Hearing.

Commission Action: Approved.

#50. Case No.: 2014001491

Respondent/Dealer received an Agreed Citation in the amount of \$2,000 after investigator determined during an inspection of the dealership that the temporary tag log was not in order and that two (2) of the salespeople were not currently licensed for that dealership. Respondent is contesting the citation, asking the commission to consider a warning in lieu of a civil penalty. Respondent's attorney asserts that the licenses of the salesmen were corrected shortly after the inspection, and the temporary tag log was provided in a timely manner.

Recommendation: Authorization of a civil penalty in the amount of Two Thousand Dollars (\$2,000) (\$500 x 2 unlicensed salesman); (\$1,000 for failure to properly maintain temporary tag log) to be settled by Consent Order or Formal Hearing.

Commission Action: Approved.

#51. Case No.: 2014001501

Complainant/Buyer alleged that Respondent/Dealer would not provide registration for her vehicle, even though it was included in the finance amount of her contract. Subsequent to the filing of the complaint, Respondent/dealer provided registration for the buyer.

Recommendation: Close, resolved between the parties.

Commission Action: Approved.

#52. Case No.: 2014001571

Complainant alleges that the Respondent/Dealer did not honor the financing deal that was agreed upon. Documents provided, however, show that the Complainant signed the contract day of delivery and purchase, and financing terms were clearly set out in contract. Complainant signed and agreed that he

had “read and understood the terms of the contract”. Insufficient evidence of violation.

Recommendation: Close.

Commission Action: Approved.

#53. Case No.: 2014001751

Complainant alleged that Respondent/Dealer misrepresented car’s condition prior to purchase and that the vehicle began to experience mechanical problems approximately three (3) months after purchase. Respondent provided proof of As-Is sale, which Complainant signed and does not dispute.

Recommendation: Close.

Commission Action: Approved.

#54. Case No.: 2014002081

Investigation has determined that Respondent/Dealer has operated without a surety bond in effect for the protection of consumers since December 1, 2013. Respondent was notified by the Motor Vehicle Commission via certified mail on December 5, 2013 that failure to maintain a surety bond could result in the assessment of civil penalties, suspension or revocation of the Motor Vehicle Dealer License pursuant to T.C.A. §55-17-111, and Respondent was given sixty (60) days to remedy the lapse of the bond. Proof of a bond has not yet been provided. Additionally, during an inspection of the Respondent on April 7, 2014, it was found that Respondent was actively engaged in selling vehicles; could not account for two (2) temporary tags; and had five (5) unlicensed motor vehicle salespersons working for Respondent. Attempts to contact the Respondent about the bond issue on April 11, 2014 were not successful.

Recommendation: Authorization for the Revocation of Respondent’s Motor Vehicle Dealer License, to be settled by Consent Order or Formal Hearing.

Commission Action: Approved.

#55. Case No.: 2014002931

Respondent/Dealer received an Agreed Citation for failure to maintain the temporary tag log. Respondent is contesting the civil penalty, asserting that they have rectified the error and asking for leniency.

Recommendation: Authorization for a civil penalty in the amount of Two Thousand Dollars (\$2,000), to be settled by Consent Order or Formal Hearing.

Commission Action: Approved.

#56. Case No.: 2014003501

Respondent/Dealer received an Agreed Citation for possessing an executed certificate of title without the name of the transferee appearing on the certificate. Respondent is contesting the citation.

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

Commission Action: Approved.

**#57. Case Nos.: 2013019691
2013023541
2014004001**

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

Recommendation: Close – Withdrawn.

Commission Action: Approved.

**#58. Case Nos.: 2014001561
2013025891
2013024181
2013024191
2013024201
2013025051
2013025141
2013025761
2014000811
2014001721
2014001731
2014005251
2014000271
2014000361
2014000831
2014000991
2014001551
2014001791**

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 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.

Re-Presentations

#59. Case No.: 2013002541

The Commission previously authorized a civil penalty in the amount of Five Hundred Dollars (\$500) at its July 2013 meeting against Respondent dealer. The Complainant in this case is a company who purchased motor vehicle notes from Respondent. The Complainant alleged that the Respondent sold the notes to them with a guarantee of title but never delivered a title with a secured lien. The Respondent stated that the failure to obtain title and lien for assignment was due to the purchaser failing to obtain a passing vehicle emissions test in Shelby County and at the time, the county clerk would not provide title or lien notation without a passing vehicle emissions.

Recently this office found that the Complainant continued to conduct business with the Respondent. The Respondent stated that he would refund the funds back from the Complainant but could not obtain instructions from them on how to do this. This office attempted to contact the Complainant to verify this information and determine if the Complainant could provide instructions to obtain a refund for the fund paid for the assigned notes in the Complaint. The Complainant did not respond to this office's request. In light of this, and the continued business relationship, this matter appears more of a contractual issue and not one of deception and fraud.

Recommendation: Amend the previous authorization to Close – No Violation found. Contractual issue between Complainant and Respondent.

Commission Action: Approved.

**#60. Case No.: 2012019021
2012021641
2013008791**

In the above complaints, the commission previously authorized a civil penalty or license revocation against the licensees. Since the authorizations, all licenses have expired or in the case of a salesperson, they were terminated. As such, there are no valid licenses under which to discipline.

Recommendation: Amend the previous authorization to: Close and Flag – Respondent is no longer licensed by the Commission.

Commission Action: Approved.

**#61. Case No.: 2013014851
2013014852**

In the above complaint, the commission previously authorized the revocation of Respondent #2's motor vehicle salesperson license. Revocation was based on the application not being truthful, i.e. Respondent #2 was not an employee of the

dealer/Respondent #1, but was instead acting as an “agent” and/or independent broker within the dealership of Respondent #1. Respondent #1 was issued a civil penalty in the amount of \$3000 for allowing an unsupervised non-employee to conduct business within the dealership. Respondents now ask that the commission reconsider the revocation of the motor vehicle salesperson license and instead issue a civil penalty based on the following information: Respondents #1 & #2 offer their apologies to the commission for their errors, and have made arrangements for Respondent #2 to become a lawful owner of Respondent #1 by May 1st. Keeping his license will permit Respondent #1 to be a lawful motor vehicle salesperson for Respondent #2 and will also allow him to pay an \$18,835.00 judgment to the Complainant that was the basis of the initial complaint to the Commission. Additionally, Respondents note that no consumer has alleged to be harmed by their actions. Complainant also joins in the request for reconsideration of the revocation.

Recommendation: Amend the previous authorization to a civil penalty in the amount of Six Thousand Dollars (\$6000) to be settled by Consent Order or Formal Hearing.

Commission Action: Approved.

Eddie Roberts, Chairman

Leon Stribling, Executive Director