

BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

IN THE MATTER OF:

H# 14-012

LAURA FOWLER

vs.

CRAIN HYUNDAI OF BENTONVILLE

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Arkansas Motor Vehicle Commission (hereinafter "Commission") held a hearing on November 19, 2014, to determine whether Crain Hyundai of Bentonville (hereinafter "Crain") violated the disclosure of damage prior to sale statute pursuant to the Arkansas Motor Vehicle Commission Act, Ark. Code Ann. § 23-112-101 et seq., and Commission Rule 2 regarding hearings and appeals. The charge before the Commission concerned whether Crain violated Commission statutes when they failed to disclose damage prior to sale.

Laura Fowler and Kenny Fowler appeared and provided testimony as the complainant.

Attorney Jamie Jones with Friday Eldredge Clark represented Crain as legal counsel and testimony was heard from General Manager Stephen Hawkins.

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. Crain is located at 3000 SE Moberly Lane, Bentonville, AR 72712.

- F2. Mrs. Laura A. Fowler filed a notarized complaint with the Commission on May 1, 2014, alleging the following:
- a. On November 29, 2013, Mrs. Laura A. Fowler visited Crain, purchased a new 2013 Hyundai Santa Fe Sport AWD for the cash price of \$28,999.00, and traded-in her 2012 Hyundai Tucson.
 - b. The new Hyundai Santa Fe was damaged prior to the sale to Ms. Fowler in the amount estimated at \$10,000 to \$15,000.
 - c. This damage prior to sale by Crain was not disclosed.
- F3. On September 12, 2014, the Commission issued a Notice of Violation, AP# 14-003, in which the Ad Hoc Committee recommended a fine of two thousand five hundred dollars (\$2,500.00). On September 18, 2014, Crain contested the allegations set forth in the Notice of Violation.
- F4. Paragraphs F1 through F3 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 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 as per Ark. Code Ann. § 23-112-309.

- C3. In accordance with Ark. Code Ann. § 23-112-706 (a), whenever a motor vehicle is damaged after delivery to the dealer by the manufacturer or distributor but before sale by the dealer to the consumer, and the occurrence and extent of such damage is in excess of six percent (6%) of the sticker price of the vehicle, it must be disclosed by the dealer to the consumer prior to the sale, and upon repair of the damage sustained, or replacement of parts or accessories damaged, the dealer must certify to the consumer that this motor vehicle has been repaired or remanufactured according to the manufacturer's standards, and (b) upon such certification, liability for any concealed damages then remaining with the motor vehicle shall lie with the dealer.
- C4. Respondent Crain violated Ark. Code Ann. § 23-112-706 when it failed to notify Mrs. Fowler of the damages prior to sale.

