

BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

IN THE MATTER OF:

H# 15-010

PHILLIP FINCH

vs.

**PAYNE'S INC., dba TURF AND TRAIL; AND
MASSIMO MOTOR SPORTS, LLC**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Arkansas Motor Vehicle Commission (hereinafter "Commission") held a hearing on June 17, 2015, to determine whether Payne's Inc., dba Turf and Trail (hereinafter "Turf and Trail"), a licensed dealer, and/or Massimo Motor Sports, LLC (hereinafter "Massimo"), violated the Arkansas Motor Vehicle Commission Act, pursuant to Ark. Code Ann. § 23-112-101 et seq., and Commission Rule 2 regarding hearings and appeals. The charge before the Commission concerned whether Turf and Trail and/or Massimo violated Commission statutes when they failed to provide warranty support and repair Mr. Finch's Massimo 600.

Phillip Finch appeared and provided testimony and evidence as the Complainant.

David Payne appeared and provided testimony and evidence on behalf of Turf and Trail as the Respondent.

Wes Stroe appeared and provided testimony and evidence on behalf of Massimo as the Respondent.

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

FINDINGS OF FACT

- F1. Turf and Trail is located at 160 E. Boswell, Batesville, AR 72501, and at the time of the transaction described below was a licensed dealer for Massimo.
- F2. Massimo is located at 8551 Esters Blvd, Irving, TX 75063, and is a licensed distributor for Massimo products.
- F3. In a notarized complaint dated January 29, 2015, Phillip Finch states he purchased a new Massimo 600 on March 11, 2014.
- F4. As stated in the attached complaint, Mr. Finch has been unable to have the vehicle repaired after first taking it to Turf and Trail, and then having it shipped to another Massimo dealer, Horn's Outdoors.
- F5. In response to Mr. Finch's complaint, Turf and Trail stated they "could not get support, parts, or warranty issues dealt with" by Massimo.
- F6. Paragraphs F1 through F5 were established as true through testimony and evidence.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Commission makes the following

Conclusions of Law:

- C1. Motor vehicle dealers and distributors are required to conform their conduct to the Motor Vehicle Commission Act, Ark. Code Act § 23-112-101, *et seq.* and the Rules promulgated by the Commission pursuant to Ark. Code Act § 23-112-204.
- C2. Failure to comply with any provision of the AMVC Act may lead to revocation or suspension of the license as per Ark. Code Ann. § 23-112-308(a)(4). The Commission may issue a monetary penalty in lieu of revocation or suspension

only if it formally finds that the public interest would not be impaired thereby and the payment of the penalty will achieve the desired disciplinary results as per Ark. Code Ann. § 23-112-309.

- C3. Pursuant to Ark. Code Ann. § 23-112-308, the Commission may suspend or revoke a license for any of the following reasons:
- A. For failure to comply with any provisions of this chapter or with any rule or regulation promulgated by the commission, Ark. Code Ann. § 23-112-308(a)(4);
 - B. For continued violation of any provisions of this chapter or any of the rules of the Commission, Ark. Code Ann. § 23-112-308(a)(6);
 - C. For any violation of any law relating to the sale of motor vehicles, Ark. Code Ann. § 23-112-308(a)(7);
 - D. Defrauding any retail buyer to the buyers damage, Ark. Code Ann. § 23-112-308(a)(8);
 - E. Failure to perform any written agreement with a retail buyer, Ark. Code Ann. § 23-112-308(a)(9); and/or,
 - F. On satisfactory proof that any distributor has unfairly and without due regard to the equities of the parties or to the detriment of the public welfare failed to properly fulfill any warranty agreement or to adequately and fairly compensate any of its motor vehicle dealers for labor, parts, or incidental expenses incurred by the dealer with regard to factory warranty agreements performed by the dealer, Ark. Code Ann. § 23-112-308(a)(18).

C4. Massimo violated the Motor Vehicle Commission Act when it failed to provide warranty support and repair Mr. Finch's Massimo 600. This charge is based on the facts relating to Massimo dealings with Turf and Trail and Mr. Finch, and the provisions of law set out in paragraphs L1, L2, and L3.

ORDER

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

The Commission finds that in lieu of a suspension of Massimo's license the public interest would not be impaired and the payment of a penalty will achieve the desired disciplinary result by issuing a monetary penalty against Massimo in accordance with Ark. Code Ann. § 23-112-309 in the amount of five hundred dollars (\$500.00) per day for ten (10) days for an aggregate amount of five thousand dollars (\$5,000.00).

Furthermore, the Commission hereby retains jurisdiction and discretion to waive the monetary penalty of five thousand dollars (\$5,000.00) against Massimo if the Commission is provided with satisfactory evidence, within thirty (30) days of entry of this Order, that complainant Phillip Finch and Massimo have resolved any complaint on the part of Phillip Finch that Massimo failed to provide warranty support, repair or to otherwise fulfill its obligations to Phillip Finch under any warranty agreement.

This is a final Order of the Commission and as such is subject to judicial review pursuant to Ark. Code Ann. § 25-15-212.

ARKANSAS MOTOR VEHICLE COMMISSION

By: F. S. Stroope
Sandy Stroope, Chairman

Date: July 22, 2015