

MINUTES

SEPTEMBER 14, 2015



**TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF REGULATORY BOARDS
MOTOR VEHICLE COMMISSION
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**TENNESSEE
MOTOR VEHICLE COMMISSION
MINUTES**

DATE: September 14, 2015

PLACE: Davy Crockett Tower – Conference Room 1-A
500 James Robertson Parkway
Nashville, Tennessee

PRESENT: Commission Members:
Eddie Roberts
Reed Trickett
Joe Clayton
Nate Jackson
Farrar Schaeffer Vaughan
Jim Galvin
Ronnie Fox
Stan Norton
Don Parr

ABSENT: Donnie Hatcher
Lynn Webb
Stan McNabb
John Murrey
Steve Tomaso
Ian Leavy

CALL TO ORDER: Chairman Eddie Roberts called the meeting to order at 8:05am

Paula J. Shaw, Executive Director called the roll. 9 members were present and a quorum was established.

AGENDA: Commissioner Jackson made a motion to adopt the agenda, seconded by Commissioner Vaughan.

MOTION CARRIED.

MINUTES: No minutes presented

MOTION CARRIED.

Notice advising the Commission of the time, date and location of the meeting being posted on the Tennessee Motor Vehicle Commission website and that it has been included as part of the year's meeting calendar since September October 6, 2014, was read into the record by Executive Director, Paula J. Shaw. The notice also advised that the Agenda has been posted on the Tennessee Motor Vehicle Commission website since September 9, 2015.

APPEALS: The following appeals were heard by the Commission.

Jeffrey Barton

Legal staff presented the salesperson renewal for Jeffrey Troy Barton. Assistant General Counsel, Matthew E. Reddish, advised the commission that Mr. Barton had multiple felony convictions which, in his opinion, fell under crimes of moral turpitude and did not notify the commission of those convictions within the amount of time prescribed by law. Mr. Reddish suggested the commission deny the application for renewal based on Mr. Barton's violation of 55-17-114(b)(2).

Commissioner Jackson made a motion to uphold the denial of Mr. Barton's application for renewal, seconded by Commissioner Vaughan.

ROLL CALL VOTE

Eddie Roberts	Yes
Reed Trickett	Yes
Joe Clayton	Yes
Nate Jackson	Yes
John Murrey	-----
Farrar Vaughan	Yes
Jim Galvin	Yes
Ronnie Fox	Yes
Stan Norton	Yes
Don Parr	Yes
Steve Tomaso	-----
Ian Leavy	Abstain

Motion carried, therefore the denial of the renewal is upheld.

DIRECTORS REPORT – Paula J. Shaw, Executive Director

No Director's Report presented

LEGAL REPORT

The legal report was presented to the Legal Review Committee. Commissioner Jackson advised the Legal Report needed to be approved and General Counsel Kim Cooper conveyed the Legal Report was accepted as written by the Legal Review Committee and was referred to the full Commission.

1. Case No.: 2015004881

Internal complaint opened against Respondent for unlicensed activity. Dealership has been unlicensed since March 31, 2013. Investigation revealed two (2) unlicensed sales people and twelve (12) motor vehicles for sale. The vehicles are still currently titled in Kentucky. Dealership was uncooperative with investigation.

Recommendation: Authorization of a civil penalty in the amount Fourteen Thousand Dollars (\$14,000) consisting of \$1,000 per unlicensed salesperson and \$1,000 per occurrence of unlicensed sales activity. To be settled by Consent Order or Formal Hearing.

2. Case No.: 2015007051

Consumer Complainant alleged Respondent dealer failed to deliver proper documents for vehicle registration. Respondent dealership is closed and claims they were only the accountant for the dealership and had no sales interactions at any point. Former sales manager verifies that Respondent was never involved in any sales transactions and that as far as he knows all customers received title prior to dealership closing. Complainant was not available for comment and Complainant's VIN or vehicle identification information was not received.

Recommendation: Close – Respondent out of business and closed – Surety bond sent

3. Case No.: 2015008561

Consumer Complainants alleged Respondent would not sell vehicle at advertised price because advertised price did not include mandatory dealer installed options which were not mentioned in the advertisement. During investigation, dealership claimed unaware of this particular customer and had no record of them ever calling or attempting to purchase the car in question. Complainant did not record name of salesperson he spoke with. Investigation did reveal two advertisements with deceptive price information and no stock number listed where stock number is required by rule.

Recommendation: Authorization of a civil penalty in the amount Two Thousand Dollars (\$2,000) consisting of \$500 for each failure to list stock number in advertisement and \$500 for each deceptive price advertising. To be settled by Consent Order or Formal Hearing.

4. Case No.: 201500706

Complaint opened against Respondent for allegedly committing unlicensed activity by selling motor vehicles from his store front. Investigation revealed Respondent had his own vehicle displayed as "for sale" in the parking lot, no other vehicles present. Complainant not available for further comment, no evidence obtained of unlicensed sales.

Recommendation: Close

5. Case No.: 2015007951 and 2015007952

Complaint opened due to allegations that Respondent 1 is engaging in unlicensed activity and had sold multiple cars. Investigation revealed Respondent 1 and Respondent 2 live at same address and had sold a combined 15 cars over a 12 months period. Respondent 2 admitted to his sales while Respondent 1 retained an attorney and was uncooperative with investigation.

Recommendation: Authorization of a civil penalty in the amount Two Thousand Five Hundred Dollars (\$2,500) against each Respondent consisting of \$500 per unlicensed sale. To be settled by Consent Order or Formal Hearing.

6. Case No.: 201500798

Complaint opened due to allegations of multiple cars for sale at a location. Drive by confirmed the presence of many vehicles that appeared to be for sale. Investigation revealed majority of vehicles were receiving upholstery repair at a shop located at the address, only one vehicle was advertised as “for sale” with a telephone number on window. Further investigation revealed the motor vehicle was for sale by Respondent, but was not titled in Respondent’s name. Respondent became uncooperative and investigation was unable to uncover any further violations.

Recommendation: Authorization of a civil penalty in the amount of One Thousand Dollars (\$1,000) for selling a motor vehicle titled in another’s name. To be settled by Consent Order or Formal Hearing.

7. Case No.: 2015007031 and 2015007032

Board Complaint opened stating Respondent 1/Salesperson was running an unlicensed dealership with online advertising out of lot owned by Respondent 2, a licensed dealership. Investigation revealed Respondent 1 was licensed as a salesperson for Respondent 2 dealership, and all cars listed on websites were owned, parked and sold at Respondent 2’s dealership. Website was Respondent 1’s promotional tool and he was operating it with Respondent 2’s knowledge per affidavits obtained during investigation. Advertisements were deceptive due to listing vehicles for sale by Respondent 1, as well as violations of pricing rules on the online advertisements. When notified of potential deceptive advertising violations, website immediately removed by Respondent 1.

Recommendation:
Authorization of a civil penalty in the amount of One Thousand Dollars (\$1,000) against Respondent 1 for deceptive acts. To be settled by Consent Order or Formal Hearing.
Authorization of civil penalty in amount of Two Thousand Dollars (\$2,000) against Respondent 2 consisting of \$1,000 for deceptive advertising and \$1,000 failure to reasonably supervise salesman. To be settled by Consent Order or Formal Hearing.

8. Case No.: 2015006631 and 2015006632

Received Consumer Complaint alleging Respondent posted a craigslist advertisement for a jeep with clean title, but sold Complainant a vehicle with rebuilt title. Complainant alleged Respondent never issued a bill of sale and is now unresponsive to requests. Complainant alleged Respondent is operating as an unlicensed dealer.

Investigation revealed Respondent only sold one motor vehicle in the last several years and it was the jeep in question. It was an off road toy and was listed for sale as “for parts.” Respondent stated Complainant knew it was for parts and Complainant told Respondent he intended to use it for that purpose. Complainant was neither responsive nor cooperative with investigation.

Recommendation: Close

9. Case No.: 2015006651

2015006652

2015006653

2015006654

2015006655

Received referral complaint from Police Department stating Respondent 1(unlicensed salesperson) admitted to engaging in unlicensed sales and posed as Respondent 2 (salesperson) who is a licensed sales person for Respondent 3 (dealership). During investigation, Respondent 1 stated he is authorized to sell on behalf of Respondent 3 dealership while using Respondent 2’s salesperson license. Investigation revealed Respondent 1 was operating with Respondent 2 salesperson’s and Respondent 3 dealership’s knowledge and was paying Respondent 3 dealership a fee to process paperwork in Respondent 3 dealership’s name. Respondent 4 salesperson completed title work for Respondent 1 with knowledge of Respondent 1’s unlicensed status. Respondent 5 also used Respondent 2’s salesperson license to purchase cars at auction on behalf of Respondent 3 dealer, as well as on behalf of Respondent 1 and Respondent 2 for personal sale. Respondent 3 admitted to knowing about these auction purchases and that he has several similar broker arrangements with other salespeople.

Recommendation:

2015006651 - Authorization of a civil penalty in the amount of Five Thousand Dollars (\$5,000) consisting of \$1,000 for deceptive acts, \$1,000 for fraudulent acts, \$2,000 for unlicensed activity and \$1,000 for selling a car titled in the name of another person.

2015006652 – Authorization of revocation of dealership license for failure to supervise salespeople, false and deceptive acts, use of unlicensed sales people and allowing unlicensed sales people to purchase motor vehicles at auction with personal funds and on behalf of dealership.

2015006653 – Authorization of revocation of salesperson license for false, fraudulent and deceptive acts.

2015006654 – Authorization of revocation of salesperson license for false, fraudulent and deceptive acts.

**2015006655 - Authorization of a civil penalty in the amount of Two Thousand Five Hundred Dollars (\$2,500) for deceptive and fraudulent acts.
To be settled by Consent Order or Formal Hearing.**

10. Case No.: 201500884

Consumer Complainant alleged Respondent failed to honor warranty and charged them for repairs that should have been free under warranty. Investigation revealed Complainant did provide a 3 month/3,000 mile warranty, however all repairs that Complainant was charged for were made after warranty had expired. Dealership closed and license returned to Commission.

Recommendation: Close

11. Case No.: 201500857

Complainant alleged Respondent held her car for repairs and then sold it out from under her. Respondent stated they are currently litigating issues with Complainant. Respondent stated they gave Complainant a “loaner car” while repairs were being done and Complainant destroyed the loaner car and refused to pay for it. Complainant was uncooperative and unresponsive to investigator. Investigator was unable to obtain any sworn statement regarding Respondent’s actions.

Recommendation: Close

12. Case No.: 21500989

Complaint opened following consumer complaint alleging Respondent failed to timely produce tags/title. During investigation, Complainant became unresponsive and uncooperative. Surety bond was sent. No violations found.

Recommendation: Close

13. Case No.: 201500902

Complaint opened after Consumer Complainant alleged Respondent falsified income on applications. Investigation revealed no proof of falsification of documents or any other actionable evidence.

Recommendation: Close

14. Case No.: 201500948

Consumer Complainant alleged Respondent hid certain fees from Complainant during the sale of a motor vehicle. Investigation revealed no evidence of deception or falsification of any paperwork. No actionable evidence was obtained during investigation.

Recommendation: Close

15. Case No.: 2015001681

Complaint opened against Respondent for potentially engaging in unlicensed sales. Investigation failed to show actionable evidence against respondent for unlicensed sales and could not locate any cooperative purchasers. Complaint did reveal Scrap Metal violations and Department of Revenue violations.

Recommendation: Close – Refer to Scrap Metal Commission and Department of Revenue – Refer to Metro Nashville Police Department

**16. Case No.: 201502003
201500991**

Complaints already opened on this same set of facts by same Complainants.

Recommendation: Close as duplicative complaint

17. Case No.: 21500900

Consumer complaint alleging Respondent falsified paperwork during purchase of motor vehicle and improperly repossessed her vehicle. Investigation and review of deal file failed to reveal proof of falsification of paperwork and repossession appeared to be valid.

Recommendation: Close – No actionable proof

18. Case No.: 201500949

Complaint opened following receipt of Consumer Complaint alleging Respondent failed to issue title/tags. Complaint has been withdrawn and matter was successfully resolved between the parties.

Recommendation: Close

19. Case No.: 201500947 & 2015009541

Complaint 1 opened following consumer complaint alleging Respondent completed loan documents in Complainant 1's name, without Complainant 1's knowledge or consent, and used the document to obtain a loan on a car that Complainant 1 did not purchase and has never possessed.

Complaint 2 opened following request by Complainant 2 for assistance in locating buyers of motor vehicles which Complainant 2 financed. Complainant 2 was not cooperative with further investigation attempts.

Investigation revealed that Respondent dealership is closed and has ceased operations on the licensed premises. The Secretary of State has dissolved Respondent's business license, however, Respondent's dealership license remains active. Investigation revealed Respondent's surety bond has been canceled. Investigator was unable to obtain any additional information due to lack of dealership operations.

Recommendation: Revocation of Respondent's dealership license for failure to maintain an established place of business/operating hours as well as failure to allow inspection of records - Flag Johnny Bandy and Lionel Morton.

20. Case No.: 201500087

Complaint opened following receipt of allegations that Respondent was holding weekly unlicensed automobile auctions marketed as "bid night." Investigators attempted to attend a scheduled event, but event was not held. The investigation ultimately resulted in a sworn statement from Respondent that two such auction nights were previously held, but the event was unsuccessful. No cars were sold and nobody attended the bid night. After receiving Commerce and Insurance complaints, Respondent consulted with its attorney and decided to cease doing "bid nights" due to their lack of success and the regulatory procedures they would need to follow.

Recommendation: Authorization of a civil penalty in the amount of Four Thousand Dollars (\$4,000) against Respondent for unlicensed motor vehicle auctions consisting of \$2,000 per auction night. To be settled by Consent Order or Formal Hearing.

21. Case No.: 201500901 & 201501445 Complaint 1 opened following Complainant 1's allegation that Respondent misrepresented the "full powertrain warranty" they sold him on his vehicle due to fact warranty actually only covered \$1,000. Additionally, Complainant 1

alleges Respondent has failed to timely produce title/tags. Investigation revealed a warranty was sold to Complainant; however the “as is” box was marked in the deal file. Further investigation revealed three temp tags were issued to Complainant 1.

Complaint 2 opened following Complainant 2’s allegation that Respondent failed to timely produce title/tags and potentially issued too many temp tags. Investigation into temp tag log revealed 46 temp tag violations where Respondent issued more than two temp tags. Additional review of deal file revealed Respondent failed to use correct conditional delivery form.

Recommendation: Authorization of a civil penalty in the amount of Twenty Five Thousand Dollars (\$25,000) against Respondent consisting of \$500 for each temporary tag violation (\$23,000), \$1,000 for deceptive warranty paperwork and \$1,000 for failure to use correct conditional delivery form. Recommend that Respondent, as part of consent order, be required to clearly state limits of powertrain warranty whenever warranty advertised or offered. To be settled by Consent Order or Formal Hearing.

22. Case No.: 210500903

Complaint opened following receipt of information alleging unlicensed activity being performed with advertisement via Craigslist. Investigation revealed 11 cars offered for sale by Respondent. Respondent stated they do not have a TN Motor Vehicle Salesperson License, only a Mississippi wholesaler license.

Recommendation: Authorization of a civil penalty in the amount of Three Thousand Dollars (\$3,000) against Respondent consisting of \$500 for each unlicensed sale. To be settled by Consent Order or Formal Hearing.

23. Case No.: 210500895

Complaint opened following inspection revealing potential unlicensed activity by Respondent. Investigation revealed Respondent dealership is closed while owner of dealership is incarcerated, but license still active. No business activities taking place on premises. Investigation confirmed the three cars parked on site are not for sale.

Recommendation: Close – Legal has requested dealership license be closed

RE-PRESENTATIONS

24. Case No.: 201501132

Respondent issued consent order for \$1,500 after July meeting for failure to maintain business hours and \$1,000 for failure to respond to agreed citation sent by program. Upon review of this matter, citation not sent via certified mail and subsequent investigator visited respondent’s dealership giving respondent the impression that the matter was resolved.

Recommendation: Amend authorization to Five Hundred Dollars (\$500) for original failure to maintain business hours.

25. Case No.: 201500845

Respondent issued consent order for \$25,000 after July meeting for forty-eight (48) missing temporary tags. Respondent provided evidence that accounted for 30 of the missing temporary tags. Evidence showed these thirty (30) missing tags were not listed in sequential order but were present in tag log at time of inspection.

Recommendation: Amend authorization to Nine Thousand Dollars (\$9,000) consisting of \$500 for each of the eighteen (18) missing temporary tags on date of inspection.

26. Case No.: 201501111

Respondent issued consent order for \$1,500 after July meeting for three (3) missing temporary tags. Respondent provided evidence that accounted for two (2) of the missing temporary tags. Evidence showed these two (2) missing tags were recorded, but Respondent mistakenly recorded the incorrect temporary tag number in the log.

Recommendation: Amend authorization to Five Hundred Dollars (\$500) for one missing temporary tag.

A motion was made by Commissioner Jackson to approve the legal report as presented by General Counsel, Kim Cooper, and seconded by Commissioner Trickett. Motion was approved unanimously by voice vote.

MOTION CARRIED.

NEW BUSINESS

Executive Director Shaw presented to the Commission a form of consignment and advised that it and all forms are required to be approved by the commission. The Executive Director also advised that under a promulgated rule the commission was required to prescribe the consignment form. After discussion by the Commission, Commissioner Jackson made a motion to adopt the consignment form, seconded by Commissioner Vaughan

ROLL CALL VOTE

Eddie Roberts	Yes
Reed Trickett	Yes
Joe Clayton	Yes
Nate Jackson	Yes
John Murrey	----
Farrar Vaughan	Yes
Jim Galvin	Yes
Ronnie Fox	Yes
Stan Norton	Yes
Don Parr	Yes
Steve Tomaso	Abstain
Ian Leavy	Yes

Motion carried, therefore the consignment form is adopted.

OLD BUSINESS

Chairman Roberts adjourned the meeting until 9:00am.

SUMMARY SUSPENSION

Chairman Roberts called the meeting to order at 9:15am.

Chairman Roberts requested Executive Director Shaw establish a quorum to hear the summary suspension being presented by legal staff.

ROLL CALL

Eddie Roberts

Reed Trickett

Joe Clayton

Nate Jackson

John Murrey

Farrar Vaughan

Jim Galvin

Ronnie Fox

Stan Norton

Don Parr

Steve Tomaso

Ian Leavy

Paula J. Shaw, Executive Director called the roll. 12 members were present and a quorum was established.

Chairman Roberts turned the meeting over to the legal staff for presentation of the summary suspension.

Assistant General Counsel Robyn Ryan advised the commission about the issue of summary suspension of the license of Luxury Imports of Nashville, License #18959, and whether the commission had to suspend the license. Ms. Ryan explained to the commission that the matter before them was not a formal hearing, but an informal conference that gives parties the opportunity to explain their perspective and whether or not the commission, under the law, believes the matter to affect the public health, safety and welfare and imperatively requires them to take action against the license.

Ms. Ryan explained that a license is a property right, and that is why the process has to be undertaken. She explained that Tennessee Code Annotated 4-5-320 which allows the commission to move forward with a summary suspension should they find that the public health, safety and welfare require it. Ms. Ryan further explained that should the commission determine the license should be summarily suspended, a formal hearing would be required to be held within a reasonable amount of time.

Asst. General Counsel Ryan advised the commission the summary suspension was being held because of numerous complaints filed against the licensee, Luxury Imports of Nashville. Ms. Ryan took the opportunity to read a few of the outstanding complaints into the record, for the commission. She also advised the Mr. Lee Nathan would have an opportunity to speak regarding the complaints.

Ms. Ryan began with a consumer complaint where the licensee sent a deal to a credit union which funded the purchase with \$22,300 and provided the consumer a check, who delivered the check to the dealer as well as the consumer providing the dealer with \$2,000 more. Neither Luxury Imports nor Mr. Nathan has obtained a vehicle for the complainant.

On or about early April 2015, Mr. Nathan indicated to the representatives at the credit union that the vehicle was not available, however, Mr. Nathan failed to return any money provided by the institution or the purchaser and failed to deliver the vehicle. In May of 2015, an arrest warrant was issued for Mr. Nathan for theft of property concerning this particular deal. The credit union filed on the dealer's surety bond and received payment for that vehicle.

Ms. Ryan continued with the second complaint, wherein a buyer purchased 2012 Hyundai Elantra on February 4, 2015, and as of June 2015, had not received registration for the vehicle. As of June 2015, the vehicle in question was titled in the State of Illinois.

In the third complaint, the consumer purchased a Nissan on or about November 2014, and made a \$2,000 cash down-payment. The consumer did take the vehicle and the vehicle passed emissions, however, the vehicle had not been registered by July 27, 2015. As of that date, the title was in the State of Kentucky and had not been vested to the consumer.

In the next complaint, a consumer purchased a 2012 Hyundai and as of June 2015, did not have registration and was driving on an expired temporary tag issued by the licensee. The Tennessee Department of Revenue has no record of the vehicle being title in Tennessee or any other state.

In the fifth complaint, Ms. Ryan stated the consumer traded in a 2000 Pontiac G6 towards the purchase of another vehicle in February 2015. As of June 2015, the vehicle is at the dealer's established place of business and the business is not open for operation during its posted hours and the consumer has stated that it is affecting her credit.

Assistant General Counsel advised the commission there were further complaints filed against the licensee, but which were not under consideration that day. She also conveyed to the commission that she was unsure of the status of the warrant issued for Mr. Nathan, but advised that Mr. Nathan was there to answer any questions they may have.

Chairman Roberts asked Ms. Ryan about the second complaint's title and whether it was titled in Illinois, to which Mr. Ryan advised that it had been previously titled in that state. Chairman Roberts also asked for clarity about the Kentucky title, which was the same as the circumstances with the previous question.

Chairman Roberts asked Mr. Nathan if he would like to address the commission, and Mr. Nathan answered in the affirmative. Mr. Nathan stated on the first complaint regarding the credit union situation, he asserted that he had spoken with the complainant and had found a

vehicle, but it had an oil leak, and he declined to purchase the vehicle for the consumer. Mr. Nathan went on to state that he had an agreement with Next Gear Capital and funds were withdrawn from his account, per his agreement, which caused his account to be overdrawn. Mr. Nathan agreed that the surety bond did take care of the issue with the credit union, and stated that all these issues began after his mother's death in July, and he was in the process of trying to obtain more sources of capital to keep the dealership in business.

Mr. Nathan then discussed further the other cited complaints, and reasoned that the events of not being able to register vehicles happened because his account was overdrawn and he was still attempting to resolve the issue.

After further discussion, and questions from the commission, a motion was made by Commission Vaughan to summarily suspend the license, seconded by Commission Jackson.

ROLL CALL VOTE

Eddie Roberts	Yes
Reed Trickett	Yes
Joe Clayton	Yes
Nate Jackson	Yes
John Murrey	Yes
Farrar Vaughan	Yes
Jim Galvin	Yes
Ronnie Fox	Yes
Stan Norton	Yes
Don Parr	Yes
Steve Tomaso	Yes
Ian Leavy	Yes

Motion carried, therefore the license is summarily suspended.

Ms. Ryan requested the commission clarify the action of suspension with a statement regarding the welfare and protection of the consumers and that the action imperatively required it. Chairman Roberts indicated this was an emergency situation and concurred with Ms. Ryan that the welfare and protection of the consumers required the summary suspension. Commissioner Clayton made a motion to adopt the statement of necessity for the summary suspension and imperative protection, seconded by Commission Galvin.

ROLL CALL VOTE

Eddie Roberts	Yes
Reed Trickett	Yes
Joe Clayton	Yes
Nate Jackson	Yes
John Murrey	Yes
Farrar Vaughan	Yes
Jim Galvin	Yes
Ronnie Fox	Yes
Stan Norton	Yes
Don Parr	Yes

Steve Tomaso **Yes**
Ian Leavy **Yes**

Motion Carried, therefore the statement was adopted.

Ms. Ryan advised the commission that the date of October 6, 2015, in her opinion, should be used for the formal hearing. Mr. Nathan agreed to the formal hearing to be held on October 6, 2015. Chairman Roberts indicated to Mr. Nathan that it would be added to the Agenda.

Meeting Adjourned

Eddie Roberts, Chairman