

**BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION**

**IN THE MATTER OF:**

**AP# 17-004**

**MCLARTY NISSAN OF LITTLE ROCK**

**NOTICE OF VIOLATION**

IT HAS BEEN determined by the Arkansas Motor Vehicle Commission (hereinafter "Commission") that McLarty Nissan of Little Rock (hereinafter "McLarty Nissan"), a licensed dealer, violated the deceptive and fraudulent practices statute. This is in direct violation of the Arkansas Motor Vehicle Commission Act, Ark. Code Ann. §23-112-316 (d)(3)(A-B), If a consumer who executes an agreement for delivery prior to sale chooses not to execute a contract for sale or otherwise cancels the purchase, then the dealer shall not deposit or cash any down payment provided by the consumer and the dealer shall immediately return any motor vehicle that was presented by the consumer as a trade-in. 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.

**FACTUAL BACKGROUND**

The Commission finds the following facts as true:

- F1. McLarty Nissan is located at 1 Colonel Glenn Plaza Drive, Little Rock, AR.
- F2. On March 28, 2017, Christine Speir purchased a 2017 Nissan Armada with a \$2,000.00 down payment and a 2009 Chevrolet as a trade-in.
- F3. Ms. Speir's deal did not get approved.

- F4. According to the notarized complaint filed May 4, 2017, she was told on or around April 20, 2017, by the lien holder that they were backing out of the deal because she did not get financed and the trade-in had already been sold.-
- F5. On April 28, 2017, Ms. Speir was asked to bring in more documentation, which she provided.
- F5. According to the notarized complaint, while waiting on them to get financing approved, Ms. Speir obtained her own pre-qualified financing and provided it to the dealership.
- F6. In May 2017, McLarty Nissan called to tell Ms. Speir that they could not get her financed unless she brought them an additional \$10, 000.00 and that her pre-qualification was only good for \$35, 000.00.
- F6. On May 2, 2017, a wrecker was sent to pick vehicle up the vehicle without returning Ms. Speir's trade-in or down payment until the following day. The trade-in was returned with additional miles due to being sent to auction.

#### **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 or any Rule promulgated by the Commission 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. Failure to comply with any provision of the AMVC Act or any Rule promulgated by the Commission 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 not to exceed ten thousand dollars (\$10,000.00) as per Ark. Code Ann. § 23-112-309.
- L4. In accordance with Ark. Code Ann. §23-112-316 (d)(3)(A-B), if a consumer who executes an agreement for delivery prior to sale chooses not to execute a contract for sale or otherwise cancels the purchase, then the dealer shall not deposit or cash any down payment provided by the consumer and the dealer shall immediately return any motor vehicle that was presented by the consumer as a trade-in.

**CONCLUSIONS OF LAW**

C1. McLarty Nissan violated Commission statutes when they cashed Ms. Speir's down payment prior to completing the retail installment contract.

AS A RESULT OF THESE VIOLATIONS, you are hereby directed to pay a civil penalty in the amount of one thousand dollars (\$1,000.00). 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:  \_\_\_\_\_  
Kristi Byars, Interim Director

Date: August 31, 2017