

BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

IN THE MATTER OF:

H # 10-002

TOMMY NEWMAN / NEWMAN'S FIXTURE COMPANY

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Arkansas Motor Vehicle Commission (hereinafter the "Commission") held a hearing on April 21, 2010, to determine whether Tommy Newman and Newman's Fixture Company (hereinafter "Newman's") violated the Arkansas Motor Vehicle Commission Act, Ark. Code Ann. § 23-112-101 et seq. The charges before the Commission concerned whether Newman's violated Commission statutes when it acted sold new motor vehicles without holding a valid dealer's license.

The Respondent, Newman's, was represented by Tommy Newman and Legal Counsel James Hamilton.

After hearing testimony from Danny Holmes, Otis Hogan, Tommy Newman, and reviewing documents received in evidence, the Commission makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

- F1. On Wednesday, November 11, 2009, Commission Investigator Holmes traveled to Monticello and observed a sign advertising "Honda Scooters" in the window of Newman's.
- F2. Under the sign there appeared to be a Honda Metropolitan Scooter in new condition.

- F3. The sign advertising the “Honda Scooters” contained the Honda “Wing” logo. There was also a sign below the “Honda Scooters” sign that advertised the price of one thousand nine hundred ninety-five dollars (\$1,995.00).
- F4. Upon entering the business, Investigator Holmes met Rodney. Mr. Holmes asked Rodney if the Honda Metropolitan scooter was new and was told it was “brand new.” Mr. Holmes was shown the odometer of the Honda scooter which reflected fourteen (14) miles. Mr. Holmes was also shown a larger scooter which was a used blue Yamaha. Mr. Holmes asked Rodney how many scooters they had for sale, and was told there were five (5) in stock originally.
- F5. Upon leaving Newman’s, Investigator Holmes met the owner, Mr. Tommy Newman, in the parking lot. Mr. Holmes told Mr. Newman he was interested in the scooters he was selling. Mr. Newman stated he began selling the scooters because no one else in the area was selling them, and he thought it might be nice for the college kids to ride around.
- F6. Investigator Holmes informed him that he may be in violation of state statutes for selling new motor vehicles without a license. Mr. Newman strongly disagreed, and stated the Honda scooter was used. Mr. Newman provided Mr. Holmes with a bill of sale indicating Mr. Newman purchased three (3) Honda scooters from Honda of North Little Rock.
- F7. On Friday, November 13, 2009, Investigator Hogan travelled to Monticello to follow up on the aforementioned investigation.

- F8. Investigator Hogan observed the “Honda Scooters” sign and the one thousand nine hundred ninety-five dollars (\$1,995.00) sign continuing to be displayed at Newman’s.
- F9. Investigator Hogan then approached Mr. Newman and Rodney in regards to the scooters displayed and offered for sale. Rodney indicated the red and white Honda Metropolitan scooter was new, and on sale for one thousand nine hundred ninety-five dollars (\$1,995.00). Rodney also indicated the store had sold other scooters with the Red Honda Metropolitan and the blue Yamaha remaining.
- F10. On January 22, 2010, the Commission issued a Notice of Violation, AP# 10-001, in which the Ad Hoc Committee recommended a fine of one thousand dollars (\$1,000.00). On January 29, 2010, Newman’s contested the allegations set forth in the Notice of Violation.
- F11. On March 12, 2010, the Commission received a call from Mr. James Hamilton, stating that Mr. Newman had to have emergency shoulder surgery and would be unable to attend the March 17, 2010 hearing. Mr. Hamilton requested and extension until April 21, 2010 which was granted.

CONCLUSION OF LAW

Based on the foregoing Findings of Fact, the Commission makes the following Conclusion of Law:

- C1. Tommy Newman and Newman’s Fixture Company violated Commission statutes by displaying and offering for sale a new motor vehicle without a license.

ORDER

The Commission finds, by a majority of the members present, the violation of Commission statutes by Tommy Newman and Newman's warrants a total civil penalty of one thousand dollars (\$1,000.00) which is to be paid within thirty (30) days of receipt of this Order.

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 _____
Joe Morgan, Chairman

Date: _____