

**BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION**

**IN THE MATTER OF:**

**AP# 15-001**

**BANITA PERKINS**

**vs.**

**NORTH POINT MAZDA VOLKSWAGEN**

**NOTICE OF VIOLATION**

IT HAS BEEN determined by the Arkansas Motor Vehicle Commission (hereinafter "Commission") that North Point Mazda Volkswagen (hereinafter "North Point"), a licensed dealer, violated the delivery prior to sale statute. This action is in direct violation of the Arkansas Motor Vehicle Commission Act, Ark Code Ann. §23-112-101, et seq., pursuant to Ark. Code Ann. §23-112-204. If the Commission determines that a firm or individual has violated the Commission Act or Rules, the Commission may revoke or suspend the license, or impose a monetary penalty in lieu of revocation or suspension if the public interest would not be impaired thereby and the payment of the penalty will achieve the desired disciplinary results.

**FACTUAL BACKGROUND**

The Commission finds the following facts as true:

- F1. North Point is located at 6030 Lander Road, Sherwood, AR.
- F2. On July 19, 2014, Banita Perkins purchased a 2014 Volkswagen CC and traded-in a 2007 Nissan Altima.
- F3. Ms. Perkins deal was unable to get funded
- F4. According to Ms. Perkins notarized complaint dated September 4, 2014, she was told that North Point wanted their car back (the 2014 Volkswagen CC), they told

her that her trade-in (2007 Nissan Altima) was sold, and they would try to get it back.

- F5. According to Ms. Perkins notarized complaint, "I don't want the car. When I left the car I was aware of the car condition. But as of today I don't know. Someone has been in my car for 47 days. So I no longer want the car."
- F6. Commission Investigator Gordon McCoy confirmed with North Point Volkswagen Finance Manager Collin Riggan and General Manager Chad McClellon that Ms. Perkins' 2007 Nissan Altima was sold and recovered.

#### APPLICABLE LAW

- L1. Motor vehicle dealers 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.
- L2. 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 as per Ark. Code Ann. § 23-112-309.
- L3. In accordance with Ark. Code Ann. § 23-112-316 related to delivery prior to sales transactions, a dealer shall provide the consumer an agreement for delivery prior to sale at the time of delivery of the motor vehicle to the consumer. The agreement states that a new motor vehicle dealer shall not sell a trade-in until the contract for sale is final. Additionally, a consumer retains the right to cancel the purchase of a motor vehicle if the consumer fails to obtain financing that meets

the agreed upon interest rate. If the consumer cancels the purchase, the dealer shall immediately return the trade-in.

**CHARGES**

C1. North Point violated Ark. Code Ann. § 23-112-316 when they failed to have Ms. Perkins sign a delivery prior to sale agreement form after North Point delivered the Volkswagen CC to her prior to the completion of the contract for sale, and when North Point sold Ms. Perkins trade-in prior to the completion of the contract for sale.

AS A RESULT OF THESE VIOLATIONS, you are hereby directed to pay a civil penalty in the amount of two thousand five hundred dollars (\$2,500.00). This amount should be sent to the Commission within seven (7) days of receipt of this Notice of Violation.

IF YOU DESIRE TO CONTEST the alleged violation or the penalty imposed, please so indicate on the attached form and return to the Commission Office within seven (7) days and this matter will be set for an evidentiary hearing before the Commission.

**ARKANSAS MOTOR VEHICLE COMMISSION**

By:

  
\_\_\_\_\_  
Greg Kirkpatrick, Director

Date:

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2/26/2015