

BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

IN THE MATTER OF:

Hearing # 05-007

**ROBERT DIGBY vs.
SUPERIOR DODGE CHRYSLER JEEP**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter came on for hearing before the Arkansas Motor Vehicle Commission on Wednesday, July 20, 2005. The Respondent, Superior Dodge Chrysler Jeep (hereinafter referred to as "Superior") appeared by Mike Lemons, one of the owners. After hearing the testimony of sworn witnesses and reviewing documents received into evidence, the Commission makes the following Findings of Fact, and Conclusions of Law and Order.

FINDINGS OF FACT

1. Superior is licensed by the Commission to sell Dodge, Chrysler and Jeep products at a location in Conway, Arkansas.
2. Robert Digby, the complainant, is a resident of Maumelle, Arkansas.
3. Mr. Digby saw an advertisement in the December 17, 2004, *Arkansas-Democrat Gazette* newspaper placed by Superior. His attention was drawn to an advertisement which pictured a 2004 Dodge Ram regular cab truck. The advertisement represented the truck would be sold at \$9,496.00 off MSRP. The published sales price in the advertisement was \$11,999.00. The advertisement did not contain any information which would inform a consumer that there was a limited quantity of 2004 Dodge Ram regular cab pick-ups available for \$11,999.00.
4. Mr. Digby called Superior and spoke with salesperson Jerry Sterling. He was told the truck had a 6-cylinder engine and standard transmission. He was also told that the dealership had several to choose from. Mr. Digby told the salesman that he did not want to drive to

Conway if he did not actually have this item in stock. Mr. Sterling assured him that they had one and invited him to come to Conway.

5. Mr. Digby went to the Superior dealership on the afternoon of December 17, 2004, and met with Mr. Sterling who showed him a blue 2004 Dodge Ram truck. They went into the dealership to discuss the purchase further and to discuss what Superior could give him on a trade in. Sometime later Mr. Sterling told Mr. Digby that he had showed him the wrong truck. The truck shown was an 8-cylinder and Superior did not have any 2004 6-cylinder trucks in stock and would not be receiving any more. Mr. Sterling apologized for the mistake and quoted Mr. Digby a price on the truck that was present on the lot.

6. Later the same day Mr. Digby spoke with General Manager Mike Lemons by telephone. Mr. Lemons told him that the last 2004 6-cylinder Dodge Ram had been sold the day before. Mr. Lemons made the offer on the more expensive 8-cylinder truck.

7. Arkansas Motor Vehicle Commission staff requested Superior to provide records of 2004 6-cylinder Dodge Ram trucks. The records were reviewed by Angie Stoffer with the Commission staff and also by Mr. Digby.

8. In the preceding three months there were at most two 2004 6-cylinder Dodge Ram trucks sold at the Superior dealership. Neither of these trucks was sold for \$11,999.00.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Commission makes the following Conclusions of Law.

1. That Superior has engaged in bait-and-switch advertising in violation of Rule 3, Section 2, paragraph B, rules of the Arkansas Motor Vehicle Commission.

2. Superior has violated Rule 3, Section 3, paragraph C, failing to disclose in the advertisement the limited availability of the vehicle advertised.

ORDER

1. The Commission determines that the violation of the regulations with respect to bait-and-switch constitutes grounds which would warrant suspension of the dealership's license. The Commission finds that the public interests will not be impaired and the desired disciplinary results will be achieved by imposing a civil penalty of \$5,000.00 in lieu of suspension.

2. The Commission finds with respect to the violation of Rule 3 Advertising, Section C, is a sufficient ground to suspend the license of Superior. The Commission finds that the public interests will not be impaired and the desired disciplinary results will be achieved by imposing a civil penalty of \$5,000.00 in lieu of suspension.

3. The civil penalty should be paid within 30 days of receipt of this Order.

4. This decision of the Arkansas Motor Vehicle Commission is a final order and Superior Dodge Chrysler Jeep may seek judicial review in the Circuit Court of Pulaski County or in the circuit court of the county in which the dealership is located.

**ARKANSAS MOTOR VEHICLE
COMMISSION**

By: _____
F. S. Stroope, Chairman

Date: _____