

BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

IN THE MATTER OF:

AP# 18-001

BALE CHEVROLET

NOTICE OF VIOLATION

IT HAS BEEN determined by the Arkansas Motor Vehicle Commission (hereinafter "Commission") that Bale Chevrolet (hereinafter "Bale Chevrolet"), a licensed dealer, violated the Motor Vehicle Commission statute when they utilized false and misleading advertising. This 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 violated the Commission Act or Rules, they 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. Bale Chevrolet is located at 13101 Chenal Parkway, Little Rock, AR.
- F2. On November 16, 2017, the Commission received a formal complaint from Ruth Ann Harrison, 319 S. Pine St., Little Rock, AR 72205, regarding a mailer from Bale Chevrolet.
- F3. In November 2017, Bale Chevrolet sent out a mailer that contained information on a sales event to be held at their dealership November 7th thru 11th. This mailer also contained a "Play Super Jackpot" game piece which invited addressee to dealership to redeem prize. Ruth Ann Harrison received one of these mailers.

- F4. On Tuesday, November 7th, Ms. Harrison went to Bale Chevrolet to claim the \$3,500 cash prize she felt she won after following instructions to activate and scratch off game piece included with mailer.
- F5. Upon arrival at Bale Chevrolet, Ms. Harrison was greeted by a lady who said she was from Wisconsin. She then escorted Ms. Harrison inside of the dealership. When Ms. Harrison informed the salesperson that she was there to collect the \$3,500 cash prize, the salesperson told Ms. Harrison that the prize she won was a “Smart Watch.” Ms. Harrison then said she did not want a watch, and left.
- F6. On November 29, 2017, Investigator Gordon McCoy visited Bale Chevrolet and spoke with Kevin Kelly, the General Manager, to discuss consumer complaints on the mailer game piece. There had been seven (7) complaints filed and several phone calls from consumers claiming they had won the \$3,500 cash prize. All claimed they had been misled and Bale Chevrolet would not award them the \$3,500 cash prize. Mr. Kelly said that he would contact Hunter Bale, the owner, before making any decision on addressing this issue. Hunter Bale called Investigator McCoy that afternoon to discuss the issue and asked for more time to contact the marketing firm, each of the seven (7) consumers, and to work out a resolution.
- F7. The seven (7) consumers that the Commission received complaints from are as follows: Nicholas Busbey, Steven Higginbotham, Samantha Cozens, Ruth Harrison, Lainey Deaton, James Owens, and Trevor Marlar.
- F8. Mr. Hunter Bale did attempt to contact all of the consumers on the list of complainants received by the Arkansas Motor Vehicle Commission. The Arkansas Motor Vehicle Commission did receive communication from Ms. Harrison saying

that she had received a call from Mr. Bale apologizing. She did not offer to withdraw her complaint and said she remained very disappointed.

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. Violations of Commission Rules are considered to be a *prima facie* violation of Ark. Code Ann. § 23-112-402(3) which states it is unlawful for a motor vehicle dealer or salesperson to use any false or misleading advertisement.
- 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 as per Ark. Code Ann. § 23-112-309.
- L4. False or misleading advertising is prohibited by Rule 3 Advertising, Section 2 and the following are in violation of this rule:
 - a. Direct statements or reasonable inferences that have the tendency to mislead consumers, Rule 3 Advertising, Section 2(B)(2)(a);
 - b. When an advertisements overall impression has the tendency to mislead consumers, Rule 3 Advertising, Section 2(B)(2)(b);
 - c. The failure to make clear and conspicuous disclosures of limitations, disclaimers, qualifications, conditions, exclusions, or restrictions, Rule 3 Advertising, Section 2(B)(2)(d); and,

- d. Using in advertisement, footnotes, asterisks, or various superscripted symbols which, confuse, contradict, materially modify or unreasonably limit the material terms of an advertisement, Rule 3 Advertising, Section 2 (B)(2)(g).

CHARGES

C1. Bale Chevrolet violated Commission statutes and Rule 3 on Advertising when they utilized false and misleading advertising designed to mislead consumers. This charge is based on the facts as stated and referenced above, and the provisions of law set out in paragraphs L1, L2, L3 and L4.

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).

The Commission finds the violations of Commission statutes and rules by Bale Chevrolet warrant a suspension of Bale Chevrolet's license for failure to comply with provisions of the Commission Act and Rules promulgated by the Commission as per the applicable law stated above.

The Commission finds that in lieu of a suspension of Bale Chevrolet'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 Bale Chevrolet in accordance with Ark. Code Ann. § 23-112-309 in the amount of five hundred dollars (\$500.00) per day for five (5) days for an aggregate 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 indicate this request 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: F. S. Stroope
F. S. Stroope, Executive Director

Date: 3/19/2018